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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2019–0001]

RIN 1557–AE60

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket ID R–1659]

RIN 7100–AF46

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AE81

Regulatory Capital Rule: Revisions to the Supplementary Leverage Ratio To Exclude Certain Central Bank Deposits of Banking Organizations Predominantly Engaged in Custody, Safekeeping, and Asset Servicing Activities

AGENCY: The Office of the Comptroller of the Currency; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation are issuing a final rule to implement section 402 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Section 402 directs these agencies to amend the regulatory capital rule to exclude from the supplementary leverage ratio certain funds of banking organizations deposited with central banks if the banking organization is predominantly engaged in custody, safekeeping, and asset servicing activities.

DATES: The rule is effective April 1, 2020.

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Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Teresa A. Scott, Manager, (202) 475–6316; Donald Gabbai, Lead Financial Institution Policy Analyst, (202) 452–3358; Division of Supervision and Regulation; or Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036; Mark Buresh, Senior Counsel, (202) 452–5270; Mary Watkins, Senior Attorney, (202) 452–3722; Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf, (202) 263–4869.

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I. Overview of the Proposal

In April 2019, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) published a notice of proposed rulemaking (proposal) [1] to implement section 402 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (section 402).[2]

Section 402 requires the agencies to amend the supplementary leverage ratio, a measure of capital adequacy that applies to large banking organizations. Under section 402, the supplementary leverage ratio must not take into account funds of a custodial bank that are deposited with certain central banks, provided that any amount that exceeds the value of deposits of the custodial bank that are linked to fiduciary or custodial and safekeeping accounts must be taken into account when calculating the supplementary leverage ratio as applied to the custodial bank.[3] Under section 402, central bank deposits that qualify for the exclusion include deposits of custodial banks placed with (1) the Federal Reserve System, (2) the European Central Bank, and (3) central banks of member countries of the Organisation for Economic Co-operation and

[1] 84 FR 18175 (April 30, 2019).

[2] Public Law 115–174, 132 Stat. 1296 (2018), section 402.

[3] *Id.* at 402(b)(2).

Development (OECD),[4] if the member country has been assigned a zero percent risk weight under the agencies' regulatory capital rule (capital rule) and the sovereign debt of such member country is not in default or has not been in default during the previous five years.[5] Section 402 defines a custodial bank as ''any depository institution holding company predominantly engaged in custody, safekeeping, and asset servicing activities, including any insured depository institution subsidiary of such a holding company.''[6]

The proposal would have implemented section 402 by defining the scope of banking organizations considered to be predominantly engaged in custody, safekeeping, and asset servicing activities and by providing the standard by which such banking organizations would determine the amount of central bank deposits that could be excluded from total leverage exposure, which is the denominator of the supplementary leverage ratio in the capital rule.

Under the proposal, a depository institution holding company with a ratio of assets under custody (AUC)-to-total assets of at least 30:1 would have been considered predominantly engaged in custody, safekeeping, and asset servicing activities. Such a banking organization would have been termed a ''custodial banking organization.'' A custodial banking organization would have excluded from the supplementary leverage ratio deposits placed at a ''qualifying central bank,'' which would have included a Federal Reserve Bank, the European Central Bank, or any central bank of a member country of the OECD if the member country meets certain criteria. The amount of central bank deposits that could have been excluded from total leverage exposure would have been limited by the amount of deposit liabilities of the custodial banking organization that are linked to fiduciary or custody and safekeeping accounts.

The agencies collectively received six comment letters on the proposal (from banking organizations and other interested parties). Some commenters were supportive of the agencies' proposal to implement section 402. Other commenters acknowledged that the agencies are required to implement section 402 but raised various concerns regarding the potential effect that implementation of section 402 would have on other aspects of the banking sector.

The agencies have considered all the comments received on the proposal. As described in more detail below, the agencies are adopting the proposal as a final rule without modification. The agencies are required under section 402 to amend the capital rule to exclude from the supplementary leverage ratio certain central bank deposits of banking organizations predominantly engaged in custody, safekeeping, and asset servicing activities. The agencies' adoption of the proposal fulfills this statutory requirement. The final rule becomes effective on April 1, 2020.

II. Background

A. The Supplementary Leverage Ratio

The supplementary leverage ratio measures tier 1 capital relative to total leverage exposure, which includes on-balance sheet assets (including deposits at central banks) and certain off-balance sheet exposures.[7] A minimum supplementary leverage ratio of 3 percent applies to certain banking organizations and their depository institution subsidiaries.[8] In addition, banking organizations that will be subject to Category I standards, which are the global systemically important bank holding companies (U.S. GSIBs), as well as their depository institution subsidiaries, are subject to enhanced supplementary leverage ratio (eSLR) standards. The eSLR standards require each U.S. GSIB to maintain a supplementary leverage ratio above 5 percent to avoid limitations on the firm's distributions and certain discretionary bonus payments and also require each of its insured depository institutions to maintain a supplementary leverage ratio of at least 6 percent to be deemed ''well capitalized'' under the prompt corrective action framework of each agency.[9]

B. Fiduciary, Custody, Safekeeping, and Asset Servicing Activities

Certain banking organizations engage in fiduciary, custody, safekeeping, and asset servicing activities. Custody, safekeeping, and asset servicing activities generally involve holding securities or other assets on behalf of clients, as well as activities such as transaction settlement, income processing, and related record keeping and operational services. A banking organization may also act as a fiduciary by, for example, acting as trustee or executor, or by having investment discretion over the management of client assets. Banking organizations typically provide custody, safekeeping, and asset servicing to their fiduciary accounts. While many banking organizations offer some or all of these services, certain banking organizations specialize in these activities and often do not provide the same range or scale of traditional commercial or retail banking products as are provided by other banking organizations.[10]

Fiduciary and custody clients often maintain cash deposits at the banking organization in connection with these services. Clients typically maintain cash positions consisting of funds awaiting investment or distribution that are often in the form of deposits placed in banking organizations. These cash deposits help facilitate the administration of the custody account. Under U.S. generally accepted accounting principles (U.S. GAAP), cash deposits at a banking organization are a deposit liability and thus appear on the banking organization's balance sheet.

Cash deposits that are linked to custody and fiduciary accounts at banking organizations fluctuate depending on the activities of the banking organization's custodial clients. For example, cash deposit balances of such banking organizations generally increase during periods when clients liquidate securities, such as during times of stress. To assist in managing these cash fluctuations, banking organizations may maintain significant cash deposits at central banks. Central bank deposits can be used as an asset-liability management strategy to facilitate these banking organizations' ability to support custodial clients' cash-related needs. Under U.S. GAAP,

[4] The OECD is an intergovernmental organization founded in 1961 to stimulate economic progress and global trade. A list of OECD member countries is available on the OECD's website, *www.oecd.org.*

[5] Public Law 115–174, section 402(a).

[6] *Id.,* at 402(b).

[7] 12 CFR 3.10(a)(5) and (c)(4) (OCC); 12 CFR 217.10(a)(5) and (c)(4) (Board); 12 CFR 324.10(a)(5) and (c)(4) (FDIC).

[8] The agencies recently adopted final rules tailoring the application of capital requirements, including the supplementary leverage ratio, based on a banking organization's risk profile (tailoring rules). *See* 84 FR 59230 (November 1, 2019), available at *https://www.federalreserve.gov/aboutthefed/boardmeetings/20191010open.htm.* Under the tailoring rules, the minimum supplementary leverage ratio requirement applies to banking organizations subject to Category I, II, and III standards. The tailoring rules will be effective December 31, 2019. Until the tailoring rules are effective, the supplementary leverage ratio applies to advanced approaches banking organizations.

[9] *See* 79 FR 24528 (May 1, 2014). Under OCC and FDIC rules, a depository institution that is a subsidiary of a bank holding company with more than $700 billion in total consolidated assets or more than $10 trillion in assets under custody is subject to the eSLR standards. 12 CFR 6.4(c) (OCC); 12 CFR 324.403(b) (FDIC). Under the Board's rule, a bank holding company that is a U.S. GSIB is subject to the eSLR standards. *See* 12 CFR 217.11(d); 12 CFR part 217, subpart H.

[10] *See* OCC Comptrollers Handbook, Custody Services (January 2002).

central bank deposits placed by the banking organization are on-balance sheet assets of the banking organization.

III. Discussion of the Comments and Final Rule

A. Scope of Applicability

1. Definition of Custodial Banking Organization

The proposal would have defined a depository institution holding company predominantly engaged in custody, safekeeping, and asset servicing activities, together with any subsidiary depository institution, as a ''custodial banking organization.'' [11] To qualify as a custodial banking organization under the proposal, a depository institution holding company would have been required to have a ratio of AUC-to-total assets of at least 30:1, calculated as an average over the prior four calendar quarters.

For the proposal, the agencies considered various measures that they could use to identify and define a custodial banking organization. As noted in the proposal, the agencies believe that the phrase ''predominantly engaged in custodial, safekeeping, and asset servicing activities'' suggests that the banking organization's business model is primarily focused on custody, safekeeping, and asset servicing activities, as compared to its commercial lending, investment banking, or other banking activities.[12] Specifically, the agencies considered both an AUC-to-total assets measure and an income-based measure to implement section 402.[13] AUC-to-total assets would provide a measure of a banking organization's custody, safekeeping, and asset servicing business relative to its other businesses. An income-based measure would show the percentage of a banking organization's income that it derives from custodial, safekeeping, and asset servicing activities. As described in the proposal, the agencies' analysis on both measures indicated a clear separation between The Bank of New York Mellon Corporation, Northern Trust Corporation, and State Street Corporation, and the other depository institution holding companies subject to the supplementary leverage ratio.[14] The agencies' analysis also revealed a significant positive correlation between the AUC-to-total assets measure and the income-based measure.[15] The agencies proposed the AUC-to-total assets measure to identify and define a custodial banking organization because it appeared to function well and minimized burden by relying on already reported data.

The agencies received several comments on the proposed definition of a custodial banking organization. One commenter supported adoption of the AUC-to-total assets measure under the proposal as a simple assessment that is consistent with legislative intent, and did not support the use of an income-based measure because it would increase reporting burden. Another commenter, however, supported an income-based measure to determine a custodial banking organization, arguing that an income-based measure would be more accurate than an asset-based measure in a stress environment.

While an income-based measure would show the percentage of a banking organization's income that it derives from custodial, safekeeping, and asset servicing activities, the agencies are concerned that such an approach would increase reporting burden for banking organizations subject to the supplementary leverage ratio, as banking organizations do not currently report income from custodial, safekeeping, and asset servicing activities separately from income derived from fiduciary activities. In addition and as noted above, an income-based measure likely would not result in a different outcome than an asset-based measure, as the agencies' analysis revealed a significant positive correlation between the AUC-to-total assets measure and the income-based measure.

As noted in the proposal, an AUC-to-total assets measure provides a metric for sizing a banking organization's custodial, safekeeping, and asset servicing business as compared with its other activities. Such a measure would compare assets held in custody—a major activity of banking organizations primarily focused on custody, safekeeping, and asset servicing activities—relative to on-balance sheet assets. The measure is objective because AUC often comprises marketable securities or other assets with widely quoted market values, and banking organizations typically exercise little or no valuation discretion when measuring AUC. In addition, the AUC-to-total assets measure is derived from items that are publicly reported and is subject to review by regulators, banking organizations, and the public.

For these reasons, the agencies are adopting as final the proposed use of an AUC-to-total assets measure as the basis for defining a custodial banking organization.

A commenter pointed out that the agencies omitted ''asset servicing activities'' from the definitions of ''fiduciary or custodial and safekeeping account'' and ''custodial banking organization'' in several parts of the proposal. Section 402 defines ''custodial bank'' as a ''depository institution holding company predominantly engaged in custody, safekeeping, and asset servicing activities.'' In contrast with the term ''custodial banking organization'' in section 402, the statute uses the term ''fiduciary or custodial and safekeeping account'' to describe the limit on the exclusion of deposits at qualifying central banks and does not include ''asset servicing activities'' in this context. Accordingly, the final rule does not use the phrase ''asset servicing activities'' in the context of the exclusion.

2. Assets Under Custody to Total Assets Measure

In defining a custodial banking organization, the proposal would have set a threshold for the AUC-to-total assets ratio at 30:1. This threshold represents the midpoint between the lowest AUC-to-total assets measure of

[11] The agencies note that the term ''custodial bank'' under the FDIC's risk-based deposit insurance assessments serves a separate purpose than the term ''custodial banking organization'' under this final rule. *See* 12 CFR 327.5(c). For assessment purposes, the FDIC defines a custodial bank consistent with section 331 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires the FDIC to define a custodial bank based on factors including the percentage of total revenues generated by custodial businesses and the level of assets under custody.

[12] *See, e.g.,* 115 Cong. Rec. S1544 (Mar. 8, 2018) (statement of Sen. Corker) (''Section 402 is not intended to provide relief to an organization engaged in consumer banking, investment banking, or other businesses, and that also happens to have some custodial business or a banking subsidiary that engages in custodial activities . . . section 402 was intended as a very narrowly tailored provision, focused on true custodial banks.''); *see also* H.R. Rep. No. 115–656, at 3–4 (2018) (''Banks that have a predominant amount of businesses derived from custodial services are different from banks that engage in a wide variety of banking activities . . . .'').

[13] The agencies also considered using an absolute amount measure, but such a measure would only take the size of a banking organization's custodial, safekeeping, and asset servicing activities into account rather than considering the predominance of these activities relative to the banking organization's other activities.

[14] *See* 84 FR 18175, 18179. The legislative history of section 402 suggests that members of Congress identified the same three institutions as custodial banking organizations. *See, e.g.,* 115 Cong. Rec. S1714 (Mar. 14, 2018) (statement of Sen. Warner) (''Section 402 provides relief to only three banks: Bank of New York Mellon, State Street, and Northern Trust . . . This provision does not mean that, if a bank has a large custodial business, it should get relief . . . .); 115 Cong Rec. S1659 (Mar. 13, 2018) (statement of Sen. Heitkamp) (''Under the plain reading of [section 402], the three custodial banking organizations are the only three institutions that are predominantly engaged in the custody business.'').

[15] *See* 84 FR 18175, 18178.

banking organizations that are subject to the supplementary leverage ratio and that specialize in providing custody, safekeeping, and asset servicing services between second quarter of 2016 through the third quarter of 2018 (52:1) and the highest such measure experienced by other banking organizations subject to the supplementary leverage ratio (9:1) over the same period. This amount also takes into account potential changes in such banking organizations' ratio of AUC-to-total assets during a stress environment. As noted in the proposal, the agencies recognize that a banking organization's ratio of AUC-to-total assets may fluctuate significantly during a stress environment as client securities decline in value or as clients liquidate custodial securities and deposit the cash with the banking organization (thus increasing the banking organization's total assets). Among The Bank of New York Mellon, Northern Trust Corporation, and State Street Corporation, the lowest AUC-to-total assets ratio observed during the period from the second quarter of 2016 through the third quarter of 2018 was approximately 52:1.[16] This means that the banking organization had approximately $52 in AUC for every $1 recognized in their total on-balance sheet assets. In comparison, among the other depository institution holding companies subject to the supplementary leverage ratio, the *highest* AUC-to-total assets ratio observed during that same period was approximately 9:1. An AUC-to-total assets ratio of 30:1 is also less than the minimum estimated ratio for The Bank of New York Mellon, Northern Trust Corporation, and State Street Corporation (35:1) over the period from 2004 through the third quarter of 2018, which includes the 2007–2009 financial crisis.[17]

The proposal also incorporated use of a four-quarter average for the AUC-to-total assets measure. This approach would further minimize the effect of significant fluctuations in a banking organization's AUC-to-total assets ratio, which is a particular concern under stress conditions. The 30:1 AUC-to-total assets measure also would limit the potential for a banking organization subject to the supplementary leverage ratio that does not predominantly engage in custody, safekeeping, and asset servicing activities, as compared to its other activities, to qualify as a custodial banking organization. The agencies did not receive comments on the proposed threshold. In addition, expanding the analysis to include the first and second quarters of 2019 produces the same range of AUC-to-total assets ratios. For the reasons provided above, the agencies are adopting as final the proposed threshold of 30:1 for the AUC-to-total assets measure.

3. Scope of Covered Entities

Under the proposal, any subsidiary depository institution of a U.S. top-tier depository institution holding company that qualifies as a custodial banking organization also would be a custodial banking organization and therefore could exclude from total leverage exposure all deposits with a qualifying central bank that are recognized on its consolidated balance sheet in the same manner as its parent depository institution holding company.[18] In other words, the proposal would not have required such a subsidiary depository institution to satisfy separately a ratio of AUC-to-total assets to be able to make this exclusion. The agencies believe this approach is both simple and consistent with section 402, which defines a ''custodial bank'' based on the characteristics of the holding company and provides that such a subsidiary depository institution may also exclude deposits at qualifying central banks from its supplementary leverage ratio, to the extent that these deposits do not exceed deposit liabilities of the banking organization that are linked to fiduciary or custodial and safekeeping accounts.

The agencies also sought comment on whether to expand the scope of application and definition of custodial banking organization to include a depository institution that is not controlled by a holding company and that has a ratio of AUC-to-total assets of at least 30:1.[19] The agencies did not receive any comments on this issue. Accordingly, the scope of application and definition of custodial banking organization are adopted in this final rule as proposed.

B. Mechanics of the Central Bank Deposit Exclusion

Under the proposal, the amount of central bank deposits eligible for exclusion from total leverage exposure would have equaled the average daily balance over the reporting quarter of all deposits placed with a ''qualifying central bank.'' Under the proposal, and consistent with section 402, a qualifying central bank would have meant a Federal Reserve Bank, the European Central Bank, or a central bank of a member country of the OECD if an exposure to the member country receives a zero percent risk weight under section 32 of the capital rule and the sovereign debt of such member country is not in default or has not been in default during the previous five years.[20] The proposal would have calculated the exclusion amount based on the average daily balance of deposits with a qualifying central bank over the reporting quarter to align with the calculation of on-balance sheet assets in total leverage exposure.[21]

The agencies did not receive any comments addressing the mechanics of the central bank deposit exclusion. One commenter stated that custodial banking organizations should be permitted to distribute profits received from interest earned on excess reserves. The agencies note that this rulemaking does not affect the types of deposits that a bank may have with a Federal Reserve Bank, or the interest paid on those deposits.

In addition, as discussed in the Supplementary Information to the proposal, all deposits placed with a Federal Reserve Bank qualify for the rule's central bank deposit exclusion, including deposits in a master account, deposits in a term deposit account that offers an early withdrawal feature, and deposits in an excess balance account.[22] Any deposits with a qualifying central bank denominated in a foreign currency should be measured in U.S. dollars to determine the amount of the deposits that can be excluded from total leverage

[16] Banking organizations report AUC on the FR Form Y–15, Schedule C, Item 3, and banking organizations report total consolidated assets on the FR Form Y–9C, Schedule HC, Item 12. Quarterly reporting of the FR Y–15 became effective starting with the June 30, 2016 date.

[17] The agencies reviewed insured depository institution-level data from the Consolidated Reports of Condition and Income (Call Report) to approximate the holding company-level AUC-to-total assets ratios of advanced approaches banking organizations during the financial crisis, because banking organizations began reporting FR Y–15 in 2015. Information regarding AUC was derived from Call Report, Schedule RC–T, Items 10 and 11, Columns A (managed assets) and B (non-managed assets), and was used as a proxy for AUC at the holding company level, as most custodial services are conducted out of insured depository institution subsidiaries.

[18] This rule applies to all depository institution subsidiaries of a custodial banking organization holding company, including uninsured national banks and Federal savings associations. However, the final rule does not apply to Federal branches and agencies supervised by the OCC.

[19] *See* 84 FR 18175, 18180 (April 30, 2019) for the agencies' description of this proposed addition to the rule, and request for comment.

[20] Under section 32 of the capital rule, an exposure to a member country that qualifies for a zero percent risk weight cannot also be in default or have been in default during the previous five years. The agencies included this latter provision in the proposal, however, for clarity and to align with section 402. 12 CFR 3.32(a) (OCC); 12 CFR 217.32(a) (Board); 12 CFR 324.32(a) (FDIC).

[21] 12 CFR 3.10(c)(4)(i)(A) (OCC); 12 CFR 217.10(c)(4)(i)(A) (Board); 12 CFR 324.10(c)(4)(i)(A) (FDIC).

[22] 84 FR 18175, 18180 (April 30, 2019).

exposure. Similarly, central bank deposits recognized on the consolidated balance sheet of a custodial banking organization may include cash placements with a central bank made by a foreign bank subsidiary. Although a foreign bank subsidiary itself will not be a custodial banking organization, any qualifying central bank deposits of the foreign bank subsidiary may be excluded from total leverage exposure of the parent organization to the extent that the central bank deposits are consolidated on the balance sheet of the parent organization and have satisfied the requirements for a qualifying central bank deposit.

The agencies are adopting as final the proposed mechanics of the central bank deposit exclusion.

C. Central Bank Deposit Exclusion Limit

Consistent with section 402, the proposal would have limited the amount of a custodial banking organization's deposits with a qualifying central bank that could have been excluded from total leverage exposure. In particular, the amount of such deposits that could have been excluded could not have exceeded an amount equal to the on-balance-sheet deposit liabilities of the custodial banking organization that were linked to fiduciary or custody and safekeeping accounts. After considering the comments discussed below, the agencies are adopting this aspect of the proposal without change.

The proposal would have defined a fiduciary or custodial and safekeeping account as an account administered by a custodial banking organization for which the custodial banking organization provides fiduciary or custodial and safekeeping services, as authorized by applicable federal and state law. Under the proposal, a deposit account would have been considered linked to a fiduciary or custodial and safekeeping account if the deposit account is used to facilitate the administration of the fiduciary or custody and safekeeping account.

The agencies sought comment on the advantages and disadvantages of using the FDIC exclusion limit or the reporting instructions to Schedule RC–O of the Call Report for purposes of determining linkage between a deposit account and a fiduciary or custody and safekeeping account to calculate the limit on the amount of deposits that could be excluded from total leverage exposure. In particular, the proposal noted that the asset exclusion limit for ''custodial banks'' provided under the FDIC's regulations for purposes of determining risk-based deposit insurance assessments (FDIC exclusion limit) includes the concept of a ''linked'' deposit and that the Call Report collects information related to such linked deposits on Schedule RC–O.[23] In addition, the agencies sought comment on whether the proposed definition of fiduciary or custody and safekeeping account should explicitly reference the reporting instructions under Schedule RC–T.

One commenter supported defining the scope of fiduciary or custodial and safekeeping accounts in a manner that does not deviate materially from the current scope of fiduciary and custody and safekeeping accounts reported under schedule RC–T of the Call Report. To mitigate additional compliance obligations for the purpose of section 402, the commenter supported using the FDIC exclusion limit and reporting instructions in Schedule RC–O to determine whether a deposit account is linked to a fiduciary or custodial and safekeeping account.

The agencies are adopting as final the proposed definition of fiduciary or custodial and safekeeping accounts. As noted in the proposal, the agencies anticipate that the scope of the fiduciary or custodial and safekeeping accounts under the rule should not deviate materially from the current scope of the fiduciary and custody and safekeeping accounts reported under Schedule RC–T of the Call Report. However, the agencies are clarifying that because this final rule applies to both custodial banking organization holding companies and custodial banking organization subsidiary depository institutions, and because holding companies do not report Schedule RC–T of the Call Report, the agencies are not referring directly to schedule RC–T for the scope of fiduciary or custodial and safekeeping accounts.

The agencies are clarifying that the existing FDIC exclusion limit and the reporting instructions to Schedule RC–O are factors that a banking organization may take into account to determine linkage between a deposit account and a fiduciary or custody and safekeeping account. However, the agencies are not directly defining the linkage standard in the final rule by reference to the FDIC exclusion limit or Schedule RC–O.

The FDIC exclusion limit and the reporting instructions to Schedule RC–O were designed for the purpose of determining risk-based deposit insurance assessments for insured depository institutions. In addition, the FDIC exclusion limit and reporting instructions in Schedule RC–O were designed to limit the custodial bank deduction to transaction account deposit liabilities and therefore Schedule RC–O would not capture non-transaction account deposit liabilities.[24] In contrast to the FDIC exclusion limit, this final rule applies to both custodial banking organization holding companies and custodial banking organization subsidiary depository institutions; uses a different standard to define a custodial banking organization; and applies only to custodial banking organizations that are subject to the supplementary leverage ratio. The agencies believe that not directly defining the linkage standard by reference to schedule RC–O and the FDIC exclusion limit is appropriate in light of the purpose served by section 402 (that is, prudential regulation of custodial banking organizations' regulatory capital) as compared to deposit insurance assessments, and because section 402 applies to a narrow set of the largest banking organizations (that is, banking organizations that qualify as custodial banking organizations that are subject to the supplementary leverage ratio). In light of these differences, the agencies are adopting as final the proposal's provision that a deposit account is considered linked to a fiduciary or custodial and safekeeping account if the deposit account is used to facilitate the administration of the fiduciary or custody and safekeeping account.

The fact that a client has both a deposit account and a fiduciary or custody and safekeeping account at the same custodial banking organization, or an affiliate or subsidiary of such custodial banking organization, would not by itself be sufficient for those accounts to be considered ''linked'' for purposes of the final rule. On the other hand, cash deposits may be used to facilitate the administration of a custody or fiduciary account, such as holding interest and dividend payments related to securities held in the custody or

[23] *See* 12 CFR 327.5(c) (Assessment base for custodial banks) and FFIEC 031 and FFIEC 041 Instructions, Schedule RC–O, Item No. 11.b., Custodial bank deduction limit (''An institution that meets the definition of custodial bank is eligible to have the FDIC deduct certain assets from its assessment base, subject to a limit . . . which equals the average amount of the institution's transaction account deposit liabilities identified by the institution as being directly linked to a fiduciary, custodial, or safekeeping account reported in Schedule RC–T—Fiduciary and Related Services. The titling of a transaction account or specific references in the deposit account documents should clearly demonstrate the link between the transaction account and a fiduciary, custodial, or safekeeping account.''), available at *www.ffiec.gov.*

[24] 76 FR 10680 (February 25, 2011) (FDIC assessments regulation).

fiduciary account; cash transfers or distributions from the custody or fiduciary account; and the purchases and sale of securities for the account. Deposit accounts used in these ways would be considered linked for purposes of the final rule.

Consistent with section 402, under the final rule, a custodial banking organization may exclude from total leverage exposure the lesser of (1) the amount of central bank deposits placed at qualifying central banks by the custodial banking organization (including deposits placed by consolidated subsidiaries), and (2) the amount of on-balance sheet deposit liabilities of the custodial banking organization (including consolidated subsidiaries) that are linked to fiduciary or custodial and safekeeping accounts.[25]

One commenter asked the agencies to clarify that the calculation of the central bank exclusion limit must be done on a quarterly basis, consistent with the calculations required under Schedule RC–T and RC–O.[26] In calculating the central bank exclusion limit, a custodial banking organization should calculate the amount of deposit liabilities linked to a fiduciary or custody and safekeeping account as the average deposit liabilities for such accounts, calculated as of each day of the reporting quarter. This approach is consistent with the calculation of on-balance sheet assets for purposes of the supplementary leverage ratio.

D. Regulatory Reporting Requirements

Banking organizations report their supplementary leverage ratios on FFIEC Form 101, Schedule A and Form Y–9C, Schedule HC–R, and Call Reports, Schedule RC–R. The agencies recently proposed modifications to the regulatory reporting requirements for the supplementary leverage ratio in a separate publication in the **Federal Register** to reflect the implementation of the central bank deposit exclusion described in this final rule.[27] The agencies' adoption of these regulatory reporting requirements would fulfill the disclosure requirements for purposes of the capital rule.[28] In particular, custodial banking organizations subject to the supplementary leverage ratio would be subject to the corresponding disclosure requirements in section 173, and would exclude qualifying central bank deposits from total leverage exposure as reported under section 173.

IV. OCC Statement Regarding Standalone Depository Institutions

As discussed in section III, the agencies sought comment on whether to expand the scope of application and definition of ''custodial banking organization'' to include a depository institution that is not controlled by a holding company and that has a ratio of AUC-to-total assets of at least 30:1. For the reasons stated in the proposal,[29] the OCC is considering this question for a future rulemaking.

V. Interaction of Section 402 With Other Rules

A. Total Loss-Absorbing Capacity

Under the Board's total loss-absorbing capacity (TLAC) rule, a covered company is subject to requirements that, in part, rely on the covered company's total leverage exposure.[30] Thus, changes to the calculation of total leverage exposure under this final rule could affect the amount of eligible external TLAC required to be held by a covered company that is also a custodial banking organization. Under the proposal, the revised definition of total leverage exposure for custodial banking organizations would also apply for purposes of the TLAC rule.

Some commenters stated that the definition of total leverage exposure should be consistent across the supplementary leverage ratio and TLAC requirements. The commenters asserted that inconsistent treatment across the supplementary leverage ratio and TLAC requirements would be in tension with the legislative intent of section 402. Commenters stated that including central bank deposits in TLAC for custodial banking organizations could undermine the ability for such deposits to serve as a safe store of value for client cash during a stress event. In addition, commenters asserted that there is no compelling policy rationale for requiring a banking organization to include in TLAC an asset for which there is no corresponding capital requirement under the supplementary leverage ratio. Commenters also stated that the use of different measures for the supplementary leverage ratio and TLAC rule would increase complexity for bank capital allocation without improving risk assessment, because the differences between the measures would only reflect the amount of central bank placements.

The agencies are adopting as final the proposed treatment of total leverage exposure. This treatment will align the TLAC rule with the supplementary leverage ratio and reduce burden by not requiring separate calculations for total leverage exposure under each of the TLAC rule and the supplementary leverage ratio.

B. The Enhanced Supplementary Leverage Ratio and Other Comments on the Proposal

Several commenters acknowledged that the agencies are required to implement section 402 but raised various concerns regarding the potential effect that implementation of section 402 could have on other aspects of the banking sector. Two commenters raised concerns that implementation of section 402 would lead to a market concentration in custody services and provide custodial banking organizations with a competitive advantage relative to banking organizations that are subject to the supplementary leverage ratio but are not eligible to exclude central bank deposits. To help mitigate these concerns, these commenters urged for finalization of the proposal to recalibrate the eSLR standards issued by the Board and OCC.[31]

The agencies did not propose recalibrating the eSLR standards as part of this rulemaking. Therefore, the agencies view comments on the eSLR standards as outside the scope of this rulemaking. Another commenter noted that while the agencies are required to implement section 402, the agencies are not prevented from using other authorities to counteract the potential effects of section 402 through making changes to other parts of the capital rule. As noted above, the proposal was designed to implement section 402, and the agencies did not seek comment on other changes. Changes to the capital rule that do not address the supplementary leverage ratio are outside of the scope of this rulemaking, but may be considered by the agencies in subsequent rulemakings.

VI. Impact Analysis

Under the final rule, a top-tier U.S. depository institution holding company that qualifies as a custodial banking organization, and any of its depository institution subsidiaries, will be able to exclude certain central bank deposits

[25] The final rule does not affect the calculation of the size indicator under the Board's Banking Organization Systemic Risk Report (FR Y–15).

[26] While the custodial bank deduction limit in item 11.b. of Schedule RC–O is reported on a quarterly basis, the limit is based on an average that is calculated on a daily or weekly basis.

[27] 84 FR 53227 (October 4, 2019).

[28] *See* 12 CFR 3.173 (OCC); 12 CFR 217.173 (Board); 12 CFR 324.173 (FDIC).

[29] *See* 84 FR 18175, 18180 (April 30, 2019) for the agencies' description of this proposed addition to the rule and request for comment. As discussed previously, the agencies received no comments on this issue.

[30] 12 CFR 252.60 through 252.65; 12 CFR 252.160 through 252.167.

[31] 83 FR 17317 (April 19, 2018).

from total leverage exposure, subject to limits as described above. For custodial banking organization holding companies and their lead depository institution subsidiaries, the agencies estimate that central bank deposits eligible for exclusion represent between 20 and 28 percent of their total leverage exposure.[32] Based on an exclusion of this amount from each of these banking organization's total leverage exposure, the final rule may result in an estimated decrease in the amount of tier 1 capital required by the supplementary leverage ratio of approximately $8 billion in aggregate across the top-tier U.S. depository institution holding companies and approximately $8 billion in aggregate across their lead depository institution subsidiaries.[33] However, this estimate relates solely to the supplementary leverage ratio and does not take into account any other applicable capital constraints that would prevent a decrease in tier 1 capital. Rather, the binding capital requirement for a given banking organization is the capital requirement that requires the highest amount of regulatory capital.[34] Holding companies are subject to leverage, risk-based, and post-stress capital requirements, and only one of these requirements binds an individual holding company at any given time.[35] Similarly, only one of the applicable leverage and risk-based capital requirements binds a depository institution at any given time.[36] The risk profile and the capital requirements for the activities and exposures of a banking organization determine which capital requirement is binding.

Thus, the final rule would reduce the amount of tier 1 capital that must be maintained by a custodial banking organization holding company only if the supplementary leverage ratio currently serves as the binding capital requirement for the banking organization.[37] Data from the third quarter of 2018 shows that top-tier U.S. depository institution holding companies that are expected to qualify as custodial banking organizations currently are bound by post-stress capital requirements. The risk-based capital standards applicable to these organizations also require a higher amount of tier 1 capital than the amount of tier 1 capital that would be required under the final rule for purposes of the supplementary leverage ratio. Therefore, the final rule is not expected to decrease the amount of tier 1 capital maintained by such holding companies.

The supplementary leverage ratio as of the third quarter 2018 serves as the binding constraint for two depository institution subsidiaries of custodial banking organization holding companies. Accordingly, under the final rule, the amount of tier 1 capital required of those institutions to the supplementary leverage ratio will decrease by approximately $7 billion, which represents approximately 23 percent of the total amount of tier 1 capital that must be maintained by those institutions as of the third quarter 2018. As described above, given the applicable capital requirements for parent holding companies of these depository institutions, the final rule is not expected to decrease the amount of tier 1 capital maintained by such holding companies.

One commenter expressed concern that the rule might allow custodial banking organizations to reduce the amount of tier 1 capital and urged the agencies to use other authorities to offset the potential capital impact. As described above, the capital standards and other constraints applicable at the custodial banking organization holding company level are expected to limit the amount of capital that such a holding company could distribute outside of the consolidated organization, thus limiting any safety and soundness or financial stability concerns for the holding company as a whole due to reduced requirements at the depository institution level. In addition, the agencies have regulatory and supervisory tools to ensure that depository institutions and holding companies maintain appropriate amounts of capital for their operations and risk profile.

VII. Regulatory Analyses

A. Paperwork Reduction Act

The agencies' capital rule contains ''collections of information'' within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for the OCC is 1557–0318, Board is 7100–0313, and FDIC is 3064–0153. The information collections that are part of the agencies' capital rule will not be affected by this final rule and therefore no final submissions will be made by the FDIC or OCC to OMB under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and § 1320.11 of the OMB's implementing regulations (5 CFR part 1320) in connection with this rulemaking.

Related to the final rule, there are required changes to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051), the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), and the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128 (Board)), which will be addressed through one or more separate **Federal Register** notices.[38]

B. Regulatory Flexibility Act Analysis

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business

[32] Analysis reflects data from the Consolidated Financial Statements for Holding Companies (FR Y–9C), the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031), the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), as reported by The Bank of New York Mellon Corporation, Northern Trust Corporation, and State Street Corporation and their depository institution subsidiaries as of third quarter 2018, as well as data from the 2018 Comprehensive Capital Analysis and Review and confidential information on central bank deposits as of third quarter 2018 collected through the supervisory process. The reporting period of 2018 was chosen in the final rule for consistency and comparability of the impact analysis with the proposed rule.

[33] Because The Bank of New York Mellon Corporation and State Street Corporation are each U.S. GSIBs, the amount of tier 1 capital required to meet regulatory minimums and avoid limitations on capital distributions is based on a 5 percent minimum supplementary leverage ratio requirement at the holding company level and a 6 percent minimum supplementary leverage ratio requirement at the depository institution subsidiary level. Because Northern Trust Corporation is not a U.S. GSIB, its required amount of tier 1 capital is based on a 3 percent supplementary leverage ratio requirement at both the holding company and depository institution subsidiary levels.

[34] For purposes of this analysis, a capital requirement is considered binding at the level that it would impose restrictions on the ability of a banking organization to make capital distributions or if the banking organization would no longer be considered ''well capitalized'' under the agencies' prompt corrective action framework.

[35] The Board's capital plan rule requires certain large bank holding companies, including the U.S. GSIBs, to hold capital in excess of the minimum capital ratios by requiring them to demonstrate the ability to satisfy the capital requirements, including the supplementary leverage ratio, under stressful conditions. 12 CFR 225.8(e)(2).

[36] Depository institutions are not subject to post-stress capital requirements.

[37] The findings set forth in this impact analysis with respect to the release of capital pertain only to the revisions under this rule, and do not consider the capital impact of anticipated or potential future changes to the capital rule.

[38] *See* 84 FR 53227 (October 4, 2019).

Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $600 million or less and trust companies with total revenue of $41.5 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. As of December 31, 2018, the OCC supervised 782 small entities. The rule would impose requirements on four OCC supervised entities that are subject to the advanced approaches risk-based capital rule, which typically have assets in excess of $250 billion, and therefore would not be small entities. Therefore, the OCC certifies that the final rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board: An initial regulatory flexibility analysis (IRFA) was included in the proposal in accordance with section 603(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* (RFA). In the IRFA, the Board requested comment on the effect of the proposed rule on small entities and on any significant alternatives that would reduce the regulatory burden on small entities. The Board did not receive any comments on the IRFA. The RFA requires an agency to prepare a final regulatory flexibility analysis unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Based on its analysis, and for the reasons stated below, the Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.[39]

Under regulations issued by the Small Business Administration, a small entity includes a bank, bank holding company, or savings and loan holding company with assets of $600 million or less and trust companies with total assets of $41.5 million or less (small banking organization).[40] On average since the second quarter of 2018, there were approximately 2,976 small bank holding companies, 133 small savings and loan holding companies, 70 small state member banks and no small trust companies.

As discussed in the Supplementary Information section, the final rule revises the capital rule to implement section 402 of EGRRCPA. Specifically, the final rule allows custodial banking organization to exclude from the denominator of the supplementary leverage ratio certain funds of the banking organization that are deposited with central banks. The supplementary leverage ratio applies only to advanced approaches banking organizations, which are very large banking organizations and their depository institution subsidiaries regardless of size.[41] Therefore, the final rule is not expected to apply to a substantial number of small entities.[42] The Board does not expect that the final rule will result in a material change in the level of capital maintained by small banking organizations or in the compliance burden on small banking organizations. For these reasons, the Board does not expect the rule to have a significant economic impact on a substantial number of small entities.

FDIC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency, in connection with a final rule, to prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of a final rule on small entities.[43] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million if they are either independently owned and operated or owned by a holding company that also has less than $600 million in total assets.[44]

As of June 30, 2019, there were 3,424 FDIC-supervised institutions, of which 2,665 are considered small entities for the purposes of RFA. These small entities hold $514 billion in assets, accounting for 16.6 percent of total assets held by FDIC-supervised institutions.[45]

The final rule applies to only three advanced approaches banking organizations, one of which has an IDI subsidiary that is FDIC-supervised and has less than $600 million in total assets.[46] However, that institution is not a small entity for the purposes of RFA since it is owned by a holding company with over $600 million in total assets. Since this final rule does not affect any FDIC-supervised institutions that are defined as small entities for the purposes of the RFA, the FDIC certifies that the rule will not have a significant economic impact on a substantial number of small entities.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[47] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies sought to present the final rule in a simple and straightforward manner, and did not receive any comments on the use of plain language.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[48] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and clients of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[49]

The agencies considered the administrative burdens and benefits of the rule in determining its effective date

[39] 5 U.S.C. 605(b).

[40] *See* 13 CFR 121.201. Effective August 19, 2019, the Small Business Administration revised the size standards for banking organizations to $600 million in assets from $550 million in assets. 84 FR 34261 (July 18, 2019). Consistent with the General Principles of Affiliation 13 CFR 121.103, Board counts the assets of all domestic and foreign affiliates when determining if the Board should classify a Board-supervised institution as a small entity.

[41] *See* 12 CFR 217.100.

[42] To the extent any small entities are subject to the final rule, they will be small subsidiaries within large organizations and would be expected to rely on their parent banking organizations rather than bearing material costs in connection with the final rule.

[43] 5 U.S.C. 601 *et seq.*

[44] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[45] FDIC Call Report, June 30, 2019.

[46] *Id.*

[47] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[48] 12 U.S.C. 4802(a).

[49] 12 U.S.C. 4802.

and administrative compliance requirements. As such, the final rule will be effective on April 1, 2020.

E. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[50] Under this analysis, the OCC considered whether the final rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

The OCC's estimated UMRA cost is near zero. Therefore, the OCC finds that the final rule does not trigger the UMRA cost threshold. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

F. The Congressional Review Act

For purposes of Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major'' rule.[51] If a rule is deemed a ''major rule'' by OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[52]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[53] As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

[50] 2 U.S.C. 1531 *et seq.*

[51] 5 U.S.C. 801 *et seq.*

[52] 5 U.S.C. 801(a)(3).

[53] 5 U.S.C. 804(2).

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Risk.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies.

12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Capital adequacy, Savings associations, State non-member banks.

Office of the Comptroller of the Currency

For the reasons set out in the joint preamble, the OCC amends 12 CFR part 3 as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 2. Section 3.2 is amended by adding the definitions of ''Custody bank'', ''Fiduciary or custodial and safekeeping account'', and ''Qualifying central bank'' in alphabetical order to read as follows:

§ 3.2 Definitions.

* * * * *

Custody bank means a national bank or Federal savings association that is a subsidiary of a depository institution holding company that is a custodial banking organization under 12 CFR 217.2.

* * * * *

Fiduciary or custodial and safekeeping account means, for purposes of § 3.10(c)(4)(ii)(J), an account administered by a custody bank for which the custody bank provides fiduciary or custodial and safekeeping services, as authorized by applicable Federal or state law.

* * * * *

Qualifying central bank means:

(1) A Federal Reserve Bank;

(2) The European Central Bank; and

(3) The central bank of any member country of the OECD, if:

(i) Sovereign exposures to the member country would receive a zero percent risk-weight under § 3.32; and

(ii) The sovereign debt of the member country is not in default or has not been in default during the previous 5 years.

* * * * *

■ 3. Section 3.10 is amended by revising paragraph (c)(4)(ii) introductory text and adding paragraph (c)(4)(ii)(J) to read as follows:

§ 3.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) * * *

(ii) For purposes of this part, *total leverage exposure* means the sum of the items described in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted pursuant to paragraph (c)(4)(ii)(I) for a clearing member national bank and Federal savings association and paragraph (c)(4)(ii)(J) for a custody bank:

* * * * *

(J) A custodial bank shall exclude from its total leverage exposure the lesser of:

(*1*) The amount of funds that the custody bank has on deposit at a qualifying central bank; and

(*2*) The amount of funds that the custody bank's clients have on deposit at the custody bank that are linked to fiduciary or custodial and safekeeping accounts. For purposes of this paragraph (c)(4)(ii)(J), a deposit account is linked to a fiduciary or custodial and safekeeping account if the deposit account is provided to a client that maintains a fiduciary or custodial and safekeeping account with the custody bank, and the deposit account is used to facilitate the administration of the fiduciary or custody and safekeeping account.

* * * * *

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 4. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, and 5371 note.

■ 5. Section 217.2 is amended by adding the definitions of ''Custodial banking organization,'' ''Fiduciary or custodial and safekeeping accounts,'' and ''Qualifying central bank'' in alphabetical order to read as follows:

§ 217.2 Definitions.

* * * * *

Custodial banking organization means:

(1) A Board-regulated institution that is:

(i) A top-tier depository institution holding company domiciled in the United States that has assets under custody that are at least 30 times the amount of the depository institution holding company's total assets; or

(ii) A state member bank that is a subsidiary of a depository institution holding company described in paragraph (1)(i) of this definition.

(2) For purposes of this definition, total assets are equal to the average of the banking organization's total consolidated assets for the four most recent calendar quarters. Assets under custody are equal to the average of the Board-regulated institution's assets under custody for the four most recent calendar quarters.

* * * * *

Fiduciary or custodial and safekeeping account means, for purposes of § 217.10(c)(4)(ii)(J), an account administered by a custodial banking organization for which the custodial banking organization provides fiduciary or custodial and safekeeping services, as authorized by applicable Federal or state law.

* * * * *

Qualifying central bank means:

(1) A Federal Reserve Bank;

(2) The European Central Bank; and

(3) The central bank of any member country of the Organisation for Economic Co-operation and Development, if:

(i) Sovereign exposures to the member country would receive a zero percent risk-weight under § 217.32; and

(ii) The sovereign debt of the member country is not in default or has not been in default during the previous 5 years.

* * * * *

■ 6. Section 217.10 is amended by revising paragraph (c)(4)(ii) introductory text and adding paragraph (c)(4)(ii)(J) to read as follows:

§ 217.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) * * *

(ii) For purposes of this part, *total leverage exposure* means the sum of the items described in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted pursuant to paragraph (c)(4)(ii)(I) for a clearing member Board-regulated institution and paragraph (c)(4)(ii)(J) for a custodial banking organization:

* * * * *

(J) A custodial banking organization shall exclude from its total leverage exposure the lesser of:

(*1*) The amount of funds that the custodial banking organization has on deposit at a qualifying central bank; and

(*2*) The amount of funds in deposit accounts at the custodial banking organization that are linked to fiduciary or custodial and safekeeping accounts at the custodial banking organization. For purposes of this paragraph (c)(4)(ii)(J), a deposit account is linked to a fiduciary or custodial and safekeeping account if the deposit account is provided to a client that maintains a fiduciary or custodial and safekeeping account with the custodial banking organization and the deposit account is used to facilitate the administration of the fiduciary or custodial and safekeeping account.

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, chapter III of title 12 of the Code of Federal Regulations is amended as set forth below.

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 7. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

■ 8. Section 324.2 is amended by adding the definitions of ''Custody bank,'' ''Fiduciary or custodial and safekeeping accounts,'' and ''Qualifying central bank'' in alphabetical order as follows:

§ 324.2 Definitions.

* * * * *

Custody bank means an FDIC-supervised institution that is a subsidiary of a depository institution holding company that is a custodial banking organization under 12 CFR 217.2.

* * * * *

Fiduciary or custodial and safekeeping account means, for purposes of § 324.10(c)(4)(ii)(J), an account administered by a custody bank for which the custody bank provides fiduciary or custodial and safekeeping services, as authorized by applicable Federal or state law.

* * * * *

Qualifying central bank means:

(1) A Federal Reserve Bank;

(2) The European Central Bank; and

(3) The central bank of any member country of the Organisation for Economic Co-operation and Development, if:

(i) Sovereign exposures to the member country would receive a zero percent risk-weight under § 324.32; and

(ii) The sovereign debt of the member country is not in default or has not been in default during the previous 5 years.

* * * * *

■ 9. Section 324.10 is amended by revising paragraph (c)(4)(ii) introductory text and adding paragraph (c)(4)(ii)(J) to read as follows:

§ 324.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) * * *

(ii) For purposes of this part, *total leverage exposure* means the sum of the items described in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted pursuant to paragraph (c)(4)(ii)(I) for a clearing member FDIC-supervised institution and paragraph (c)(4)(ii)(J) for a custody bank:

* * * * *

(J) A custody bank shall exclude from its total leverage exposure the lesser of:

(*1*) The amount of funds that the custody bank has on deposit at a qualifying central bank; and

(*2*) The amount of funds in deposit accounts at the custody bank that are linked to fiduciary or custodial and safekeeping accounts at the custody bank. For purposes of this paragraph (c)(4)(ii)(J), a deposit account is linked to a fiduciary or custodial and safekeeping account if the deposit account is provided to a client that maintains a fiduciary or custodial and safekeeping account with the custody bank and the deposit account is used to facilitate the administration of the fiduciary or custodial and safekeeping account.

* * * * *

Dated: November 19, 2019.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 19, 2019.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on November 19, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–28293 Filed 1–24–20; 8:45 am]

BILLING CODE 6210–01–P 4810–33–P; 6714–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Policy Statement on Compliance Aids

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Policy statement.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing this policy statement in order to announce a new designation for certain Bureau guidance, known as ''Compliance Aids,'' and to explain the legal status and role of guidance with that designation.

DATES: This policy statement becomes applicable on February 1, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher Shelton, Counsel, or Lea Mosena, Senior Counsel, Legal Division, 202–435–7700. Regulatory inquiries can be submitted at *https://reginquiries.consumerfinance.gov/.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau's ''primary functions'' under the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] include issuing guidance implementing Federal consumer financial law.[2] The Bureau believes that providing clear and useful guidance to regulated entities is an important aspect of facilitating markets that serve consumers.

Since its inception, the Bureau has provided guidance through a variety of means, and its guidance functions have evolved and are continuing to evolve in response to feedback from industry and other stakeholders. Some examples of compliance resources that the Bureau has released include small entity compliance guides, instructional guides for disclosure forms, executive summaries, summaries of regulation changes, factsheets, flow charts, compliance checklists, frequently asked questions, and summary tables.

II. Policy Statement on Compliance Aids

Going forward, the Bureau intends to establish a new category of materials that are similar to previous compliance resources but will now be designated as ''Compliance Aids.'' This designation will provide the public with greater clarity regarding the legal status and role of these materials, as discussed below.[3]

The Bureau does not intend to use Compliance Aids to make decisions that bind regulated entities. Unlike the Bureau's regulations and official interpretations, Compliance Aids are not ''rules'' under the Administrative Procedure Act.[4] Rather, Compliance Aids present the requirements of existing rules and statutes in a manner that is useful for compliance professionals, other industry stakeholders, and the public.[5] Compliance Aids may also include practical suggestions for how entities might choose to go about complying with those rules and statutes.[6] But they may not address all situations. Where there are multiple methods of compliance that are permitted by the applicable rules and statutes, an entity can make its own business decision regarding which method to use, and this may include a method that is not specifically addressed in a Compliance Aid. In sum, regulated entities are not required to comply with the Compliance Aids themselves. Regulated entities are only required to comply with the underlying rules and statutes.

Compliance Aids are designed to accurately summarize and illustrate the underlying rules and statutes. Accordingly, when exercising its enforcement and supervisory discretion, the Bureau does not intend to sanction, or ask a court to sanction, entities that reasonably rely on Compliance Aids.

II. Regulatory Requirements

This policy statement constitutes a general statement of policy that is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act.[7] It is intended to provide information regarding the Bureau's general plans to exercise its discretion and does not confer any rights. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[8] The Bureau has also determined that this policy statement does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[9]

Pursuant to the Congressional Review Act,[10] the Bureau will submit a report containing this policy statement and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to its applicability date. The Office of Information and Regulatory Affairs has designated this policy statement as not a ''major rule'' as defined by 5 U.S.C. 804(2).

[1] Public Law 111–203, 124 Stat. 2081 (2010).

[2] 12 U.S.C. 5511(c)(5). Moreover, the Dodd-Frank Act authorizes the Director of the Bureau to issue guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws and to prevent evasions thereof. 12 U.S.C. 5512(b)(1). Additionally, the Bureau is authorized to establish general policies, including with respect to implementing the Federal consumer financial laws through guidance. 12 U.S.C. 5492(a)(10).

[3] This policy statement does not apply to materials that do not bear the label ''Compliance Aid,'' or to the use of outdated materials that have been withdrawn or superseded. It also does not alter the status of materials that were issued before this policy statement, although the Bureau may re-issue certain existing materials as Compliance Aids if it is in the public interest and as Bureau resources permit. Moreover, this policy statement does not determine the policies of regulators other than the Bureau.

[4] Under the Administrative Procedure Act, generally a ''rule'' is an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy. 5 U.S.C. 551(4). The three main categories of rules are substantive rules, interpretive rules, and general statements of policy. Some examples of rules are regulations like Regulation Z, 12 CFR part 1026, and official interpretations like the Official Interpretations to Regulation Z, 12 CFR part 1026, supp. I.

[5] *See, e.g., Golden & Zimmerman, LLC* v. *Domenech,* 599 F.3d 426, 432 (4th Cir. 2010) (agency documents like FAQs that ''restate or report what already exists in the relevant body of statutes, regulations, and rulings'' are not themselves rules under the Administrative Procedure Act).

[6] *See, e.g., Indus. Safety Equip. Ass'n, Inc.* v. *EPA,* 837 F.2d 1115, 1120–21 (D.C. Cir. 1988) (an agency's ''hortatory advice'' regarding potential methods for complying with a rule is not itself a rule under the Administrative Procedure Act).

[7] 5 U.S.C. 553(b). However, this is not a ''statement of policy'' as that term is specifically used in Regulation X, 12 CFR 1024.4(a)(1)(ii).

[8] 5 U.S.C. 603(a), 604(a).

[9] 44 U.S.C. 3501–3521.

[10] 5 U.S.C. 801–808.

Dated: January 10, 2020.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2020–00648 Filed 1–24–20; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31292; Amdt. No. 3887]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 27, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 2020.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29 Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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

amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on January 10, 2020.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 26 March 2020

Bay Minette, AL, Bay Minette Muni, RNAV (GPS) RWY 8, Amdt 2
Birmingham, AL, Birmingham-Shuttlesworth Intl, RNAV (RNP) Z RWY 6, Amdt 1A
Huntsville, AL, Huntsville Intl-Carl T Jones Field, ILS OR LOC RWY 36R, Amdt 4
Huntsville, AL, Huntsville Intl-Carl T Jones Field, RNAV (GPS) RWY 36R, Amdt 3
Albany, GA, Southwest Georgia Rgnl, ILS OR LOC RWY 5, Amdt 13B
Albany, GA, Southwest Georgia Rgnl, RNAV (GPS) RWY 5, Amdt 1D
Albany, GA, Southwest Georgia Rgnl, RNAV (GPS) RWY 17, Amdt 1C
Albany, GA, Southwest Georgia Rgnl, RNAV (GPS) RWY 23, Amdt 1C
Albany, GA, Southwest Georgia Rgnl, RNAV (GPS) RWY 35, Amdt 2C
Albany, GA, Southwest Georgia Rgnl, Takeoff Minimums and Obstacle DP, Orig-B
Albany, GA, Southwest Georgia Rgnl, VOR RWY 17, Amdt 27C
Iowa Falls, IA, Iowa Falls Muni, RNAV (GPS) RWY 13, Amdt 1A
Iowa Falls, IA, Iowa Falls Muni, RNAV (GPS) RWY 31, Amdt 2A
Orange City, IA, Orange City Muni, RNAV (GPS) RWY 16, Orig, CANCELLED
Orange City, IA, Orange City Muni, RNAV (GPS) RWY 34, Orig, CANCELLED
Orange City, IA, Orange City Muni, Takeoff Minimums and Obstacle DP, Orig, CANCELLED
Alton/St Louis, IL, St Louis Rgnl, ILS OR LOC RWY 29, Amdt 12C
Alton/St Louis, IL, St Louis Rgnl, LOC BC RWY 11, Amdt 9A, CANCELLED
Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 22L, ILS RWY 22L (SA CAT I), ILS RWY 22L (SA CAT II), Amdt 7
Peoria, IL, Mount Hawley Auxiliary, VOR–A, Orig-B
Columbus, IN, Columbus Muni, RNAV (GPS) RWY 14, Amdt 1C
Sullivan, IN, Sullivan County, NDB RWY 36, Amdt 7A, CANCELLED
Anthony, KS, Anthony Muni, VOR–A, Amdt 2A, CANCELLED
Owensboro, KY, Owensboro-Daviess County Rgnl, ILS OR LOC RWY 36, Amdt 14
Owensboro, KY, Owensboro-Daviess County Rgnl, VOR RWY 6, Amdt 2B
Owensboro, KY, Owensboro-Daviess County Rgnl, VOR RWY 18, Amdt 10B
Owensboro, KY, Owensboro-Daviess County Rgnl, VOR RWY 36, Amdt 19C
Boston, MA, General Edward Lawrence Logan Intl, ILS OR LOC RWY 4R, ILS RWY 4R SA CAT I, ILS RWY 4R CAT II, ILS RWY 4R CAT III, Amdt 11
Boston, MA, General Edward Lawrence Logan Intl, ILS OR LOC RWY 15R, Amdt 2
Boston, MA, General Edward Lawrence Logan Intl, ILS OR LOC RWY 27, Amdt 3
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 4R, Amdt 3
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 15R, Amdt 2
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 27, Amdt 1
Great Barrington, MA, Walter J. Koladza, NDB–A, Amdt 6, CANCELLED
Taunton, MA, Taunton Muni—King Field, NDB RWY 30, Amdt 5C, CANCELLED
Stevensville, MD, Bay Bridge, RNAV (GPS) RWY 11, Amdt 1B
Stevensville, MD, Bay Bridge, RNAV (GPS) RWY 29, Amdt 1A
Cloquet, MN, Cloquet Carlton County, NDB RWY 18, Amdt 4B
Cloquet, MN, Cloquet Carlton County, NDB RWY 36, Amdt 5B
Cloquet, MN, Cloquet Carlton County, Takeoff Minimums and Obstacle DP, Amdt 3
Rushford, MN, Rushford Muni-Robert W Bunke Field, RNAV (GPS) RWY 34, Orig-B
Laurel, MS, Hesler-Noble Field, RNAV (GPS) RWY 13, Amdt 1B
Laurel, MS, Hesler-Noble Field, RNAV (GPS) RWY 31, Amdt 1B
Tunica, MS, Tunica Muni, VOR–A, Orig-A
Baker, MT, Baker Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Ahoskie, NC, Tri-County, VOR–A, Amdt 6A, CANCELLED
Roxboro, NC, Raleigh Rgnl at Person County, ILS OR LOC RWY 6, Amdt 1C
Roxboro, NC, Raleigh Rgnl at Person County, RNAV (GPS) RWY 24, Orig-C
Roxboro, NC, Raleigh Rgnl at Person County, Takeoff Minimums and Obstacle DP, Orig-A
Ainsworth, NE, Ainsworth Rgnl, VOR RWY 35, Amdt 4A
Atkinson, NE, Stuart-Atkinson Muni, RNAV (GPS) RWY 11, Amdt 1B
Lincoln, NE, Lincoln, RNAV (GPS) RWY 35, Orig-A
Roswell, NM, Roswell Air Center, Takeoff Minimums and Obstacle DP, Orig-B
Fulton, NY, Oswego County, RNAV (GPS) RWY 24, Amdt 1B
Fulton, NY, Oswego County, RNAV (GPS) RWY 33, Amdt 1A
Oneonta, NY, Albert S Nader Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1A
Bluffton, OH, Bluffton, RNAV (GPS) RWY 23, Orig-B
Bluffton, OH, Bluffton, VOR RWY 23, Amdt 7B
Bowling Green, OH, Wood County, VOR RWY 18, Amdt 13A, CANCELLED
Fremont, OH, Sandusky County Rgnl, RNAV (GPS) RWY 6, Amdt 1B
Willoughby, OH, Lake County Executive, NDB RWY 10, Amdt 10B
Willoughby, OH, Lake County Executive, RNAV (GPS) RWY 5, Orig-B
Willoughby, OH, Lake County Executive, RNAV (GPS) RWY 10, Orig-C
Willoughby, OH, Lake County Executive, RNAV (GPS) RWY 23, Orig-C
Willoughby, OH, Lake County Executive, RNAV (GPS) RWY 28, Orig-B
Willoughby, OH, Lake County Executive, Takeoff Minimums and Obstacle DP, Amdt 3B
Enid, OK, Enid Woodring Rgnl, ILS OR LOC RWY 35, Amdt 7A
Enid, OK, Enid Woodring Rgnl, RNAV (GPS) RWY 17, Amdt 1A
Enid, OK, Enid Woodring Rgnl, VOR RWY 17, Amdt 13A
Enid, OK, Enid Woodring Rgnl, VOR RWY 35, Amdt 15A
Norman, OK, University of Oklahoma Westheimer, RNAV (GPS) RWY 18, Amdt 2B
Eugene, OR, Mahlon Sweet Field, RNAV (GPS) Y RWY 16L, Amdt 4A
North Bend, OR, Southwest Oregon Rgnl, COPTER ILS OR LOC RWY 5, Amdt 1A
North Bend, OR, Southwest Oregon Rgnl, ILS OR LOC RWY 5, Amdt 8A
North Bend, OR, Southwest Oregon Rgnl, Takeoff Minimums and Obstacle DP, Amdt 7
North Bend, OR, Southwest Oregon Rgnl, VOR RWY 5, Amdt 11A
North Bend, OR, Southwest Oregon Rgnl, VOR–A, Amdt 6A
North Bend, OR, Southwest Oregon Rgnl, VOR–B, Amdt 5A
Erie, PA, Erie Intl/Tom Ridge Field, ILS OR LOC RWY 24, Amdt 11
Erie, PA, Erie Intl/Tom Ridge Field, NDB RWY 24, Amdt 20, CANCELLED
Philadelphia, PA, Philadelphia Intl, ILS OR LOC RWY 27L, Amdt 14C
San Juan, PR, Luis Munoz Marin Intl, Takeoff Minimums and Obstacle DP, Amdt 8
Winner, SD, Winner Rgnl, VOR–A, Amdt 7B, CANCELLED
Dyersburg, TN, Dyersburg Rgnl, RNAV (GPS) RWY 4, Amdt 2C
Nashville, TN, Nashville Intl, ILS OR LOC RWY 2C, Amdt 2A
Mineral Wells, TX, Mineral Wells Rgnl, ILS OR LOC RWY 31, Amdt 1A
Tyler, TX, Tyler Pounds Rgnl, ILS OR LOC RWY 4, Orig
Tyler, TX, Tyler Pounds Rgnl, RNAV (GPS) RWY 4, Amdt 4
Weslaco, TX, Mid Valley, RNAV (GPS) RWY 14, Orig-B

Blanding, UT, Blanding Muni, RNAV (GPS) RWY 35, Amdt 2C
Norfolk, VA, Hampton Roads Executive, ILS OR LOC RWY 10, Orig
Boscobel, WI, Boscobel, RNAV (GPS) RWY 7, Orig-B
Chetek, WI, Chetek Muni-Southworth, RNAV (GPS) RWY 17, Orig-E
Hartford, WI, Hartford Muni, RNAV (GPS) RWY 11, Orig-A, CANCELLED
Hartford, WI, Hartford Muni, RNAV (GPS) RWY 29, Orig-A, CANCELLED
Hartford, WI, Hartford Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Phillips, WI, Price County, RNAV (GPS) RWY 1, Amdt 1A
Phillips, WI, Price County, RNAV (GPS) RWY 6, Orig-D
Superior, WI, Richard I Bong, RNAV (GPS) RWY 4, Orig-C
Superior, WI, Richard I Bong, RNAV (GPS) RWY 14, Orig-C
Superior, WI, Richard I Bong, RNAV (GPS) RWY 32, Orig-C
Viroqua, WI, Viroqua Muni, RNAV (GPS) RWY 29, Orig-C
Wheeling, WV, Wheeling Ohio Co, VOR RWY 21, Amdt 16A

[FR Doc. 2020–00891 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31293; Amdt. No. 3888]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 27, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 2020.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29 Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC on January 10, 2020.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
27-Feb-20	WY	Lander	Hunt Field	0/0409	1/6/20	RNAV (GPS) RWY 22, Orig.
27-Feb-20	MN	Montevideo	Montevideo-Chippewa County.	0/0419	1/3/20	VOR RWY 14, Amdt 5A.
27-Feb-20	NE	Seward	Seward Muni	0/0426	1/3/20	RNAV (GPS) RWY 34, Orig-A.
27-Feb-20	VA	Front Royal	Front Royal-Warren County.	0/0432	1/6/20	RNAV (GPS)-A, Orig-B.
27-Feb-20	SC	Union	Union County, Troy Shelton Field.	0/0816	1/7/20	RNAV (GPS) RWY 23, Orig-B.
27-Feb-20	SC	Union	Union County, Troy Shelton Field.	0/0820	1/7/20	NDB RWY 5, Orig-B.
27-Feb-20	SC	Union	Union County, Troy Shelton Field.	0/0832	1/7/20	RNAV (GPS) RWY 5, Orig-B.
27-Feb-20	NC	Concord	Concord-Padgett Rgnl	0/0858	1/7/20	ILS OR LOC RWY 20, Amdt 2A.
27-Feb-20	NC	Concord	Concord-Padgett Rgnl	0/0861	1/7/20	RNAV (GPS) RWY 20, Orig-A.
27-Feb-20	MI	Mackinac Island	Mackinac Island	9/0092	12/26/19	VOR/DME–A , Amdt 9A.
27-Feb-20	MT	Twin Bridges	Twin Bridges	9/0156	1/7/20	RNAV (GPS) RWY 17, Orig-A.
27-Feb-20	MT	Twin Bridges	Twin Bridges	9/0157	1/7/20	RNAV (GPS) RWY 35, Orig-A.
27-Feb-20	MN	Moose Lake	Moose Lake Carlton County.	9/0223	12/26/19	NDB RWY 4, Amdt 1A.
27-Feb-20	AL	Prattville	Prattville—Grouby Field	9/1016	12/27/19	VOR/DME–A, Amdt 3B.
27-Feb-20	AL	Gadsden	Northeast Alabama Rgnl.	9/1018	12/27/19	RNAV (GPS) RWY 18, Amdt 1B.
27-Feb-20	AL	Gadsden	Northeast Alabama Rgnl.	9/1019	12/27/19	RNAV (GPS) RWY 36, Amdt 1B.
27-Feb-20	AL	Gadsden	Northeast Alabama Rgnl.	9/1020	12/27/19	ILS OR LOC RWY 24, Orig-B.
27-Feb-20	NH	Manchester	Manchester	9/2101	12/26/19	RNAV (GPS) RWY 6, Amdt 2B.
27-Feb-20	SC	Anderson	Anderson Rgnl	9/2104	12/26/19	ILS OR LOC RWY 5, Amdt 1B.
27-Feb-20	SC	Anderson	Anderson Rgnl	9/2105	12/26/19	RNAV (GPS) RWY 5 , Amdt 1B.
27-Feb-20	SC	Anderson	Anderson Rgnl	9/2106	12/26/19	VOR RWY 5, Amdt 10A.
27-Feb-20	OK	Shawnee	Shawnee Rgnl	9/2731	12/26/19	RNAV (GPS) RWY 17, Amdt 1.
27-Feb-20	OK	Shawnee	Shawnee Rgnl	9/2733	12/26/19	RNAV (GPS) RWY 35, Orig-B.
27-Feb-20	GA	Athens	Athens/Ben Epps	9/4202	12/26/19	VOR RWY 2, Amdt 11C.
27-Feb-20	KY	Frankfort	Capital City	9/4203	12/26/19	LOC RWY 25, Amdt 3C.
27-Feb-20	KY	Somerset	Lake Cumberland Rgnl	9/4204	12/26/19	ILS OR LOC/DME RWY, 5, Orig-E.
27-Feb-20	MS	Tupelo	Tupelo Rgnl	9/5852	12/26/19	ILS Y OR LOC Y RWY 36, Orig-A.
27-Feb-20	MS	Tupelo	Tupelo Rgnl	9/5855	12/26/19	NDB RWY 36, Amdt 5B.
27-Feb-20	MS	Tupelo	Tupelo Rgnl	9/5856	12/26/19	COPTER VOR 023, Orig-A.
27-Feb-20	MN	Olivia	Olivia Rgnl	9/8446	12/26/19	VOR/DME OR GPS–A, Amdt 2A.
27-Feb-20	MN	Olivia	Olivia Rgnl	9/8447	12/26/19	RNAV (GPS) RWY 29, Orig-A.
27-Feb-20	NV	Eureka	Eureka	9/8448	12/26/19	RNAV (GPS) RWY 18, Orig-A.
27-Feb-20	MO	Bolivar	Bolivar Muni	9/8449	12/26/19	VOR/DME RWY 36, Orig.
27-Feb-20	UT	Duchesne	Duchesne Muni	9/8450	12/26/19	VOR/DME–A, Orig-A.
27-Feb-20	MI	Detroit	Willow Run	9/8822	12/26/19	VOR–A, Amdt 1A.
27-Feb-20	IL	Chicago	Chicago O'Hare Intl	9/8839	12/26/19	RNAV (GPS) RWY 4R, Amdt 1B.
27-Feb-20	IL	Chicago	Chicago O'Hare Intl	9/8840	12/26/19	RNAV (GPS) RWY 22R, Amdt 2B.
27-Feb-20	WI	Baraboo	Baraboo-Wisconsin Dells Rgnl.	9/8845	12/26/19	RNAV (GPS) RWY 1, Amdt 1C.
27-Feb-20	CA	La Verne	Brackett Field	9/8879	12/26/19	VOR OR GPS–A, Amdt 5D.
27-Feb-20	CA	Carlsbad	Mc Clellan-Palomar	9/8980	12/26/19	VOR–A, Amdt 8.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
27-Feb-20	NC	Salisbury	Mid-Carolina Rgnl	9/9048	12/26/19	RNAV (GPS) RWY 20, Amdt 1B.
27-Feb-20	NC	Salisbury	Mid-Carolina Rgnl	9/9055	12/26/19	NDB RWY 20, Amdt 1B.
27-Feb-20	NC	Salisbury	Mid-Carolina Rgnl	9/9056	12/26/19	ILS OR LOC RWY 20, Amdt 1B.
27-Feb-20	NM	Deming	Deming Muni	9/9062	1/3/20	RNAV (GPS) RWY 4, Amdt 1A.
27-Feb-20	NM	Deming	Deming Muni	9/9063	1/3/20	RNAV (GPS) RWY 8, Orig-A.
27-Feb-20	NM	Deming	Deming Muni	9/9065	1/3/20	RNAV (GPS) RWY 22, Orig-A.
27-Feb-20	KY	Murray	Kyle-Oakley Field	9/9167	12/26/19	LOC RWY 23, Amdt 2B.
27-Feb-20	OH	Youngstown	Youngstown Elser Metro.	9/9168	12/26/19	VOR–C, Amdt 2B.
27-Feb-20	KY	Springfield	Lebanon Springfield-George Hoerter Field.	9/9177	12/26/19	VOR/DME RWY 11, Amdt 4C.
27-Feb-20	NV	Reno	Reno/Stead	9/9181	12/26/19	ILS OR LOC RWY 32, Orig-A.
27-Feb-20	NV	Reno	Reno/Stead	9/9183	12/26/19	RNAV (GPS) RWY 32, Amdt 1B.
27-Feb-20	IN	Angola	Tri-State Steuben County.	9/9187	12/26/19	RNAV (GPS) RWY 5, Orig-E.
27-Feb-20	KY	Williamsburg	Williamsburg-Whitley County.	9/9658	12/26/19	LOC RWY 20, Orig-C.

[FR Doc. 2020–00889 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA–505F]

RIN 1117–ZA05

Additions to Listing of Exempt Chemical Mixtures

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Direct final rule.

SUMMARY: Under this direct final rule, the Drug Enforcement Administration (DEA) is updating the Table of Exempt Chemical Mixtures to include the listing of 15 additional preparations. This action is in response to DEA's review of new applications for exemption. Having reviewed applications and relevant information, DEA finds that these preparations meet the applicable exemption criteria. Therefore, these products are exempted from the application of certain provisions of the Controlled Substances Act.

DATES: This direct final rule is effective March 27, 2020 without further action, unless adverse comment is received by DEA no later than February 26, 2020. If any comments or objections raise significant issues regarding any findings of fact or conclusions of law upon which the order is based, the DEA will publish a timely withdrawal of the rule in the **Federal Register**.

Written comments must be postmarked and electronic comments must be submitted on or before February 26, 2020. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–505F/RIN 1117–ZA05'' on all correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152. Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION: Any interested person may file comments or objections to this order, on or before March 27, 2020. If any such comments or objections raise significant issues regarding any findings of fact or conclusions of law upon which the order is based, the DEA will publish a timely withdrawal of the rule in the **Federal Register**. The Acting Administrator may reconsider the application in light of the comments and objections filed and reinstate, terminate, or amend the original order as deemed appropriate.

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential

business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.* Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. Please note that the Freedom of Information Act applies to all comments received.

New Exempt Chemical Mixtures

The manufacturers of 15 chemical mixtures listed below have applied for an exemption pursuant to 21 CFR 1310.13. The Drug Enforcement Administration (DEA) has reviewed the applications, as well as any additional information submitted by the respective manufacturers. DEA has found that: (1) Each of these chemical mixtures is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance; and (2) the listed chemical(s) contained in these chemical mixtures cannot be readily recovered. Therefore, DEA has determined that each of the applications should be granted, and previously issued a letter to this effect. This regulatory action conforms DEA regulations to the exemptions previously issued.

Background

Under 21 CFR 1310.13(a), the Acting Administrator may, by publication of a Final Rule in the **Federal Register**, exempt from the application of all or any part of the Controlled Substances Act a chemical mixture consisting of two or more chemical components, at least one of which is not a list I or list II chemical. Each manufacturer must apply for such an exemption (21 CFR 1310.13) to ensure that each manufacturer's product warrants an exemption by demonstrating that:

- The mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance; and
- The listed chemical or chemicals contained in the chemical mixture cannot be readily recovered.

Any manufacturer seeking an exemption for a chemical mixture, not automatically exempt under 21 CFR 1310.12, may apply to the Acting Administrator by submitting an application for exemption which contains the information required by 21 CFR 1310.13(c):

- The name, address, and registration number, if any, of the applicant;
- The date of the application;
- The exact trade name(s) of the applicant's chemical mixture;
- The complete qualitative and quantitative composition of the chemical mixture (including all listed and all non-listed chemicals); or if a group of mixtures, the concentration range for the listed chemical and a listing of all non-listed chemicals with respective concentration ranges;
- The chemical and physical properties of the mixture and how they differ from the properties of the listed chemical or chemicals; and if a group of mixtures, how the group's properties differ from the properties of the listed chemical;
- A statement that the applicant believes justifies an exemption for the chemical mixture or group of mixtures. The statement must explain how the chemical mixture(s) meets the exemption criteria;
- A statement that the applicant accepts the right of the Acting Administrator to terminate exemption from regulation for the chemical mixture(s) granted exemption under 21 CFR 1310.13; and
- The identification of any information on the application that is considered by the applicant to be a trade secret or confidential and entitled to protection under U.S. laws restricting the public disclosure of such information.

The Acting Administrator may require the applicant to submit such additional documents or written statements of fact relevant to the application that he deems necessary for determining if the application should be granted.

Title 21 CFR 1310.13 further specifies that within a reasonable period of time after the receipt of an application for an exemption, the Acting Administrator will notify the applicant of acceptance or rejection of the application for filing. If the application is not accepted for filing, an explanation will be provided. The Acting Administrator is not required to accept an application if any information required pursuant to 21 CFR 1310.13 is lacking or not readily understood. The applicant may, however, amend the application to meet the requirements of this section.

If the exemption is granted, the applicant shall be notified in writing and the Acting Administrator shall issue, and publish in the **Federal Register**, an order on the application. This order shall specify the date on which it shall take effect. The Acting Administrator shall permit any interested person to file written comments on or objections to the order. If any comments or objections raise significant issues regarding any findings of fact or conclusions of law upon which the order is based, the DEA will publish a timely withdrawal of the rule in the **Federal Register**. The Acting Administrator may reconsider the application in light of the comments and objections filed and reinstate, terminate, or amend the original order as deemed appropriate.

A formulation granted exemption by publication in the **Federal Register** will not be exempted for all manufacturers. The current Table of Exempt Chemical Mixtures lists those products that have been granted exempt status prior to this update. That table can be viewed online at: *http://www.deadiversion.usdoj.gov/schedules/exempt/exempt_list.htm.*

Findings

Having considered the information provided in each of the below listed applications, I find that each of the referenced chemical mixtures meets the requirements for exemption under 21 CFR 1310.13(a). Therefore, each of these mixtures is exempt from the application of sections 302, 303, 310, 1007, and 1008 of the Controlled Substances Act (21 U.S.C. 822, 823, 830, 957 and 958).

DEA is updating the table in 21 CFR 1310.13(i) to include each of these exempt chemical mixtures.

Regulatory Analyses

Administrative Procedure Act

An agency may find good cause to exempt a rule from prior public notice provisions of the Administrative Procedure Act (5 U.S.C. 553(b)(B)), if it is determined to be unnecessary, impracticable, or contrary to the public interest. DEA finds that it is unnecessary to engage in notice and comment procedures because this rulemaking grants exemptions for the below listed products in accordance with standards set by existing DEA regulations. Each of these manufacturers has previously received a letter from DEA granting exempted status for the specific products. This regulatory action hereby conforms DEA regulations to the exemptions previously considered and issued.

Executive Orders 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs

This direct final rule was developed in accordance with the principles of

Executive Orders 12866, 13563, and 13771. Executive Order 12866 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 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866. Executive Order 12866 classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. DEA has determined that this direct final rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f).

This direct final rule is not an Executive Order 13771 regulatory action pursuant to Executive Order 12866 and the Office of Management and Budget (OMB) guidance.[1]

Executive Order 12988, Civil Justice Reform

The Acting Administrator further certifies that this rulemaking meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Acting Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. This regulation will not have a significant impact upon firms who distribute these products. In fact, the approval of Exempt Chemical Mixture status for these products reduces the regulatory requirements for distribution of these materials.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined that this action will not result in any Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year. Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action does not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. This rule does not result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign based companies in domestic and export markets. However, pursuant to the CRA, the DEA has submitted a copy of this direct final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1310

Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by section 102(39)(A)(vi) of the Act (21 U.S.C. 802(39)(A)(vi)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice (28 CFR 0.100), the Acting Administrator hereby amends 21 CFR part 1310 as set forth below.

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES; IMPORTATION AND EXPORTATION OF CERTAIN MACHINES

■ 1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 827(h), 830, 871(b) 890.

■ 2. In § 1310.13(i), the table is amended by:

■ a. Designating the table as table 1 to paragraph (i); and

■ b. Adding the entries ''GFS Chemicals; WaterMark® Karl-Fisher Reagent, Pyridine-Free Single Solution, 5 mg/ml,'' ''GFS Chemicals; WaterMark® Karl-Fisher Reagent, 5 mg/ml Single Solution NON–HAZ,'' ''GFS Chemicals; WaterMark® Karl-Fisher Reagent, Pyridine-Free Single Solution, 2 mg/ml,'' ''GFS Chemicals; WaterMark® Karl-Fisher Reagent, 2 mg/ml Single Solution NON–HAZ,'' ''GFS Chemicals; WaterMark® Karl-Fisher Reagent, 5 mg/ml, Stabilized, Pyridine-Based,'' ''Lord Corporation; Chemlok TS701–52,'' ''Lord Corporation; Chemlok TS701–53,'' ''Sigma-Aldrich; Hydranal®-Composite 1,'' ''Sigma-Aldrich; Hydranal®-Composite 2,'' ''Sigma-Aldrich; Hydranal®-Composite 5K,'' ''Sigma-Aldrich; Hydranal®-Composite 5,'' ''Standard Homeopathic Co.; Baby Cough Syrup,'' ''Standard Homeopathic Co.; Defend Cough & Cold

[1] Office of Mgmt. & Budget, Exec. Office of The President, Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 Titled ''Reducing Regulation and Controlling Regulatory Costs'' (Feb. 2, 2017).

Night,'' ''Standard Homeopathic Co.; Defend Cough & Cold,'' and ''Standard Homeopathic Co.; Diarrex'' in alphabetical order of Manufacturer.

The additions read as follows:

§ 1310.13 Exemption of chemical mixtures; application.

* * * * *

(i) * * *

TABLE 1 TO PARAGRAPH (i)—EXEMPT CHEMICAL MIXTURES

Manufacturer	Product name [1]	Form	Approval date
*	*	*	*
GFS Chemicals	WaterMark® Karl-Fisher Reagent, Pyridine-Free Single Solution, 5 mg/ml	Liquid	11/26/2018
GFS Chemicals	WaterMark® Karl-Fisher Reagent, 5 mg/ml Single Solution NON–HAZ	Liquid	11/26/2018
GFS Chemicals	WaterMark® Karl-Fisher Reagent, Pyridine-Free Single Solution, 2 mg/ml	Liquid	11/26/2018
GFS Chemicals	WaterMark® Karl-Fisher Reagent, 2 mg/ml Single Solution NON–HAZ	Liquid	11/26/2018
GFS Chemicals	WaterMark® Karl-Fisher Reagent, 5 mg/ml, Stabilized, Pyridine-Based	Liquid	11/26/2018
*	*	*	*
Lord Corporation	Chemlok TS701–52	Liquid	05/03/2018
Lord Corporation	Chemlok TS701–53	Liquid	05/03/2018
*	*	*	*
Sigma-Aldrich	Hydranal®-Composite 1	Liquid	5/29/2013
Sigma-Aldrich	Hydranal®-Composite 2	Liquid	5/29/2013
Sigma-Aldrich	Hydranal®-Composite 5K	Liquid	5/29/2013
Sigma-Aldrich	Hydranal®-Composite 5	Liquid	5/29/2013
Standard Homeopathic Co	Baby Cough Syrup	Liquid	9/28/2012
Standard Homeopathic Co	Defend Cough & Cold Night	Liquid	9/28/2012
Standard Homeopathic Co	Defend Cough & Cold	Liquid	9/28/2012
Standard Homeopathic Co	Diarrex	Liquid	9/28/2012
*	*	*	*

[1] Designate product line if a group.

Dated: January 3, 2020.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2020–00667 Filed 1–24–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2019–0911]

Drawbridge Operation Regulation; Mobile River, Hurricane, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the CSX Transportation Railroad vertical lift bridge across Mobile River, mile 13.3 near Hurricane, Alabama. This deviation is needed to collect and analyze information on vessel traffic when the bridge tender is moved to a geographically remote centralized control point located in Mobile, AL. The Coast Guard is seeking comments from the public about the impact to vessel traffic generated by this change.

DATES: This deviation is effective from 6 a.m. January 27, 2020 through 6 p.m. March 27, 2020.

Comments and related material must be received by the Coast Guard on or before March 27, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0911 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this test deviation, call or email Mr. Doug Blakemore, Eighth Coast Guard District Bridge Administrator; telephone (504) 671–2128, email *Douglas.A.Blakemore@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

CSX Railroad has established a central location to operate CSX drawbridges. They have requested to relocate the Mobile River bridge tender to their centralized location in Mobile, AL. This CSX vertical lift bridge is located at Mobile River, mile 13.3, Mobile County, near Hurricane, AL. It has a vertical clearance of 5.5' in the closed to vessel position. The bridge operates according to 33 CFR 117.5. Mobile River is used primarily by commercial tow and recreational vessels. The bridge opens for vessels about 6 times per day and vessels that do not need the bridge to open may pass.

This deviation will last for 60 days. CSX will collect data on all bridge openings to ensure that the remote operations will not impact navigation. CSX will immediately return the tender to the bridge location if there are any system failures or weather conditions that will not allow the bridge tender to operate the bridge from Mobile.

The Coast Guard will publish information about this temporary deviation in our Local and Broadcast Notice to Mariners so that mariners are informed of this operating change and our request for comments on the change.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the

outcome of this deviation from drawbridge regulations. If you submit a comment, please include the docket number for this document, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacynotice.*

Documents mentioned in this deviation from drawbridge regulations as being available in this docket and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or another document is published.

Dated: January 8, 2020.

Douglas Allen Blakemore, Sr.,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2020–00339 Filed 1–24–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200113–0013]

RIN 0648–BI32

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Regulatory Amendment 27

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

ACTION: Final rule.

SUMMARY: NMFS implements management measures described in Vision Blueprint Commercial Regulatory Amendment 27 (Regulatory Amendment 27) to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule modifies commercial fishing seasons, trip limits, and minimum size limits for selected snapper-grouper species in the South Atlantic exclusive economic zone (EEZ). The purpose of this final rule is to improve equitable access for commercial fishermen in the snapper-grouper fishery, minimize discards to the extent practicable, and improve marketability within the snapper-grouper fishery.

DATES: This final rule is effective on February 26, 2020.

ADDRESSES: Electronic copies of Regulatory Amendment 27 may be obtained from *www.regulations.gov* or the NOAA Fisheries website at *https://www.fisheries.noaa.gov/action/regulatory-amendment-27-vision-blueprint-commercial-measures.* Regulatory Amendment 27 includes an environmental assessment, regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery in the South Atlantic region is managed under the Snapper-Grouper FMP and includes blueline tilefish, snowy grouper, greater amberjack, red porgy, vermilion snapper, almaco jack, other jacks complex (lesser amberjack, almaco jack, and banded rudderfish), queen snapper, silk snapper, blackfin snapper, and gray triggerfish, along with other snapper-grouper species. The Snapper-Grouper FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On October 17, 2019, NMFS published a proposed rule for Regulatory Amendment 27 in the **Federal Register** and requested public comment (84 FR 55531). Regulatory Amendment 27 and the proposed rule outline the rationale for the actions contained in this final rule. A summary of the management measures described in Regulatory Amendment 27 and implemented by this final rule is provided below.

Management Measures Contained in This Final Rule

This final rule modifies the commercial trip limits for blueline tilefish, greater amberjack, red porgy, and vermilion snapper; establishes commercial split seasons for snowy grouper, greater amberjack, and red porgy; and establishes a commercial trip limit for the other jacks complex. For the commercial sector, this final rule establishes a minimum size limit for almaco jack, removes the minimum size limits for silk snapper, queen snapper, and blackfin snapper, and reduces the minimum size limit for gray triggerfish in the EEZ off the east coast of Florida. The management measures in this final rule apply on board a vessel for which a Federal commercial permit for South Atlantic snapper-grouper has been issued. Unless otherwise noted, all weights in this final rule are described in gutted weight.

Commercial Trip Limit for Blueline Tilefish

This final rule modifies the commercial trip limit for blueline tilefish throughout the South Atlantic EEZ. During the period from January 1 through April 30 each year, the commercial trip limit is 100 lb (45 kg), and from May 1 through December 31 each year, the commercial trip limit is 300 lb (136 kg). The Council determined that a lower 100-lb (45-kg) commercial trip limit of blueline tilefish each year from January through April would help reduce snowy grouper discards by commercial fishermen operating south of Cape Hatteras, North Carolina, because the commercial trip limit for blueline tilefish would be met more quickly on a trip. This final rule maintains the current 300-lb (136-kg) trip limit for blueline tilefish from May through December when good weather conditions are more likely to allow commercial fishermen in the northern portion of the Council's area of jurisdiction to have greater access to the resource and optimize their harvest through an extended fishing season.

Commercial Split Season for Snowy Grouper

This final rule establishes two commercial fishing seasons for snowy grouper of January 1 through June 30 (Season 1) and July 1 through December 31 (Season 2) within the current fishing year. This final rule allocates the commercial quotas as 70 percent to Season 1, 107,754 lb (48,876 kg), and 30 percent to Season 2, 46,181 lb (20,947 kg). Any remaining commercial quota from Season 1 will be transferred to

Season 2. Any remaining commercial quota from Season 2 will not be carried forward into the next fishing year. The Council determined that allocating the majority of the commercial quota to Season 1 will ensure availability of snowy grouper when it is most valuable at the market and optimize access to this species for the majority of commercial fishermen in the South Atlantic. The Council also decided that allocating 30 percent of the commercial quota of snowy grouper for Season 2 allows for the incidental harvest of snowy grouper when North Carolina commercial fishermen are targeting blueline tilefish.

Commercial Split Season and Trip Limit for Greater Amberjack

This final rule establishes two commercial fishing seasons for greater amberjack. The two seasons are March 1 through August 31 (Season 1) and September 1 through the end of February (Season 2). The commercial quotas are allocated as 60 percent to Season 1, 461,633 lb (209,393 kg), and 40 percent to Season 2, 307,755 lb (139,595 kg). Any remaining commercial quota from Season 1 will be added to the commercial quota in Season 2. Any remaining quota from Season 2 will not be carried forward into the next fishing year. Additionally, this final rule modifies the commercial trip limit for greater amberjack. During Season 1, the commercial trip limit is 1,200 lb (544 kg) in round or gutted weight, and during Season 2, the commercial trip limit is 1,000 lb (454 kg) in round or gutted weight. However, during April each year, the commercial sale and purchase of greater amberjack will continue to be prohibited, and the commercial harvest and possession limit will continue to be one fish per person per day or one fish per person per trip, whichever is more restrictive.

The Council expects that dividing the commercial quota for South Atlantic greater amberjack between two seasons and reducing the commercial trip limit for the latter half of the fishing year would lengthen the greater amberjack commercial season and allow for a more equitable distribution and price stability of the greater amberjack resource throughout the South Atlantic.

Commercial Split Season and Trip Limit for Red Porgy

This final rule establishes two commercial fishing seasons for red porgy. Season 1 is January 1 through April 30, and Season 2 is May 1 through December 31. The commercial quotas are allocated as 30 percent to Season 1, which is 47,308 lb (21,459 kg), gutted weight, or 49,200 lb (22,317 kg), round weight; and 70 percent to Season 2, which is 110,384 lb (50,069 kg), gutted weight, or 114,800 lb (52,072 kg), round weight. Any remaining commercial quota from Season 1 will be added to the commercial quota in Season 2. Any remaining quota from Season 2 will not be carried forward into the next fishing year.

Additionally, Regulatory Amendment 27 and this final rule modify the commercial trip limit for red porgy during Season 1 to be 60 fish. During Season 2, the commercial trip limit for red porgy will continue to be 120 fish.

The final rule removes the current commercial sale and purchase prohibition and the possession limit of three fish per person per day or three fish per person per trip, whichever is more restrictive, from January 1 through April 30. The Council determined that these new measures will continue to constrain commercial harvest to protect spawning red porgy during Season 1, while allowing commercial fishermen to retain some red porgy when targeting other co-occurring species, thereby reducing discards of red porgy.

Commercial Trip Limit for Vermilion Snapper

This final rule removes the commercial trip limit reduction for vermilion snapper when 75 percent of the seasonal quota is met during both Season 1 and 2 but retains the 1,000 lb (454 kg) commercial trip limit. The Council determined that there is no longer a need to have a trip limit reduction for vermilion snapper. Also, as described in Regulatory Amendment 27, maintaining the current commercial trip limit would ensure economic profitability and efficient use of the vermilion snapper resource.

Minimum Size Limit for Almaco Jack

This final rule establishes a commercial minimum size limit of 20 inches (50.8 cm), fork length (FL), for almaco jack in the South Atlantic EEZ. The Council determined that a commercial minimum size limit of 20 inches (50.8 cm) FL will allow more individual almaco jack to reach reproductive activity before being susceptible to harvest, and is projected to increase the average size and the corresponding average weight of fish harvested.

Commercial Trip Limit for the Other Jacks Complex

This final rule establishes a commercial trip limit for the other jacks complex of 500 lb (227 kg). The Council determined a 500-lb (227-kg) commercial trip limit for the other jacks complex would still allow fishermen to make a profitable trip, and enables them to have the added benefit of an extended commercial season, and it is better for the long-term sustainability of the other jacks complex resource.

Minimum Size Limit for Queen Snapper, Silk Snapper, and Blackfin Snapper

Queen snapper, silk snapper, and blackfin snapper are part of the deep-water complex. Prior to this final rule, the commercial minimum size limit for queen snapper, silk snapper, and blackfin snapper was 12 inches (30.5 cm) total length (TL), but the remaining species in the deep-water complex do not have a specified minimum size limit requirement. The Council determined that removing the commercial minimum size limit for queen snapper, silk snapper, and blackfin snapper would reduce discards and discard mortality for these species. Therefore, this final rule removes the commercial minimum size limit for queen snapper, silk snapper, and blackfin snapper.

Minimum Size Limit for Gray Triggerfish

This final rule reduces the commercial minimum size limit to 12 inches (30.5 cm) FL for gray triggerfish in the EEZ off the east coast of Florida. In 2015, the 12-inch (30.5-cm) FL commercial minimum size limit was implemented for gray triggerfish in the EEZ off North Carolina, South Carolina, and Georgia, and a commercial minimum size limit of 14 inches (35.6 cm) FL was implemented in the EEZ off the east coast of Florida (80 FR 30947, June 1, 2015). However, after the commercial minimum size limit went into effect on July 1, 2015, stakeholders in Florida expressed concern to the Florida Fish and Wildlife Conservation Commission (FWC) regarding increasing discards of gray triggerfish in south Florida where the average size of gray triggerfish is less than that off northeast Florida. In response to that concern, the FWC subsequently reduced the recreational minimum size limit of gray triggerfish in state waters to 12 inches (30.5 cm) FL in 2015 (incorrectly stated in the preamble of the proposed rule as 2017), and requested that the Council develop consistent size limit regulations in Federal waters for gray triggerfish. Therefore, reducing the commercial minimum size limit to 12 inches (30.5 cm) FL in the EEZ off the east coast of Florida will make these state and Federal commercial regulations for gray triggerfish consistent throughout the Council's jurisdiction.

Comments and Responses

NMFS received six comments from individuals, a state agency, and a fisheries consulting company during the public comment period on the proposed rule for Regulatory Amendment 27. Five of the comments offered were in general support of most or all the actions in the proposed rule. NMFS acknowledges the comments in favor of all or part of the actions in the proposed rule and agrees with them. Comments that were beyond the scope of the proposed rule are not responded to in this final rule. The public comment that opposed an action contained in Regulatory Amendment 27 and the proposed rule is summarized below, along with NMFS' response.

Comment 1: The commercial minimum size limit for almaco jack should be 20 inches (50.8 cm) FL off North Carolina, and 12 inches (30.5 cm) FL off the east coast of Florida. Almaco jack grow larger off North Carolina, so a 20-inch (50.8-cm) FL minimum size limit is appropriate off that state, but due to the regional differences in catchability, the minimum size limit for almaco jack should be 12 inches (30.5 cm) FL off the east coast of Florida, since fishermen will be discarding those fish at a higher rate if the minimum size limit is 20 inches (50.8 cm) FL.

Response: The Council decided to implement a minimum size limit for almaco jack because during the Vision Blueprint process, fishermen expressed concern about the small size and resulting poor commercial value of some of the almaco jack being landed. The Council considered a range of minimum size limits in Regulatory Amendment 27, in addition to no minimum size limit; however, a 12-inch (30.5-cm) minimum size limit was not within the range of alternatives considered by the Council during the development of Regulatory Amendment 27.

Although minimum size limits, in general, have the potential to increase discards, NMFS believes that almaco jack would presumably exhibit similar release mortality to that of greater amberjack (20 percent, Southeast Data, Assessment, and Review 15, 2008), and thus, most discarded fish would likely survive. Some fishermen also believe that almaco jack are a ''hardy'' fish and have high release survival. Therefore, a 20-inch (50.8-cm) FL minimum size limit is expected to reduce discards to the extent practicable.

Additionally, and as stated in Regulatory Amendment 27, 88.5 percent of almaco jack landed commercially (by weight) in the South Atlantic are above 20 inches (50.8 cm) FL and 66 percent of the catch is above 26 inches (66 cm) FL; therefore, the change in regulatory discards is expected to be minimal. In regard to biological benefits, the larger the minimum size limit, the greater the resulting benefits to the population in terms of increased reproductive potential. Therefore, implementing a commercial minimum size limit of 20 inches (50.8 cm) FL is expected to result in positive biological impacts to the almaco jack stock. Overall, the Council determined that action to implement the 20-inch (50.8-cm) FL minimum size limit best meets their purpose to minimize discards in the snapper-grouper commercial fishery to the extent practicable while improving marketability.

Classification

The Regional Administrator for the NMFS Southeast Region determined that this final rule is necessary for the conservation and management of the South Atlantic snapper-grouper fishery and that it is consistent with Regulatory Amendment 27, the Snapper-Grouper FMP, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule is considered to be an Executive Order 13771 deregulatory action. The potential cost savings from this final rule are estimated to be $.02 million in 2016 dollars, discounted at 7 percent in perpetuity.

A final regulatory flexibility analysis (FRFA) was prepared. NMFS did not receive any comments from the U.S. Small Business Administration's Office of Advocacy or the public on the IRFA in the proposed rule, and therefore, NMFS did not make any associated changes to this final rule. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The objective of this rule is to improve management of the commercial sector of the snapper-grouper fishery to better achieve optimum yield, while minimizing to the extent practicable, the adverse socio-economic effects of regulations on commercial fishing entities in the South Atlantic.

This final rule makes the following changes to the regulations for the commercial snapper-grouper fishing industry in the South Atlantic region. This rule reduces the commercial trip limit for blueline tilefish from 300 lb (136 kg) to 100 lb (45 kg) from January 1 through April 30 each fishing year. For snowy grouper, this rule establishes two commercial fishing seasons of January 1 through June 30 (Season 1) and July 1 through December 31 (Season 2), rather than a single season within the fishing year; allocates 70 percent of the commercial quota to Season 1 and 30 percent to Season 2; and adds any remaining commercial quota from Season 1 to Season 2 only. For greater amberjack, this rule establishes two commercial fishing seasons of March 1 through August 31 (Season 1) and September 1 through the end of February (Season 2), rather than a single season within the March through February fishing year; allocates 60 percent of the commercial quota to Season 1 and 40 percent to Season 2; and adds any remaining commercial quota from Season 1 to Season 2 only; and reduces the commercial trip limit from 1,200 lb (545 kg) in round or gutted weight to 1,000 lb (454 kg) in round or gutted weight for Season 2. For red porgy, this rule removes the sale and purchase prohibition, and the possession limit of three fish per person per day or three fish per person per trip during January 1 to April 30 each year; specifies two commercial fishing seasons for red porgy of January 1 through April 30 (Season 1) and May 1 through December 31 (Season 2) within the fishing year; allocates 30 percent of the commercial quota to Season 1 and 70 percent to Season 2; and establishes a commercial trip limit of 60 fish in Season 1. In addition, this rule also removes the in-season reduction of the commercial trip limit in Season 1 and Season 2 for vermilion snapper; establishes a commercial minimum size limit of 20 inches (50.8 cm) FL for almaco jack; establishes a commercial trip limit of 500 lb (227 kg) for the other jacks complex; removes the 12-inch (30.5-cm) TL commercial minimum size limit for queen snapper, silk snapper, and blackfin snapper; and reduces the commercial minimum size limit for gray triggerfish from 14 inches (35.6 cm) to 12 inches (30.5 cm) FL in the EEZ off the east coast of Florida. Therefore, this final rule is expected to directly regulate businesses that are active in the commercial snapper-grouper fishing industry.

As of August 17, 2018, the number of vessels with a valid or renewable Federal commercial permit for South Atlantic snapper-grouper was 644, composed of 536 transferable, unlimited snapper-grouper permits and 108 non-transferable, 225-lb (102 kg) trip-limited permits. With the exception of species-specific trip limits, there is no aggregate snapper-grouper harvest limit per trip for vessels with unlimited snapper-grouper permits, while vessels with trip-limited permits cannot harvest more

than 225 lb (102 kg) of all snapper-grouper species per trip. On average, only 584 vessels used their commercial permits for harvesting purposes from 2012 through 2016. Some permit holders retain their permits for speculative or other non-harvesting purposes. The majority of vessels harvest multiple snapper-grouper species. The rule will only directly regulate permit holders that actually use their permits for harvesting purposes. Therefore, it is expected that approximately 584 vessels will be directly regulated by this final rule.

Although NMFS started to collect ownership data for businesses that possess commercial snapper-grouper permits in 2017, this data is currently incomplete and historical data is not available. Therefore, it is not currently feasible to accurately determine affiliations between these particular businesses. As a result of the incomplete ownership data, for purposes of this analysis, it is assumed each of these vessels is independently owned by a single business, which is expected to result in an overestimate of the actual number of businesses directly regulated by this rule. Therefore, this rule is estimated to directly regulate 584 businesses in the commercial snapper-grouper fishing industry.

All monetary estimates in the following analysis are in 2016 dollars. For vessels that were active in the snapper-grouper fishing industry from 2012 through 2016, average annual gross revenue was approximately $44,000 per vessel. Average annual net cash flow per vessel was approximately $8,300 while net revenue from operations was approximately $2,000 per vessel. Net revenue from operations is the best available estimate of economic profit.

The Small Business Administration has established size standards for all major industry sectors in the U.S. including commercial fishing businesses. On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts (revenue) for all businesses primarily engaged in the commercial fishing industry (NAICS code 11411) for RFA compliance purposes only (80 FR 81194, December 29, 2015). In addition to this gross revenue standard, a business primarily involved in commercial fishing is classified as a small business if it is independently owned and operated, and is not dominant in it field of operations (including its affiliates). The maximum average annual gross revenue from 2012 through 2016 for a single vessel in the commercial snapper-grouper fishing industry was about $1.6 million. Based on the information above, all businesses directly regulated by this rule are determined to be small businesses for the purpose of this analysis.

This final rule, if implemented, would be expected to directly regulate the 584 active vessels with Federal commercial permits in the South Atlantic snapper-grouper fishery of the 644 vessels that currently possess those permits. All directly regulated businesses have been determined, for the purpose of this analysis, to be small entities. Based on this information, the rule is expected to affect a substantial number of small businesses.

The action to reduce the commercial trip limit for blueline tilefish from 300 lb (136 kg) to 100 lb (45 kg) each year from January 1 through April 30 is expected to directly regulate approximately 134 vessels. These vessels' average annual gross revenues were $82,411 per vessel from 2012 through 2016. Average annual net revenue from operations for these vessels was approximately 4 percent of their average annual gross revenue from 2014 through 2016. Thus, annual net revenue from operations (economic profit) for these vessels is estimated to be about $3,300 per vessel. Average annual gross revenue per vessel is expected to increase by about $13 per year, which would result in an increase in economic profit of about 0.4 percent for these vessels.

For snowy grouper, the action to establish two commercial fishing seasons of January 1 through June 30 (Season 1) and July 1 through December 31 (Season 2) rather than a single season within the fishing year, allocate 70 percent of the commercial quota to Season 1 and 30 percent to Season 2, and to add any remaining commercial quota from Season 1 to Season 2 only, is expected to directly regulate approximately 149 vessels. These vessels' average annual gross revenues were $85,475 per vessel from 2012 through 2016. Average annual net revenue from operations for these vessels was approximately 4 percent of their average annual gross revenue from 2014 through 2016. Therefore, annual net revenue from operations for these vessels is estimated to be about $3,400 per vessel. This action is not expected to affect landings, annual gross revenue, or harvesting costs, and thus economic profit for these vessels is not expected to change.

For greater amberjack, the action to establish two commercial fishing seasons of March 1 through August 31 (Season 1) and September 1 through the end of February (Season 2) within the fishing year, allocate 60 percent of the commercial quota to Season 1 and 40 percent to Season 2, add any remaining commercial quota from Season 1 to Season 2 only, and reduce the commercial trip limit from 1,200 lb (545 kg) in round or gutted weight to 1,000 lb (454 kg) in round or gutted weight for Season 2 is expected to directly regulate approximately 263 vessels. These vessels' average annual gross revenues were $62,578 per vessel from 2012 through 2016. Average annual net revenue from operations for these vessels was approximately 4 percent of their average annual gross revenue from 2014 through 2016. Thus, average annual net revenue from operations for these vessels is estimated to be about $2,500 per vessel. This action is expected to reduce average annual gross revenues to these vessels by about $34, which represents less than 0.1 percent of their average annual gross revenues, and about 11.4 percent of their average annual economic profit. Although a quantitative estimate cannot be provided due to lack of data, this action is also expected to cause a minor increase in these vessels' operating costs. In general, trip limits are expected to increase costs because commercial fishing vessels must take more trips to harvest and land the same amount of fish. The more restrictive the trip limit, the greater the expected increase in costs. The reduction in the commercial trip limit for Season 2 is 200 lb (91 kg) in round or gutted weight per trip, or about 17 percent of the current trip limit. A 17 percent reduction is not a large reduction in general and the reduction only applies in Season 2. Thus, this action would be expected to only slightly reduce these vessels' economic profits.

For red porgy, the actions to remove the sale and purchase prohibition, and the possession limit of three fish per person per day or three fish per person per trip from January 1 to April 30 each year, establish two commercial fishing seasons of January 1 through April 30 (Season 1) and May 1 through December 31 (Season 2) within the fishing year, allocate 30 percent of the commercial quota to Season 1 and 70 percent to Season 2, and establish a commercial trip limit of 60 fish in Season 1 is expected to directly regulate approximately 160 vessels. These vessels' average annual gross revenues were $73,366 per vessel from 2012 through 2016. Average annual net revenue from operations for commercial vessels in the snapper-grouper fishery was approximately 4.5 percent of their average annual gross revenue from 2014

through 2016. Thus, annual net revenue from operations for these vessels is estimated to be about $3,300 per vessel. The expected increase in annual gross revenue from this action is about $335 per vessel, representing an increase of about 0.5 percent of average annual gross revenues but a 9 percent increase in economic profit. The decision to harvest red porgy during the months when sale and purchase are currently prohibited could lead to additional harvesting costs, but these would be self-imposed and, assuming standard business practices by owners of commercial vessels, the additional gross revenues will exceed the additional costs (*i.e.,* economic profit is expected to increase). Moreover, the red porgy landings that would be expected from January through April are likely fish that were previously discarded due to the current prohibition. If these landings are fish that were previously discarded, then no additional costs would be incurred and the additional gross revenue would represent additional economic profit to these vessels as well.

The action to remove the in-season commercial trip limit reduction for vermilion snapper in both seasons is expected to directly regulate approximately 206 vessels. These vessels' average annual gross revenues were $66,330 per vessel from 2011 through 2016. Average annual net revenue from operations for these vessels was approximately negative 1 percent of their average annual gross revenue from 2014 through 2016 (*i.e.,* these vessels have been generating economic losses). Thus, annual net revenue from operations for these vessels is estimated to be about negative $6,600 per vessel. This action is expected to result in a reduction of $42 in average annual gross revenue per vessel, which is a minimal change relative to annual average gross revenues, but would increase economic losses by about 0.6 percent. However, the action is also expected to change the cost of harvesting vermilion snapper. In general, trip limits are expected to increase costs because commercial fishing vessels must take more trips to harvest and land the same amount of fish. The more restrictive the trip limit, the greater the expected increase in costs. Under previous regulations, the commercial trip limit for both seasons was reduced from 1,000 lb (454 kg) gutted weight to 500 lb (227 kg) gutted weight, or by 50 percent, when 75 percent of the commercial quota in either season was harvested, which was significant. Further, changes in trip limits within a fishing year and particularly within a season can introduce inefficiencies in the production process as commercial fishing vessels must adjust their operations to account for such changes. While these inefficiencies are likely not as great when the trip limit changes are known well in advance, they become particularly significant when the owners of commercial fishing vessels do not know if or when the trip limit change is going to occur, which was the case under the previous regulations. Further, because at least some owners of commercial fishing vessels would prefer to fish when the trip limit is greater, trip limit reductions can result in mini-fishing derbies (race-to-fish) within a season. Splitting the commercial quota between seasons only partially mitigates this effect. Although models are not available to quantitatively estimate the expected changes in costs, the elimination of the trip limit reduction in this rule is expected to significantly reduce these vessels' harvesting costs, likely more than offsetting the relatively minor reduction in gross revenue. Therefore, this action is expected to increase economic profit for these vessels.

The action to establish a commercial minimum size limit of 20 inches (50.8 cm) FL for almaco jack is expected to directly regulate approximately 165 vessels. These vessels' average annual gross revenues were $77,267 per vessel from 2012 through 2016. Average annual net revenue from operations for these vessels was approximately 4 percent of their average annual gross revenue from 2014 through 2016. Thus, average annual net revenue from operations for these vessels is estimated to be about $3,100 per vessel. Average annual gross revenue per vessel is expected to decrease by about $4 per vessel under the action, which is minimal (*i.e.,* about 0.1 percent of economic profit), and thus unlikely to affect these vessels' fishing behavior. However, establishing a minimum size limit will also lead to discarded fish. Thus, commercial fishing vessels would have to exert more effort per trip or take more trips to land the same amount of almaco jack, which would lead to higher costs. The more restrictive the minimum size limit, the greater the amount of discarded fish and thus the greater the expected increase in costs. The increase in costs per vessel could be considerably higher than the minimal increase in average annual gross revenue per vessel, depending on the amount of almaco jack that vessels are forced to discard and how much additional effort they exert to maintain their landings and revenue. However, the increase in cost may be partially offset through a higher price received for larger sized fish. But the extent to which this effect will occur is unknown due to lack of data on the variability of prices across almaco jack of different sizes. Based on this information, this action may reduce the economic profits of these 165 vessels.

The action to establish a commercial trip limit of 500 lb (227 kg) for the other jacks complex is expected to directly regulate approximately 210 vessels. These vessels' average annual gross revenues were $69,363 per vessel from 2012 through 2016. Average annual net revenue from operations for these vessels was approximately 4 percent of their average annual gross revenue from 2014 through 2016. Therefore, annual net revenue from operations for these vessels is estimated to be about $2,800 per vessel. Given the commercial minimum size limit for almaco jack discussed in the previous action, establishing a commercial trip limit for the other jacks complex is expected to result in a reduction of $28 in average annual gross revenue per vessel, or about 1 percent of the average annual economic profit. However, establishing a minimum size limit is also expected to increase costs, which would decrease economic profit even further. The magnitude of the increase in costs depends on how much additional effort commercial vessels must exert to maintain their landings and revenues. Therefore, economic profit for these vessels is expected to be reduced.

The action to remove the 12-inch (30.5-cm) TL commercial minimum size limit for queen snapper, silk snapper, and blackfin snapper is expected to directly regulate approximately 94 vessels. These vessels' average annual gross revenues were $93,154 per vessel from 2012 through 2016. Average annual net revenue from operations for these vessels was approximately 4 percent of their average annual gross revenue from 2014 through 2016. Thus, annual net revenue from operations for these vessels is estimated to be about $3,700 per vessel. This action is expected to result in a minimal increase in landings of queen snapper, silk snapper, and blackfin snapper. However, commercial fishing vessels have only harvested about 43 percent of the commercial ACL for the deep-water complex since blueline tilefish was removed from that complex. Therefore, landings of queen snapper, silk snapper, and blackfin snapper could increase significantly without any concern of exceeding the commercial ACL for the deep-water complex. Further, with the

elimination of the minimum size limit, vessels would be able to increase their landings per unit of effort for these species, thereby decreasing the cost per pound of fish landed. Therefore, this action would be expected to increase the economic profit of these vessels to some extent.

The action to reduce the commercial minimum size limit for gray triggerfish in the EEZ off the east coast of Florida from 14 inches (35.6 cm) to 12 inches (30.5 cm) FL is expected to directly regulate approximately 213 vessels. These vessels' average annual gross revenues were $65,661 per vessel from 2012 through 2016. Average annual net revenue from operations for these vessels was approximately 2 percent of their average annual gross revenue from 2014 through 2016. Thus, annual net revenue from operations for these vessels is estimated to be about $1,300 per vessel. This action is expected to result in an increase in annual gross revenue per vessel of approximately $10, which would represent an increase the average vessel's economic profit of about 0.8 percent per year. Reducing the minimum size limit for gray triggerfish will also allow commercial fishing vessels to harvest these species with less effort. As such, this action would also be expected to decrease the cost per pound of harvest, though by how much is unknown due to the lack of appropriate models. Thus, this action is expected to result in a modest increase in these vessels' economic profit.

Based on the information above, average annual gross revenues for the 584 active commercial snapper-grouper vessels is expected to increase by about $33,400, or approximately $57 per vessel, as a result of all the actions in this rule. This increase represents only about 0.1 percent of these vessels' average annual gross revenues, but about 3 percent of their average annual economic profit. Harvesting costs are expected to significantly decrease for vessels harvesting vermilion snapper and slightly decrease for vessels harvesting gray triggerfish, while they are expected to increase for vessels harvesting greater amberjack, almaco jack, and species in the other jacks complex. Because of these countervailing effects on harvesting costs, harvesting costs for many commercial snapper-grouper vessels will likely change little if at all. Thus, economic profit for the average commercial snapper-grouper vessel is expected to increase slightly or remain relatively the same, though some vessels could experience a reduction in economic profit.

Five alternatives, including the *status quo,* were considered for the action to reduce the commercial trip limit for blueline tilefish from 300 lb (136 kg) to 100 lb (45 kg) from January 1 through April 30. The *status quo* alternative and the other four alternatives were not selected because they are not expected to achieve the Council's goal of enabling more equitable access to the resource for fishermen from different areas of the South Atlantic. The *status quo* alternative is also not expected to increase economic profits for the affected small entities.

Two alternatives, including the *status quo,* were considered for the action to establish, for snowy grouper, two commercial fishing seasons of January 1 through June 30 (Season 1) and July 1 through December 31 (Season 2) within the calendar fishing year, allocate 70 percent of the commercial ACL to Season 1 and 30 percent to Season 2, and transfer any remaining quota from Season 1 to Season 2. The *status quo* alternative and the other alternative were not selected because they are not expected to achieve the Council's goal of enabling more equitable access to the resource for fishermen from different areas of the South Atlantic.

Nine alternatives, including the *status quo,* were considered for the action to establish, for greater amberjack, two commercial fishing seasons of March 1 through August 31 (Season 1) and September 1 through February 31 (Season 2) within the March through February fishing year, allocate 60 percent of the commercial ACL to Season 1 and 40 percent to Season 2, transfer any remaining quota from Season 1 to Season 2, and reduce the commercial trip limit from 1,200 lb (545 kg) in round or gutted weight to 1,000 lb (454 kg) in round or gutted weight for Season 2. The *status quo* alternative was not selected because it is not expected to achieve the Council's goal of enabling more equitable access to the resource for fishermen from different areas of the South Atlantic. Six of the other alternatives are expected to decrease economic profits for the affected small entities more than the action and thus were not selected. The other two alternatives are expected to reduce economic profits less than the action, but were not selected because they are not expected to achieve the Council's goal of enabling more equitable access to the resource for fishermen from different areas of the South Atlantic.

For red porgy, seven alternatives, including the *status quo,* were considered for the action to remove the sale and purchase prohibition, and the possession limit of three per person per day or three per person per trip during January 1 to April 30 each year, specify two commercial fishing seasons of January 1 through April 30 (Season 1) and May 1 through December 31 (Season 2) within the fishing year, allocate 30 percent of the commercial ACL to Season 1 and 70 percent to Season 2, and establish a commercial trip limit of 60 fish in Season 1. The *status quo* was not selected because it is not expected to achieve the Council's goal of enabling more equitable access to the resource for fishermen from different areas of the South Atlantic and is not expected to increase economic profits for the affected small entities.

Five alternatives, including the *status quo,* were considered for the action to remove the trip limit reduction in both seasons for vermilion snapper. None of these alternatives were selected because they are expected to result in lower economic profits for the affected small entities, while three of these alternatives are also expected to result in significantly higher regulatory costs to the Federal Government.

Four alternatives, including the *status quo,* were considered for the action to establish a commercial minimum size limit of 20 inches (50.8 cm) FL for almaco jack. The *status quo* was not selected because almaco jack less than 20 inches (50.8 cm) FL are not considered to be of a marketable size (*i.e.,* they are difficult if not impossible to sell at a price that would not lead to economic losses) and therefore would likely be discarded. Thus, the *status quo* alternative is not expected to achieve the Council's goals of improving the marketability of certain species and minimizing discards. The other three alternatives are expected to result in even higher discards, which is contrary to the Council's goal of minimizing discards, and are also expected to reduce economic profits for the affected small entities more than the action.

Three alternatives, including the *status quo,* were considered for the action to establish a commercial trip limit of 500 lb (227 kg) for the other jacks complex. The *status quo* alternative was not selected as it is not expected to achieve the Council's goal of enabling more equitable access to the resource for fishermen from different areas of the South Atlantic. The other two alternatives are expected to reduce economic profits more than the action and therefore were not selected.

One alternative, the *status quo,* was considered for the action to remove the 12-inch (30.5-cm) TL commercial minimum size limit for queen snapper, silk snapper, and blackfin snapper. The *status quo* alternative was not selected

because it is expected to result in higher discards, which is contrary to the Council's goal of minimizing discards, and is also expected to result in lower economic profits for the affected small entities.

One alternative, the *status quo,* was considered for the action to reduce the commercial minimum size limit for gray triggerfish in the EEZ off the east coast of Florida from 14 inches (35.6 cm) to 12 inches (30.5 cm) FL. The *status quo* alternative was not selected because it is expected to result in higher discards, which is contrary to the Council's goal of minimizing discards, and is also expected to result lower economic profits for the affected small entities.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a fishery bulletin that also serves as a small entity compliance guide was prepared. Copies of this final rule are available from the Southeast Regional Office, see **ADDRESSES**, and the guide will be sent to all Federal permit holders for the fishery. The guide and this final rule will be available upon request.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Grouper, Snapper, South Atlantic.

Dated: January 14, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator, National Marine Fisheries Service.

Editorial Note: This document was received for publication by the Office of the Federal Register on January 15, 2020.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

§ 622.184 [Amended]

■ 2. In § 622.184, remove paragraph (c).

■ 3. In § 622.185, revise paragraphs (a)(3) and (c)(2) and add paragraph (c)(6) to read as follows:

§ 622.185 Size limits.

* * * * *

(a) * * *

(3) *Cubera, gray, and yellowtail snappers*—12 inches (30.5 cm), TL.

* * * * *

(c) * * *

(2) *Gray triggerfish.* (i) For a fish taken by a person not subject to the bag limit specified in § 622.187(b)(8)–12 inches (30.5 cm), FL.

(ii) For a fish taken by a person that is subject to the bag limit specified in § 622.187(b)(8)—

(A) In the South Atlantic EEZ off Florida—14 inches (35.6 cm), FL.

(B) In the South Atlantic EEZ off North Carolina, South Carolina, and Georgia—12 inches (30.5 cm), FL.

* * * * *

(6) *Almaco jack.* For a fish taken by a person not subject to the bag limit specified in § 622.187(b)(8)—20 inches (50.8 cm), FL.

■ 4. In § 622.190 revise paragraphs (a)(1), (3), and (6) to read as follows:

§ 622.190 Quotas.

* * * * *

(a) * * *

(1) *Snowy grouper*—(i) For the period January 1 through June 30 each year—107,754 lb (48,876 kg).

(ii) For the period July 1 through December 31 each year—46,181 lb (20,947 kg).

(iii) Any unused portion of the quota specified in paragraph (a)(1)(i) of this section will be added to the quota specified in paragraph (a)(1)(ii) of this section. Any unused portion of the quota specified in paragraph (a)(1)(ii) of this section, including any addition of quota specified in paragraph (a)(1)(i) of this section that was unused, will become void and will not be added to any subsequent quota.

* * * * *

(3) *Greater amberjack*—(i) For the period March 1 through August 31 each year—461,633 lb (209,393 kg).

(ii) For the period September 1 through the end of February each year—307,755 lb (139,595 kg).

(iii) Any unused portion of the quota specified in paragraph (a)(3)(i) of this section will be added to the quota specified in paragraph (a)(3)(ii) of this section. Any unused portion of the quota specified in paragraph (a)(3)(ii) of this section, including any addition of quota specified in paragraph (a)(3)(i) of this section that was unused, will become void and will not be added to any subsequent quota.

* * * * *

(6) *Red porgy*—(i) For the period January 1 through April 30 each year—47,308 lb (21,458 kg), gutted weight; 49,200 lb (22,317 kg), round weight.

(ii) For the period May 1 through December 31 each year—110,384 lb (50,069 kg), gutted weight; 114,800 lb (52,072 kg), round weight.

(iii) Any unused portion of the quota specified in paragraph (a)(6)(i) of this section will be added to the quota specified in paragraph (a)(6)(ii) of this section. Any unused portion of the quota specified in paragraph (a)(6)(ii) of this section, including any addition of quota specified in paragraph (a)(6)(i) of this section that was unused, will become void and will not be added to any subsequent quota.

* * * * *

■ 5. In § 622.191, revise paragraphs (a)(4) through (6) and (a)(10) and add paragraph (a)(14) to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(4) *Red porgy.* The following commercial trip limits apply until the applicable commercial quota specified in § 622.190(a)(6) is reached. See § 622.190(c)(1) for the limitations regarding red porgy after the applicable commercial quota is reached.

(i) From January 1 through April 30—60 fish.

(ii) From May 1 through December 31—120 fish.

(5) *Greater amberjack.* The following commercial trip limits apply until the applicable commercial quota specified in § 622.190(a)(3) is reached. See § 622.190(c)(1) for the limitations regarding greater amberjack after the applicable commercial quota is reached.

(i) From March 1 through August 31—1,200 lb (544 kg).

(ii) From September 1 through the end of February—1,000 lb (454 kg).

(6) *Vermilion snapper.* Until the applicable commercial quota specified in § 622.190(a)(4) is reached—1,000 lb (454 kg), gutted weight. See § 622.190(c)(1) for the limitations regarding vermilion snapper after the applicable commercial quota is reached.

* * * * *

(10) *Blueline tilefish.* The following commercial trip limits apply until the commercial ACL specified in § 622.193(z)(1)(i) is reached. See § 622.193(z)(1)(i) for the limitations regarding blueline tilefish after the commercial ACL is reached.

(i) From January 1 through April 30—100 lb (45 kg), gutted weight; 106 lb (48 kg), round weight.

(ii) From May 1 through December 31—300 lb (136 kg), gutted weight; 318 lb (144 kg), round weight.

* * * * *

(14) *Other jacks complex (lesser amberjack, almaco jack, and banded rudderfish).* Until the commercial ACL specified in § 622.193(l)(1)(i) is reached—500 lb (227 kg), gutted weight; 520 lb (236 kg), round weight. See § 622.193(l)(1)(i) for the limitations regarding the other jacks complex after the commercial ACL is reached.

* * * * *

[FR Doc. 2020–00912 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200110–0007; RTID 0648–XX008]

Revisions to Framework Adjustment 58 to the Northeast Multispecies Fishery Management Plan and Sector Annual Catch Entitlements; Updated Annual Catch Limits for Sectors and the Common Pool for Fishing Year 2019; Correction

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

ACTION: Final rule; adjustment to specifications; correction.

SUMMARY: This final rule corrects minor errors published in our rule approving and implementing Framework Adjustment 58 to the Northeast Multispecies Fishery Management Plan and distributes sector allocation carried over from fishing year 2018 into fishing year 2019 as authorized by the sector regulations. This action is necessary to correct errors published in the final rule and to allocate carryover quota to sectors. The carryover adjustments are routine and formulaic, and industry expects them each year.

DATES: Effective January 24, 2020, through April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Claire Fitz-Gerald, Fishery Management Specialist, (978) 281–9255.

SUPPLEMENTARY INFORMATION: We recently published a final rule approving Framework Adjustment 58 to the Northeast Multispecies Fishery Management Plan (FMP), which set 2019–2020 annual catch limits (ACL) for four groundfish stocks, and 2019 ACLs for three shared U.S./Canada stocks. That action became effective on July 18, 2019 (84 FR 34799; July 19, 2019). This rule corrects minor errors published in the Framework Adjustment 58 final rule and distributes unused sector quota carried over from fishing year 2018.

Corrections to Framework Adjustment 58

Correction to Fishing Year 2020 Georges Bank Yellowtail Flounder Acceptable Biological Catch in Table 2

Table 2 published fishing year 2019 and 2020 overfishing limits and acceptable biological catch (ABC) for 20 groundfish stocks. The fishing year 2020 ABC published in the table for Georges Bank (GB) yellowtail flounder was incorrect. The ABC published in Framework Adjustment 58 was 168 mt, but the ABC approved by the Scientific and Statistical Committee was 162 mt. This error was the result of a typographical error in the Environmental Assessment that was repeated in the rulemaking. It did not affect the ACL or sub-ACL. The corrected information appears in the table below.

TABLE 1—CORRECTED FISHING YEARS 2019–2020 OVERFISHING LIMITS AND ACCEPTABLE BIOLOGICAL CATCHES FOR GB YELLOWTAIL FLOUNDER (mt, live weight), TABLE 2 IN FRAMEWORK ADJUSTMENT 58

Stock	2019		Percent change from 2018	2020	
	OFL	U.S. ABC		OFL	U.S. ABC
GB Yellowtail Flounder	UNK	106	−50	UNK	162

Correction to Fishing Year 2019 Gulf of Maine Cod Annual Catch Limits in Table 3

In fishing year 2017, Gulf of Maine (GOM) cod catch exceeded the total ACL and ABC due to excess catch by the recreational fishery, state waters sub-component, and the other sub-component. Accountability measures described in the regulations require sectors and the common pool to pay back their share of the overage for the unallocated fishery components (state waters and other sub-components) pound-for-pound. The application of this accountability measure resulted in reductions of 28.8 mt to the sector sub-ACL and 0.4 mt to the common pool sub-ACL for fishing year 2019.

Framework Adjustment 58 announced this reduction and published revised 2019 allocations that accounted for the overage. According to regulation, the overage should be applied to the sector and common pool sub-ACLs only; the total ACL and commercial groundfish sub-ACL should not be reduced. The GOM cod total ACL and commercial groundfish sub-ACL published in Framework Adjustment 58 were incorrectly reduced to reflect the overage. The table below displays the incorrect GOM cod ACL and commercial groundfish sub-ACL originally published in Table 3 in Framework Adjustment 58, as well as the corrected values. This correction is administrative only, does not change the amount of quota available to sectors or the common pool, and ensures the published catch limits are consistent with the Framework 58 Environmental Assessment.

TABLE 2—CORRECTED GOM COD CATCH LIMITS FOR 2019 FISHING YEAR (mt, live weight), TABLE 3 IN FRAMEWORK ADJUSTMENT 58

Stock	Total ACL	Groundfish sub-ACL	Final sector sub-ACL	Final common pool sub-ACL	Recreational sub-ACL	Midwater trawl fishery	Scallop fishery	Small-mesh fisheries	State waters sub-component	Other sub-component
	A to H	A + B + C	A	B	C	D	E	F	G	H
Framework 58 GOM Cod	637	581	350	11	220	.....	.....	.....	47	9

TABLE 2—CORRECTED GOM COD CATCH LIMITS FOR 2019 FISHING YEAR (mt, live weight), TABLE 3 IN FRAMEWORK ADJUSTMENT 58—Continued

Stock	Total ACL	Groundfish sub-ACL	Final sector sub-ACL	Final common pool sub-ACL	Recreational sub-ACL	Midwater trawl fishery	Scallop fishery	Small-mesh fisheries	State waters sub-component	Other sub-component
	A to H	A + B + C	A	B	C	D	E	F	G	H
Corrected GOM Cod	666	610	350	11	220	.....	.....	.....	47	9

Correction to Formatting in Table 8

The final rule for Framework Adjustment 58 included Table 8, which provided the incidental catch total allowable catches (TACs) for each special management program for fishing years 2019 and 2020. The published rule included a formatting error that made Table 8 difficult to interpret. This rule republishes Table 8 in the correct format.

TABLE 3—FISHING YEARS 2019–2020 INCIDENTAL TACS FOR EACH SPECIAL MANAGEMENT PROGRAM (mt, live weight), TABLE 8 IN FRAMEWORK ADJUSTMENT 58

Stock	Regular B DAS program		Closed area I hook gear haddock SAP		Eastern U.S./Canada haddock SAP	
	2019	2020	2019	2020	2019	2020
GB Cod	0.54	0.67	0.17	0.22	0.37	0.46
GOM Cod	0.11	0.11				
GB Yellowtail Flounder	0.02	0.04	.....	.....	0.02	0.04
CC/GOM Yellowtail Flounder	0.21	0.21				
American Plaice	1.57	1.46				
Witch Flounder	1.15	1.15				
SNE/MA Winter Flounder	0.74	0.74				

Correction to Terminal Year of Witch Flounder Rebuilding Plan

Framework Adjustment 58 included new or revised rebuilding plans for several stocks, including witch flounder. The New England Fishery Management Council approved, and Framework Adjustment 58 implemented, a 23-year rebuilding plan for witch flounder. The final rule stated that the plan's official start date would be January 1, 2020, with a target to rebuild by calendar year (CY) 2043. A stock on a 23-year rebuilding plan that begins in CY 2020 would be expected to rebuild by the end of CY 2042, not CY 2043. This rule corrects the terminal year for the witch flounder rebuilding plan to CY 2042.

Sector Carryover Allocations From Fishing Year 2018

Sector regulations at 50 CFR 648.87(c) authorize us to adjust annual catch entitlement (ACE) carryover to ensure that the total unused ACE combined with the overall sub-ACL does not exceed the ABC for the fishing year in which the carryover may be harvested. We have completed 2018 fishing year data reconciliation with sectors and determined final 2018 fishing year sector catch and the amount of allocation that sectors may carry over from the 2018 to the 2019 fishing year. A sector may carry over up to 10 percent of unused ACE for each stock, except in instances where the amount of unused ACE was reduced so as not to exceed the ABC. Accordingly, unused ACE from fishing year 2018 available to carry over to 2019 was reduced for the following stocks: GB cod, GB haddock; GOM haddock; Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder; Cape Cod/GOM yellowtail flounder; American plaice; GB winter flounder; GOM winter flounder; SNE/MA winter flounder; redfish; white hake; and pollock. Complete details on carryover reduction percentages can be found at: *https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/h/groundfish_catch_accounting*. Table 4 includes the maximum amount of allocation that sectors may carry over from the 2018 to the 2019 fishing year.

Table 5 includes the *de minimis* amount of carryover for each sector for the 2019 fishing year. If the overall ACL for any allocated stock is exceeded for the 2019 fishing year, the allowed carryover harvested by a sector, minus the pounds in the sector's *de minimis* amount, will be counted against its allocation to determine whether an overage subject to an accountability measure occurred. Tables 6 and 7 list the final ACE available to sectors for the 2019 fishing year, including finalized carryover amounts for each sector, as adjusted down when necessary to equal each stock's ABC.

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Table 4 -- Maximum Carryover ACE from Fishing Year 2018 to Fishing Year 2019 (lb)

	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	0	55,938	3,347	0	417,596	53,697	0	49	2,360	2,448	2,252	45	7,243	1,946	47,091	26,511	426,803
MCCS	0	2,257	7,757	0	77,545	106,034	0	72	1,536	19,109	8,072	401	1,301	1,038	87,198	40,530	498,692
MOON	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NEFS 2	0	11,280	17,352	0	681,630	316,323	0	103	11,553	19,583	7,967	1,774	10,456	2,760	204,758	29,019	581,887
NEFS 4	0	3,133	1	0	340,893	126,836	0	124	2,134	14,831	0	381	2,345	581	5	0	282,213
NEFS 5	0	936	1	0	52,005	59	0	1,155	106	795	597	240	8	8,287	204	359	1,959
NEFS 6	0	5,628	2,403	0	186,968	63,639	0	294	1,935	7,167	3,855	833	2,187	1,346	74,754	14,913	152,469
NEFS 7	0	25,758	2,449	0	718,572	122,467	0	467	5,473	17,674	197	18,363	1,411	12,021	127,252	24,284	292,485
NEFS 8	0	14,675	668	0	462,233	9,406	0	431	2,499	5,296	2,363	11,925	1,402	6,939	12,102	3,902	49,579
NEFS 10	0	1,025	2,001	0	11,269	21,207	0	29	2,215	1,987	2,390	5	4,359	411	4,708	2,492	35,173
NEFS 11	0	581	10,100	0	2,373	51,083	0	1	1,306	3,826	2,175	1	1,021	14	27,622	18,006	415,951
NEFS 12	0	1,225	2,325	0	5,978	16,765	0	0	4,056	773	1,038	0	3,609	148	3,187	1,070	35,726
NEFS 13	0	23,761	477	0	1,282,608	17,405	0	1,152	4,579	15,601	17,004	9,830	1,461	11,365	60,217	8,185	120,787
SHS1	0	4,100	2,554	0	152,531	63,861	0	5	1,624	8,866	3,934	1,589	2,160	375	59,652	16,549	128,540
SHS2	0	1,622	3,729	0	51,527	53,731	0	120	551	4,585	1,501	89	694	461	52,484	15,124	303,145
SHS3	0	31,057	6,170	0	1,872,509	492,054	0	402	4,360	47,207	23,212	7,427	2,221	11,822	510,825	116,514	1,013,282
Total	0	182,976	61,334	0	6,316,237	1,514,567	0	4,404	46,287	169,748	76,557	52,903	41,878	59,514	1,272,059	317,458	4,338,691

Georges Bank Cod Fixed Gear Sector (FGS), Maine Coast Community Sector (MCCS), Mooncusser Sector (MOON), Maine Permit Bank (MPB), New Hampshire Permit Bank (NHPB), Northeast Coastal Communities Sector (NCCS), Northeast Fishery Sectors (NEFS), and Sustainable Harvest Sector (SHS)

Table 5 -- *De Minimis* Carryover ACE from Fishing Year 2018 to Fishing Year 2019 (lb)

	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	0	5,686	60	0	28,937	389	0	5	190	217	236	12	992	154	1,580	688	31,599
MCCS	0	805	913	0	36,863	16,282	0	11	299	3,977	1,808	173	272	210	20,911	7,978	104,074
MOON	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NEFS 2	0	2,268	2,172	0	125,856	42,778	0	13	2,235	3,671	2,799	549	1,976	488	37,701	5,721	123,357
NEFS 4	0	1,434	1	0	62,745	16,145	0	16	537	3,043	0	118	548	99	5	0	54,135
NEFS 5	0	166	0	0	9,579	7	0	142	18	140	106	74	1	1,375	35	57	351
NEFS 6	0	1,053	245	0	39,366	7,734	0	33	318	1,422	1,072	260	355	199	16,460	2,721	30,129
NEFS 7	0	4,111	239	0	123,893	13,564	0	56	860	3,030	197	5,114	224	1,675	21,896	3,833	51,896
NEFS 8	0	2,686	88	0	86,610	1,239	0	62	502	958	670	3,700	362	1,181	2,091	629	9,649
NEFS 10	0	182	196	0	2,076	2,349	0	4	375	350	385	2	712	69	810	395	6,294
NEFS 11	0	138	980	0	409	5,258	0	0	221	550	311	1	167	2	4,701	2,714	73,429
NEFS 12	0	217	228	0	1,101	1,857	0	0	687	163	107	0	589	25	548	170	6,393
NEFS 13	0	4,031	60	0	239,355	1,728	0	163	535	2,738	1,634	2,953	150	1,739	10,427	1,290	21,659
SHS1	0	782	248	0	23,129	6,646	0	1	294	1,416	626	966	347	92	6,981	2,552	26,380
SHS2	0	341	383	0	11,418	5,763	0	22	236	1,383	645	89	238	226	8,248	3,813	48,424
SHS3	0	5,210	577	0	316,084	51,708	0	37	757	8,001	4,101	2,326	259	2,083	83,630	17,747	171,622
Total	0	29,110	6,390	0	1,107,421	173,447	0	565	8,064	31,059	14,697	16,337	7,192	9,617	216,024	50,308	759,391

Table 6 -- Total ACE Available to Sectors in Fishing Year 2019 including Final Carryover (mt)

	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	31	252	4	370	1,132	42	1	0	10	11	12	1	48	8	93	43	1,627
MCCS	4	33	45	471	1,236	787	2	1	14	189	86	8	13	10	988	380	4,947
MOON	23	169	12	613	1,564	252	0	0	10	10	14	0	9	8	296	159	2,031
MPB	0	2	4	7	17	93	0	0	1	17	6	0	2	0	90	45	634
NEFS 2	12	96	106	1,607	4,411	2,084	2	1	107	175	131	26	94	23	1,803	273	5,859
NEFS 4	8	59	39	801	2,199	790	2	1	25	145	74	6	26	5	728	225	2,584
NEFS 5	1	7	0	122	336	0	1	7	1	7	5	3	0	66	2	3	17
NEFS 6	6	45	12	503	1,368	380	2	2	15	68	50	12	17	10	781	130	1,436
NEFS 7	22	176	12	1,582	4,363	671	20	3	41	145	78	240	11	81	1,051	185	2,487
NEFS 8	15	114	4	1,106	3,032	60	12	3	24	46	31	173	17	57	100	30	460
NEFS 10	1	8	10	27	73	116	0	0	18	17	19	0	34	3	39	19	301
NEFS 11	1	6	49	5	14	262	0	0	11	27	15	0	8	0	226	131	3,519
NEFS 12	1	9	11	14	39	92	0	0	33	8	5	0	28	1	26	8	306
NEFS 13	22	172	3	3,057	8,382	86	29	8	26	131	82	138	7	84	500	62	1,037
NHPB	0	0	4	0	0	3	0	0	0	0	0	0	0	0	2	2	42
SHS1	4	33	12	295	823	330	1	0	14	68	30	45	17	4	344	123	1,255
SHS2	2	14	19	146	395	286	2	1	11	65	30	5	11	10	398	180	2,334
SHS3	28	222	29	4,037	11,150	2,569	8	2	36	384	197	109	13	100	4,025	858	8,244
Total	183	1,415	377	14,762	40,534	8,903	82	28	398	1,513	865	766	356	471	11,492	2,858	39,120

Table 7 -- Total ACE Available to Sectors in Fishing Year 2019 with including Final Carryover (1,000 lb)

	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	69	556	9	815	2,497	93	2	1	21	24	26	1	106	17	205	95	3,587
MCCS	10	73	99	1,038	2,726	1,734	3	1	31	417	189	18	29	22	2,178	838	10,906
MOON	51	372	27	1,351	3,447	556	0	0	21	21	31	0	19	17	652	351	4,478
MPB	1	4	9	15	37	206	0	0	3	38	14	0	3	0	199	100	1,398
NEFS 2	27	211	235	3,544	9,724	4,594	4	1	235	387	288	57	208	52	3,975	601	12,918
NEFS 4	17	129	87	1,767	4,849	1,741	4	2	56	319	164	12	57	10	1,605	497	5,696
NEFS 5	2	16	0	270	740	1	2	15	2	15	11	8	0	146	4	6	37
NEFS 6	13	98	27	1,108	3,015	837	5	4	34	149	111	27	38	21	1,721	287	3,165
NEFS 7	50	387	26	3,488	9,620	1,479	45	6	91	321	173	530	24	180	2,317	408	5,482
NEFS 8	32	251	9	2,439	6,685	133	27	7	53	101	69	382	38	125	221	67	1,015
NEFS 10	2	17	22	58	160	256	0	0	40	37	41	0	76	7	86	42	665
NEFS 11	2	13	108	12	32	577	0	0	23	59	33	0	18	0	498	289	7,759
NEFS 12	3	20	25	31	85	202	0	0	73	17	12	0	63	3	58	18	675
NEFS 13	49	378	7	6,739	18,479	190	65	17	58	289	180	305	16	185	1,103	137	2,287
NHPB	0	0	9	0	0	6	0	0	0	1	0	0	0	0	5	5	92
SHS1	9	73	27	651	1,814	728	2	0	31	150	67	98	37	10	758	272	2,766
SHS2	4	32	42	321	872	630	5	2	24	143	66	11	24	23	877	396	5,146
SHS3	63	489	64	8,899	24,581	5,663	18	4	80	847	433	240	28	220	8,874	1,891	18,175
Total	402	3,119	832	32,545	89,363	19,627	181	61	877	3,336	1,908	1,689	784	1,039	25,335	6,301	86,245

BILLING CODE 3510–22–C

Classification

The NMFS Assistant Administrator has determined that this rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

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

Pursuant to 5 U.S.C. 553(b)(3)(B), we find good cause to waive prior public notice and opportunity for public comment on the minor corrections and allocation adjustments because allowing time for notice and comment is impracticable, unnecessary, and contrary to the public interest. We also find good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1) and (3), so that this final rule may become effective in a timely manner and maximize the economic benefits of the adjusted allocations to the fishery.

Notice and comment and a 30-day delay in effectiveness would be impracticable, unnecessary, and contrary to the public interest. The adjustments in this rule are necessary to correct minor errors made in the Framework Adjustment 58 final rule. Correcting these errors is not subject to our discretion, so there would be no benefit to allowing time for notice and comment. Immediate implementation corrects information published in Framework Adjustment 58 and provides industry with the most accurate information. Delaying these adjustments could cause confusion to industry. The distribution of unused quota carried over from the previous fishing year is an annual adjustment action that is expected by industry and causes no economic harm. Some of these adjustments increase available catch. They are routine, formulaic, and authorized by regulation. Delaying these adjustments would result in a delay in the distribution of unused carryover to sectors, and could negate or reduce the intended economic benefits of the rule.

Also, because advanced notice and the opportunity for public comment are not required for this action under the Administrative Procedure Act, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* do not apply to this rule. Therefore, no final regulatory flexibility analysis is required and none has been prepared.

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

Dated: January 13, 2020.

Samuel D. Rauch III,

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

[FR Doc. 2020–00652 Filed 1–24–20; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02; RTID 0648–XY066]

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

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters) length overall using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the A season apportionment of the 2020 total allowable catch of Pacific cod to be harvested.

DATES: Effective January 24, 2020, through 2400 hours, Alaska local time (A.l.t.), December 31, 2020.

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

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

The A season apportionment of the 2020 Pacific cod total allowable catch (TAC) specified for vessels using jig gear in the BSAI is 1,167 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).

The 2020 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 meters(m)) length overall (LOA) using hook-and-line or pot gear in the BSAI is 2,766 mt as established by 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).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that jig vessels will not be able to harvest 667 mt of the A season apportionment of the 2020 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*1*). Therefore, in accordance with § 679.20(a)(7)(iv)(C), NMFS apportions 667 mt of Pacific cod from the A season jig gear apportionment to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

The harvest specifications for 2020 Pacific cod included in 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) are revised as follows: 500 mt to the A season apportionment and 1,278 mt to the annual amount for vessels using jig gear, and 3,433 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Classification

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

recent, relevant data only became available as of January 13, 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 14, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–00741 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180831813–9170–02; RTID 0648–XY068]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2020 total allowable catch of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 22, 2020, through 1200 hrs, A.l.t., March 10, 2020.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 allowance of the 2020 total allowable catch (TAC) of pollock in Statistical Area 610 of the GOA is 517 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish in the GOA (84 FR 9416, March 14, 2019) and inseason adjustment (84 FR 70436, December 23, 2019).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2020 TAC of pollock in Statistical Area 610 of the GOA is necessary to account for the incidental catch in other anticipated fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt and is setting aside the remaining 517 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

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 pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 13, 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 14, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–00725 Filed 1–22–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 17
Monday, January 27, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 201 and 202

[Doc. No. AMS–ST–19–0039]

Revisions to the Federal Seed Act Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) invites comments on proposed revisions to regulations that implement the Federal Seed Act (FSA). The proposals include revisions to seed labeling, testing, and certification requirements. The proposed revisions would add certain seed species to the lists of covered kinds of seed and update the lists to reflect current scientific nomenclature; update regulations related to seed quality, germination and purity standards, and acceptable seed testing methods; and update seed certification and recertification requirements, including new eligibility standards and the recognition of current breeding techniques. AMS intends to align FSA regulations with current industry practices, harmonize FSA testing methods with industry standards, and clarify confusing or contradictory language in the existing regulations. AMS expects the proposed revisions to reduce trade burden associated with interstate seed commerce and encourage compliance with State and Federal laws.

DATES: Comments must be received by March 27, 2020.

ADDRESSES: Interested persons are invited to submit comments on this proposed rulemaking. All comments must be submitted electronically through the e-rulemaking portal at *http://www.regulations.gov,* and should reference the document number, date, and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the rulemaking record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Ernest Allen, Director, Seed Regulatory and Testing Division, Science and Technology Program, AMS, USDA; 801 Summit Crossing Place, Suite C, Gastonia, NC 28054, USA; telephone: 704–810–8884; email *Ernest.Allen@usda.gov.*

SUPPLEMENTARY INFORMATION: The FSA (7 U.S.C. 1551–1611) regulates interstate and foreign commerce of planting seeds for agricultural and gardening purposes. The FSA requires seeds to meet certain germination rate, purity, and certification standards. Under the FSA, seeds must be truthfully labeled with specific quality information. As well, the FSA requires all persons shipping agricultural seed in interstate commerce to maintain records of seed variety, origin, treatment, germination, and purity. Regulations established under the FSA (7 CFR part 201) (regulations) implement the requirements of the FSA and are administered by AMS.

From time to time, AMS finds it necessary to update the regulations to reflect current industry standards and practices and to remove obsolete references. AMS last updated the regulations in 2011 (76 FR 31790). AMS met with representatives of major seed industry stakeholder organizations in February 2019 to discuss possible revisions to make the regulations more reflective of current industry practices and updated testing methods. Based on stakeholder input, the Seed Regulatory and Testing Division of AMS's Science and Technology Program initiated this proposed action to update the regulations.

AMS proposes to update the lists of which seed kinds are covered by the regulations and revise the names of several agricultural and vegetable seeds to provide updated scientific nomenclature. AMS proposes further to revise the definitions of other terms used in the regulations to provide greater clarity for regulated entities. Other revisions in this proposed rule would update the seed labeling, testing, and certification requirements to reflect revised terminology, as well as the evolution of industry practices. Finally, AMS is proposing several revisions of an administrative nature to correct misspellings and other errors in the regulations. Specific proposals are addressed below.

Proposals

Nomenclature

The regulations specify the kinds of agricultural and vegetable seed that are subject to regulation. AMS proposes to revise the list of agricultural seed covered by the regulation in § 201.2(h) by adding *camelina, radish,* and *teff* to the list. The proposed revisions would add *radish* to the list of seed kinds for which the variety is required on the label in § 201.10(a); add *camelina, radish,* and *teff* to the list of seed kinds for which sample weights are specified in Table 1 to § 201.46(d)(2)(iii); add *camelina, radish,* and *teff* to the list of seed kinds for which germination requirements are specified in Table 2 to § 201.58(c)(3); add *teff* to the list of seed kinds for which purity percentage tolerances are increased in § 201.60(a)(1); and add *camelina, chickpea, hemp, radish,* and *sunn hemp* to the list of seed kinds for which standards related to certification are specified in Table 5 to § 201.76.

To assure clear market communication about seeds, the regulations use the Latin scientific names assigned to plants in the *International Code of Nomenclature for Cultivated Plants* [1] and recognized throughout the world. Occasionally, the International Union of Biological Science's International Commission for the Nomenclature of Cultivated Plants revises those scientific names. This proposed rule would further revise § 201.2(h) by updating the scientific names for 15 agricultural seed kinds already on the list (*big bluestem, mountain brome, buffalograss, crambe, galletagrass, guineagrass, forage kochia, browntop millet, pearl millet, napiergrass, green needlegrass, green panicgrass, bird rape, turnip rape,* and *smilo*), and by adding another common name for *sunn crotalaria,* one of the kinds already on the list. The proposed rule would also update the scientific

[1] The International Code of Nomenclature for Cultivated Plants (ICNCP or Cultivated Plant Code), published by the International Society for Horticultural Science. The ICNCP was most recently updated in 2016.

name for *tomato,* which is on the list of vegetable seed kinds in § 201.2(i). Such changes would align regulatory language with current terminology and nomenclature recognized in the industry.

Other sections of the regulations reference scientific names, as well. AMS proposes to update those references by revising the scientific names for *quackgrass* in § 201.17(a); *buffalograss, sunflower, small-seeded legumes, carrot,* and *mint* in § 201.47a; *legumes* and *crucifers* in 201.48(a); *sunflower, carrot,* and *mint* in 201.48(f); *buffalograss* in 201.48(g)(1); *legumes* in 201.51(a)(1); *quackgrass* in 201.51(b)(2)(iv) and (v); *sunflower* in 201.51(b)(4), and *carrot* in 201.56(d).

Other Terminology

Section 201.2 defines other terms used in the regulations. The proposed rule would update some terms to reflect changes in industry and AMS needs and processes. AMS proposes to revise the term for ''person'' in § 201.2(b) to include *individuals* and *agents* to clarify that such entities are also subject to the regulations. A revision to § 201.2(l)(1) would clarify that each person must keep required records regarding seed treatment, including, but not limited to, records about seed coating, film coating, encrusting, or pelleting. The proposal would make corresponding revisions to references to ''treatment'' in § 201.4(b). Proposed revisions to § 201.2(p) would clarify that seed mixtures consist of more than one kind or variety of seed, each present in excess of 5 percent by weight of the whole, and that combinations of more than one variety of a single kind of seed may be referred to as ''blends.'' A proposed revision to the definition of ''coated seed'' in § 201.2(q) would exclude seeds coated with polymers or biologicals. Proposed revisions to the term ''purity'' in § 201.2(w) would remove the reference to ''crop seed,'' and would clarify that percentages of inert matter would include coating material, if any is present. A proposed revision to § 201.2(x) would revise the definition of ''inoculant'' to mean a product consisting of microorganisms applied to the seed for the purpose of enhancing the availability or uptake of plant nutrients through the root system. Such a change would align FSA regulations with current Environmental Protection Agency definition of a plant inoculant,[2] which is recognized and used by the industry. A proposed revision would add a new term ''acceptable test'' as § 201.2(nn) and would define the term to mean any testing method described in §§ 201.45 through 201.66 of the regulations or any testing method approved by the Association of Official Seed Analysts rules for testing seed.[3] This would clarify for regulated entities what records they are required to maintain. Finally, the proposal would add a new paragraph (oo) to § 201.2 to define the term ''brand,'' which would mean the words, name, symbol, number, mark, design, unique design, or any combination of those that would distinguish the seed of one entity from the seed of another. The term's definition would clarify its use in § 201.36b(e).

Records

The FSA regulations require seed shippers to maintain records and samples for each lot of agricultural and vegetable seed shipped in interstate commerce. Sections 201.4 through 201.7a specify the recordkeeping requirements related to seed origin, germination testing, purity testing, and treatment. AMS proposes to revise §§ 201.6 and 201.7 to clarify that complete records about germination and purity, respectively, would include all the records of laboratory tests considered acceptable under proposed new § 201.2 (nn) described above.

Labeling

The FSA requires each container of agricultural and vegetable seed shipped in interstate commerce to be labeled with specific information. For agricultural seed, the label must include, among other things, the name of each kind of seed comprising more than 5 percent of the contents, and for certain kinds of seed, the labels must show the variety(ies). Currently, § 201.12a of the regulations requires mixtures of lawn and turf seed to be labeled as mixtures and requires the name and percentage of each seed component to be listed on the label in the order of predominance. AMS proposes to revise § 201.12a by removing the reference to turf and lawn seed mixtures, requiring all mixtures of agricultural seed for seeding or planting purposes to be designated mixtures on the label, and requiring the label to list each seed component on the label in order of predominance. AMS proposes to add a similar requirement for labeling vegetable seed mixtures by adding a new § 201.26a—Vegetable Seed Mixtures, which would require labels for mixtures of vegetable seeds to list each seed component in order of predominance. This change would reflect the current market practice of packaging vegetable seed mixtures, which has not previously been addressed in the regulations.

The regulations prohibit the interstate shipment of agricultural or vegetable seeds containing seeds or bulblets of certain noxious weeds identified in § 201.16(b). AMS proposes to revise the list of prohibited noxious weed seed in § 201.16(b) by updating the scientific names of several species to reflect the current names recognized in the market. Where the shipment of noxious-weed seed is not prohibited under § 201.16(b), the rate of occurrence in agricultural seed cannot exceed the rate permitted by each State into which the seed is shipped or reshipped, and the label must include the rate of occurrence according to each State's requirements. (*See* 7 CFR 201.16(a)) AMS proposes to add a new § 201.30c that would provide similar restrictions for shipments of noxious-weed seed in vegetable seed in containers weighing more than one pound. This addition would support State laws regarding noxious-weed seed in vegetable seed.

Currently, § 201.18 specifies that when agricultural seeds other than the predominant kind, variety, or type named on the label are included, they may be collectively identified as ''crop seeds'' or ''other crop seeds'' by percentage. A proposed change to § 201.18 would remove the reference to ''crop seeds'' to reduce confusion about what is in the seed. Another proposed labeling change would clarify in § 201.19 that the percentage by weight of inert matter in the seed includes coating material, if any is present. This would allow seed shippers to identify coating material separately from other inert material, if desired.

Under §§ 201.21 and 201.30, seed labels are required to show the percentage of hard seed—seed with an impermeable seed coat that doesn't absorb water and germinate—apart from the agricultural or vegetable seed germination percentage. A proposed change to §§ 201.21 and 201.30 would require labels to also show the percentage of dormant seed—seed other than hard seed that fails to germinate under specified conditions—apart from the germination percentage. The proposed rule would make similar changes to the labeling requirements for percentages of hard seed and dormant

[2] See 40 CFR 152.6(g)(2)—EPA's definition of plant inoculant.

[3] The Association of Official Seed Analysts (AOSA) is an organization of state, federal, and university laboratories in the United States and Canada. AOSA publishes a series of handbooks related to seed testing. AOSA testing methods are comparable to AMS seed testing methods and are considered equally acceptable for meeting testing requirements under the regulations in 7 CFR part 201.

seed in §§ 201.29, 201.29a, and 201.31, which specify the labeling of vegetable seed. These changes are necessary to reflect the emerging industry practice of labeling dormant seed as such and providing the percentage of dormant seed on the label. Further changes to the heading and introductory paragraph of § 201.31 would clarify that the germination standards for vegetable seeds in interstate commerce are minimum standards.

Currently, the regulations require seed labels to include the full name and address of the shipper or consignee, or to show a code that identifies the shipper. Proposed revisions to §§ 201.23, 201.24, 201.27, and 201.28 would require the labels of both agricultural and vegetable seed to show the full name and address of the interstate shipper or show both a code identifying the interstate shipper and the full name and address of the consignee. AMS intends these proposed changes to reduce industry confusion about the labeling requirements.

Currently, § 201.31a requires seed labels to include the name or description of any treatment applied to the seed. Paragraph (b) of that section specifies the names that can be used to identify substances used in seed treatments. AMS proposes to revise § 201.31a(b) to clarify that active ingredient substances used in seed treatments must be included in the label, and that biological active ingredients should be identified by their brand names or genus and species names.

Seed Testing

The regulations specify testing requirements for seed shipped in interstate commerce. Seed testing methodology continues to evolve as new equipment and processes are developed. In addition to the revisions described earlier in this document, AMS proposes the following revisions to the testing regulations in 7 CFR part 201 to ensure the requirements reflect methods and procedures that have been adopted in the industry and by AMS.

The proposal would revise the introductory text of § 201.48 to clarify that pure seed includes all seeds of each kind that are present in excess of 5 percent by weight of the whole. Revisions to § 201.48(g)(3) would remove references to *chewings fescue, red fescue,* and *orchardgrass* from the list of species for which special purity testing procedures are provided in § 201.51a(b). Corresponding revisions to the Table of Factors to Apply to Multiple Units in § 201.51a(b)(2)(ii) would reflect the revisions to § 201.48(g)(3). A proposed revision to § 201.51a(a) would add more precise instructions relating to the Uniform Blowing Procedure used to separate pure seed and inert matter for seed testing, and the revision would better align the regulation with AOSA standards. A proposed revision to § 201.58(a) would clarify that if the date for a final count for germination testing falls on a weekend or public holiday, the count could be taken on the following work day. A proposed revision to § 201.60(b)(2) would correct a reference to tolerance determinations for ''crop seeds'' to refer to tolerance determinations for ''other crop seeds.'' A proposed revision to § 201.61 would revise the title of the table in that section to be ''Fluorescence Tolerance, Based on Test Fluorescence (TFL)'' to clarify that the ryegrass fluorescence tolerances shown for 400-seed fluorescence tests are based on the test fluorescence level (TFL) calculated under § 201.58a.

Currently, for seed label claims related to germination rates to be truthful, they must incorporate the percentage of hard seed present. AMS proposes to revise the introductory text of § 201.63 to clarify that when 400 or more seeds are tested, the amount of dormant seed in the mix must also be considered when calculating total germination. AMS proposes a similar revision for the introductory text and formula in § 201.64, which provide the tolerance calculation for pure live seed.

Certification

The regulations require seed certifying agencies to meet specified qualification standards and comply with procedures outlined in the regulations. One such procedure provided in § 201.68 requires certifying agencies to obtain specific information from certification applicants. AMS proposes to revise the introductory text of § 201.68 to clarify that point, as the regulations as currently written have been confusing, making it unclear that certifying agencies must request the specified information. A further revision to § 201.68(b) would require entities applying for certification to supply information about the breeding technique(s) or reproductive stabilization procedures used to develop the variety. This change is necessary to recognize that different techniques are used to develop new plant varieties.

A proposed revision to § 201.70(a) would permit recertification of seed beyond the standard two generations past the Foundation seed generation only when neither Foundation nor Registered class seed is being maintained. Currently, the regulations allow recertification of Certified class seed when no Foundation seed is being maintained, even if Registered seed is being maintained. This revision would prohibit recertification of Certified class seeds when Registered class seed is being maintained. Adding this restriction would preclude recertification of Certified class seed when seed of a higher certification class is available. AMS intends such a restriction to prevent recertification of the class of seed most likely to have changed over time when more stable alternatives are available. Proposed revisions to §§ 201.74 and 201.75 would remove the caveat that certified seed labeling would require the variety name only if the seed has been certified as to variety. This change would remove contradictory or confusing language from the regulations, since all certification is varietal.

Section 201.76 of the regulations establishes production standards for Foundation, Registered, and Certified classes of various crop seeds. As well as adding the five new crop kinds mentioned earlier in the *Terminology* section, AMS proposes to add four explanatory footnotes to the chart of production standards in § 201.76. Proposed footnote 60 would explain that land on which certain seed is grown for certification must not have been planted in cruciferous crops during the previous five years, or for the previous three years if the previous crop was of the same variety and of the same or higher certification class. Proposed footnote 61 would explain that fields producing any class of certified seed must be at least 50 feet from any other variety or from fields of the same variety that do not meet the varietal purity requirements for certification. Proposed footnote 62 would pertain to the production of sunn hemp and would explain that no other varieties of *Crotolaria* species would be allowed in Foundation, Registered, and/or Certified seed production fields. Proposed footnote 63 would explain that producers of certified seed of any class for that crop should refer to the requirements established by certifying agencies in the production States for applicable production standards. AMS proposes adding these footnotes to explain specific standards for the new crops proposed to be added to the Table in § 201.76 (*camelina, chickpea, hemp, radish,* and *sunn hemp*), but most would be generic in nature and could apply to other crops in the future, as well.

Section 201.78 provides additional certification requirements related to

pollen control for hybrids of certain crops. Paragraph (e) in section 201.78 specifies the determination of the pollen production index (PPI) for hybrid alfalfa. Currently, paragraph (e) in section 201.78 provides maximum PPI for various hybrids of Foundation and Certified class seed. AMS proposes to revise § 201.78(e) to provide greater specificity about maximum PPI allowances for hybrid alfalfa that would depend on the production method, parentage, and generation of hybrid seed being analyzed. The industry requested this revision in response to a change in production practices for hybrid alfalfa seed. AMS expects the proposed revision to recognize the breadth of hybridization methods currently used by different plant breeders.

Administrative Changes

AMS is proposing to make several revisions of an administrative nature to the regulations to correct typographical errors and update addresses and other references to reflect current business practices or provide clarity. A proposed revision to § 201.2(a) would replace the reference to ''the FSA'' with the words ''the Federal Seed Act'' to clarify the meaning of the term ''Act'' used throughout the regulations. References to the ''Act'' would replace references to the ''act'' throughout the regulations and minor misspellings would be corrected in several sections. A proposed revision to § 201.51a(a)(3) would update the address for obtaining calibration samples and instructions from the Seed Regulatory and Testing Division to its current address in Gastonia, North Carolina. A proposed revision to the entries for ''*Oat*'' and ''*Brussels Sprouts*'' in Table 2 to paragraph (c)(3) in § 201.58 would move the additional germination directions for fresh and dormant seed into the correct table column. Finally, AMS proposes to revise the headings for Parts 201 and 202 and to remove an undesignated center heading in Part 201 that is no longer needed. These changes replace references to the terms ''Rules'' or ''Regulations'' with terms that comply with Code of Federal Regulations nomenclature conventions.

Rulemaking Analyses

Executive Orders 12866, 13563, and 13771

AMS is issuing this proposed rule in conformance with Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are 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.

In the development of this proposed rule, AMS considered alternatives, including updating only the list of regulated seed varieties or making no changes at all. Ultimately, AMS rejected those alternatives because many references and processes in the current regulations are obsolete and do not reflect modern business and industry practices. AMS believes making the proposed revisions would best serve the industry by aligning seed species references with internationally recognized scientific names, clarifying processes to simplify regulatory compliance, and improving AMS's customer service. AMS does not expect the proposed rule to provide any environmental, public health, or safety benefits.

This rule does not meet the criteria of a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those Orders. Because this rule does not meet the criteria of a significant regulatory action, it does not trigger the requirements in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs''' (February 2, 2017).

AMS does not expect the proposed revisions to impact compliance costs for the private sector because the industry has already adopted the practices reflected by the proposed regulatory changes in order to comply with State laws. AMS expects seed industry stakeholders to benefit from the references to updated scientific nomenclature, which provides a common language for marketing seed. Likewise, AMS expects updating the labeling, testing, and certification requirements to simplify compliance and facilitate the interstate marketing of seed. AMS also expects stakeholders to benefit from streamlined AMS business practices.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this action on small business entities. The affected industry falls under the North American Industry Classification System (NAICS) as code 54171—Research and development in the physical, engineering, and life sciences. This classification includes firms that are not plant breeders/plant research, however no detailed industry data was available for the analysis.

Table 1 shows the most recent descriptive data for the industry, obtained from the County Business Pattern 2016 survey. This data set provides information on the number of establishments, number of employees and total annual payroll.

TABLE 1—NUMBER OF ESTABLISHMENTS, REVENUE AND PAYROLL BY EMPLOYEE COUNT, NAICS CODE 54171, 2016 COUNTY BUSINESS PATTERNS [4]

	Number of establishments	Number of paid employees	Annual payroll ($1,000)
All establishments	17,292	695,810	$82,865,611

The Small Business Administration (SBA) determines firm size for this industry by number of employees, but on a per firm basis, with small firms defined as having fewer than 1,000 employees and 1,000 or more employees per firm classified as large. Because firms may own more than one establishment, and the County Business Patterns data are compiled on an establishment rather than a firm basis, we must use the Economic Census data to determine the number of small and large firms for the industry.

Table 2 shows the most recent data available on the breakdown between

[4] Geography Area Series: County Business Patterns by Employment Size Class, 2016 Business Patterns, *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=BP_2016_00A3&prodType=table.*

small (<1,000 employees) and large (1,000 or more employees) firms in this industry, according to SBA's guidance.[5] The data are from the 2002 Economic Census, with monetary values converted to 2016 dollars. More recent Economic Census data is not available at this level of detail for this industry.

TABLE 2—NUMBER OF FIRMS AND ESTABLISHMENTS, REVENUE AND PAYROLL BY EMPLOYEE COUNT, NAICS CODE 54171, 2002 ECONOMIC CENSUS[6]

Size of firm by number of employees	Number of firms	Number of establishments	Number of paid employees	Revenue * ($1,000)	Annual payroll * ($1,000)
Small—					
Firms with fewer than 1,000 employees	10,200	11,753	273,601	$49,702,793	$24,780,487
Large—					
Firms with 1,000 employees or more	79	1,380	283,816	30,095,258	27,776,903
All firms	10,279	13,133	557,417	79,798,051	52,557,389

* Adjusted to 2016 values.

The 2002 Economic Census reported that fewer than one percent of firms were considered large (79 of 10,279 firms, or 0.54 percent). The 10,279 firms at that time owned a total of 13,133 establishments, with 1,380 (nearly 11 percent) of these facilities owned by the 79 large firms.

The tables show the extent of growth in the industry over time. The number of establishments has grown from 13,133 in 2002 to 17,292 in 2016 (32 percent, or 2.3 percent per year). Total employment increased from 557,417 workers to 695,810 (25 percent, or 1.8 percent per year), and total annual payroll from $52,557,389 to $82,865,611 (58 percent or 4 percent per year). These figures indicate that the industry has seen small to moderate growth, with a more highly paid work force over time. There do not appear to be significant changes in the structure of the industry between 2002 and 2016. AMS expects that the size distribution of the firms affected by these revisions is consistent with data reported in the 2002 Economic Census. Therefore, affected firms would mostly be considered small business entities under the criteria established by SBA (13 CFR 121.201).

As a result of meeting with representatives of major seed industry stakeholder organizations in February 2019, AMS is updating regulations to reflect current industry standards and practices and to remove obsolete references. With these revisions to the existing FSA regulation, AMS proposes the following:

1. Update the lists of which seed kinds are covered by the regulations and revise the names of several agricultural and vegetable seeds to provide updated scientific nomenclature;

2. Revise the definitions of other terms used in the regulations to provide greater clarity for regulated entities;

3. Update the seed labeling, testing, and certification requirements to reflect revised terminology and industry practices; and

4. Correct misspellings and other errors in the regulations.

Most of the proposed revisions listed above (1, 2, and 4) are changes in the regulations that would not impact costs to the private sector. The third proposal listed above is expected to lower the costs of seed testing for three grass species. The proposed revisions would eliminate the requirement to segregate certain components of seed in purity testing for those three species. This would reduce the number of component separations for those species from five to four. Cost savings are difficult to estimate. Information on the exact costs of the tests was difficult to obtain because of the variability in seed testing fees by third-party labs. Costs for these tests are generally based on hourly laboratory charges and can range between $10 and $50 per test. Without data on the breakdown of cost for each of the separations performed in the test, it is assumed testing costs for the three affected crops could fall by 20 percent as a result of the proposed revisions.

The proposed revisions would ease the existing requirement to follow test procedures according to the Federal Seed Act before engaging in interstate commerce by allowing the use of seed testing methods from Association of Official Seed Analysts Rules used by most seed testing laboratories in the U.S. These revisions also expand the time requirement of the current regulation by allowing testing to be completed only on laboratory work days, which effectively acknowledges the existence of weekends and holidays, eliminating the need for staff to work or reschedule completion dates.

The burden of labeling radishes is also expected to fall, as currently it is not considered agricultural seed under the Federal Seed Act. Radishes are now considered only as a vegetable crop and must be labeled by variety. Inclusion of radishes as agricultural seed under the Act will allow the industry to exclude varieties in labeling agricultural radish seed.

The proposed rule reduces the trade burden associated with interstate seed commerce and encourages compliance with State and Federal laws. AMS has determined that this action would not have a significant negative economic impact on a substantial number of these small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information requirements under the regulations have been approved previously by OMB and assigned OMB No. 0581–0026. No changes are necessary in those requirements as a result of this proposed action. Reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Should any changes become necessary, they would be submitted to OMB for approval.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs

[5] ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes'', Small Business Administration, effective January 1, 2017, *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[6] Professional, Scientific, and Technical Services: Subject Series—Establishment and Firm Size: Employment Size of Firms for the United States: 2002 Economic Census of the United States, *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2002_US_54SSSZ5&prodType=table.*

designated this rule as not a major rule as defined by 5 U.S.C. 804(2).

E-Government Act

USDA is committed to complying with the E-Government Act (44 U.S.C. 3601, *et seq.*) by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 13175

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to judicial challenge to the provisions of this proposed rule.

List of Subjects

7 CFR Part 201

Certified seed, Definitions, Inspections, Labeling, Purity analysis, Sampling.

7 CFR Part 202

Administrative practice and procedure, Agricultural commodities, Imports, Labeling, Seeds, Vegetables.

For the reasons set forth in the preamble, it is proposed that 7 CFR parts 201 and 202 be amended as follows:

PART 201—FEDERAL SEED ACT REQUIREMENTS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 1592.

■ 2. In part 201, revise the heading to read as set forth above.

■ 3. Remove the undesignated center heading ''RULES AND REGULATIONS OF THE SECRETARY OF AGRICULTURE''.

§ 201.2 [Amended]

■ 4. Amend § 201.2 by:

■ a. Removing in paragraph (a) the word ''FSA'' and adding in its place the words ''Federal Seed Act'';

■ b. Removing in paragraph (b) the word ''a partnership'' and adding in their place the words ''an individual partnership'' and removing the words ''or trustee'' and adding in their place the words ''trustee, or agent'';

■ c. Removing in paragraph (h) the terms ''Bluestem, big—*Andropogon gerardii* Vitman'', ''Brome, mountain—*Bromus marginatus* Steud.'', ''Buffalograss—*Buchloe dactyloides* (Nutt.) Engelm.'', '' Crambe—*Crambe abyssinica* R.E. Fr.'', ''Crotalaria, sunn—*Crotalaria juncea* L.'', ''Galletagrass—*Hilaria jamesii* (Torr.) Benth.'', ''Guineagrass—*Panicum maximum* Jacq. var. *maximum*'', ''Kochia, forage—*Kochia prostrata* (L.) Schrad.'', ''Millet, browntop—*Brachiaria ramosa* (L.) Stapf'', ''Millet, pearl—*Pennisetum glaucum* (L.) R. Br.'', ''Napiergrass—*Pennisetum purpureum* Schumach.'', ''Needlegrass, green—*Stipa viridula* Trin.'', ''Panicgrass, green—*Panicum maximum* Jacq.'', ''Rape, bird—*Brassica rapa* L. subsp. *campestris* (L.) A.R. Clapham'', ''Rape, turnip—*Brassica rapa* L. subsp. campestris (L.)'', and ''Smilo—*Piptatherum miliaceum* (L.) Coss'';

■ d. Adding in paragraph (h) in alphabetical order the terms ''Bluestem, big—*Andropogon gerardi* Vitman'', ''Brome, mountain—*Bromus carinatus* var. *marginatus* (Steud.) Barworth & Anderton'', ''Buffalograss—*Bouteloua dactyloides* (Nutt.) Columbus'', ''Camelina—*Camelina sativa* (L.) Crantz subsp. sativa'', ''Crambe—*Crambe hispanica* L. subsp. *abyssinica*'', ''Crotalaria, sunn or sunn hemp—*Crotalaria juncea* L.'', ''Galletagrass—*Pleuraphis jamesii* Torr.'', ''Guineagrass—*Megathyrsus maximus* (Jacq.) B. K. Simon & S. W. L. Jacobs'', ''Kochia, forage—*Bassia prostrata* (L.) A. J. Scott'', ''Millet, browntop—*Urochloa ramose* (L.) T. Q. Nguyen'', ''Millet, pearl—*Cenchrus americanus* (L.) Morrone'', ''Napiergrass—*Cenchrus purpureus* (Schumach,) Morrone'', ''Needlegrass, green—Nassella viridula (Trin.) Barkworth'', ''Panicgrass, green—*Megathyrsus maximus* (Jacq.) B. K. Simon & S. W. L. Jacobs'', ''Radish—*Raphanus sativus* L.'', ''Rape, bird—*Brassica rapa* L. subsp. *oleifera*'', ''Rape, turnip—*Brassica rapa* L. Subsp. *oleifera*'', ''Smilo—Oloptum miliaceum (L.) Röser & Hamasha'', and ''Teff—*Eragrostis tef* (Zuccangi) Trotter'';

■ e. Removing in paragraph (i) the term ''Tomato—*Lycopersicon esculentum* Mill.'' and adding in its place the term ''Tomato—*Solanum lycopersicum* L.'';

■ f. Removing in paragraph (j) the word ''act'' and replacing it with the word ''Act'';

■ g. Adding in the first sentence of paragraph (l)(1) wherever it appears the word ''treatment'' the words ''(including but not limited to coating, film coating, encrusting, or pelleting)'';

■ h. Removing in the second sentence of paragraph (l)(1) the word ''treatment'' and adding in its place the words ''chemical or biological treatment'' and removing the words ''analyses, tests, and examinations'' and adding in their place the words ''and acceptable tests'';

■ i. Adding in paragraph (p) after the word ''percent'' the words ''by weight'' and adding a second sentence to read ''A mixture of varieties of a single kind may be labeled as a blend.'';

■ j. Adding in the second sentence of paragraph (q) after the word ''dyes'' the words ''polymers, biologicals,'';

■ k. Removing in paragraph (w), the words ''or crop seed'', and removing the words ''inert matter'' and adding in their place the words ''inert matter, including coating material if any is present'';

■ l. Removing in paragraph (x), the words ''commercial preparation containing nitrogen fixing bacteria applied to seed'' and adding in their place the words ''product consisting of microorganisms applied to the seed for the purpose of enhancing the availability or uptake of plant nutrients through the root system'';

■ m. Removing in paragraph (z), the word ''act'' and adding in its place the word ''Act'';

■ n. Removing in paragraph (mm), the word ''detasselling'' and adding in its place the word ''detasseling'';

■ o. Adding a new paragraphs (nn) and (oo).

The additions read as follows:

* * * * *

(nn) *Acceptable test.* The term ''acceptable test'' means any testing method described in § 201.45 through § 201.66 of this part, or to testing methods in accordance with Association of Official Seed Analyst (AOSA) rules.

(oo) *Brand.* The term ''brand'' means word(s), name, symbol, number, mark, design, unique design, or any combination of those which distinguishes seed of one entity from seed of another.

■ 5. Revise § 201.3 to read as follows:

§ 201.3 Administrator.

The Administrator of the Agricultural Marketing Service may perform such duties as the Secretary requires in enforcing the provisions of the Act and of the regulations in this part.

§ 201.4 [Amended]

■ 6. Amend § 201.4 by:

■ a. Removing in paragraph (a) the word ''act'' and adding in its place the word ''Act''; and

■ b. Removing in paragraph (b) wherever it appears the word

''treatment'' and adding it its place the words ''(including but not limited to coating, film coating, encrusting, or pelleting)'' and removing the word ''act'' and adding in its place the word ''Act''.

§ 201.6 [Amended]

■ 7. Amend § 201.6 in the first sentence by adding the word ''acceptable'' after the word ''all''.

§ 201.7 [Amended]

■ 8. Amend § 201.7 by removing in the first sentence the words ''(a) records of analyses, tests, and examinations'' and adding in their place the words ''(a) records of acceptable tests''.

§ 201.8 [Amended]

■ 9. Amend § 201.8 by removing in the last sentence the word ''act'' and adding in its place the word ''Act''.

§ 201.10 [Amended]

■ 10. Amend § 201.10 paragraph (a) by adding the word ''Radish;'' after the word ''Peanut;''.

■ 11. Revise § 201.12a to read as follows:

§ 201.12a Seed mixtures.

Seed mixtures intended for seeding/planting purposes shall be designated as a mixture on the label and each seed component shall be listed on the label in the order of predominance.

§ 201.16 [Amended]

■ 12. Amend § 201.16 by:

■ a. Removing in paragraph (a) in the first sentence the word ''state'' and adding in its place the word ''State'';

■ b. Removing in paragraph (b), the terms ''*Emex australis* Steinh.'', ''*Emex spinosa* (L.) Campd.'', ''*Leptochola chinensis* (L.) Nees'', ''*Pennisetum clandestinum* Chiov.'', ''*Pennisetum macrourum* Trin.'', ''*Pennisetum pedicellatum* Trin.'', ''*Pennisetum polystachion* (L.) Schult.'', and ''*Rubus fruticosus* L. (complex)''; and

■ c. Adding in paragraph (b) in alphabetical order the terms ''*Cenchrus caudatus* (Schrad.) Kuntze'', ''*Cenchrus clandestinus* Morrone'', ''*Cenchrus pedicellatus* (Trin.) Morrone'', ''*Cenchrus polystachios* (L.) Morrone'', ''*Dinebra chinensis (L.)* P. M. Peterson & N. Snow'', ''*Rubus plicatus* Weihe & Nees'', ''*Rumex hypogaeus* T.M. Schust & Reveal'', and ''*Rumex spinosus* L.''.

§ 201.17 [Amended]

■ 13. Amend § 201.17 by removing the words ''Quackgrass (*Elytrigia repens*)'' and adding in their place the words ''Quackgrass (*Elymus repens*)''.

■ 14. Revise § 201.18 to read as follows:

§ 201.18 Other agricultural seeds.

Agricultural seeds other than those included in the percentage or percentages of kind, variety, or type may be expressed as ''other crop seeds,'' but the percentage shall include collectively all kinds, varieties, or types not named upon the label.

■ 15. Revise § 201.19 to read as follows:

§ 201.19 Inert matter.

The label shall show the percentage by weight of inert matter, including coating material as defined in § 201.2(q), if any is present.

■ 16. Revise § 201.20 to read as follows:

§ 201.20 Germination

The label shall show the percentage of germination for each kind, kind and variety, kind and type, or kind and hybrid of agricultural seed comprising more than 5 percent of the whole. The label shall show the percentage of germination for each kind, kind and variety, kind and type, or kind and hybrid of agricultural seed comprising 5 percent of the whole or less if the seed is identified individually on the label.

■ 17. Revise § 201.21 to read as follows:

§ 201.21 Hard seed or dormant seed.

The label shall show the percentage of hard seed or dormant seed, as defined in § 201.57 or § 201.57a, if any is present. The percentages of hard seed and dormant seed shall not be included as part of the germination percentage.

■ 18. Revise § 201.23 to read as follows:

§ 201.23 Name of interstate shipper or name of consignee.

The full name and address of the interstate shipper shall appear upon the label. If the name and address of the shipper are not shown upon the label, a code designation identifying the interstate shipper shall be shown, along with the full name and address of the consignee.

■ 19. Amend § 201.24 by revising the second sentence to read as follows:

§ 201.24 Code designation.

* * * When used, the AMS code designation shall appear on the label in a clear and legible manner, along with the full name and address of the consignee.

§ 201.25 [Amended]

■ 20. Amend § 201.25 by removing in the third sentence the word ''act'' and adding in its place the word ''Act''.

■ 21. Add § 201.26a to read as follows:

§ 201.26a Vegetable seed mixtures.

Vegetable seed mixtures for seeding/planting purposes shall be designated as a mixture on the label, and each seed component shall be listed on the label in the order of predominance.

■ 22. Revise § 201.27 to read as follows:

§ 201.27 Name of interstate shipper or name of consignee.

The full name and address of the interstate shipper shall appear upon the label. If the name and address of the interstate shipper are not shown upon the label, a code designation identifying the interstate shipper shall be shown, along with the full name and address of the consignee.

■ 23. Amend § 201.28 by revising the second sentence to read as follows:

§ 201.28 Code designation.

* * * When used, the AMS code designation shall appear on the label in a clear and legible manner, along with the full name and address of the consignee.

■ 24. Revise § 201.29 to read as follows:

§ 201.29 Germination of vegetable seed in containers of 1 pound or less.

Vegetable seeds in containers of 1 pound or less which have a germination percentage equal to or better than the standard set forth in § 201.31 need not be labeled to show the percentage of germination and date of test. Each variety of vegetable seed which has a germination percentage less than the standard set forth in § 201.31 shall have the words ''Below Standard'' clearly shown in a conspicuous place on the label or on the face of the container in type no smaller than 8 points. Each variety which germinates less than the standard shall also be labeled to show the percentage of germination and the percentage of hard seed or dormant seed (if any).

■ 25. Revise § 201.29a to read as follows:

§ 201.29a Germination of vegetable seed in containers of more than 1 pound.

Each variety of vegetable seeds in containers of more than 1 pound shall be labeled to show the percentage of germination and the percentages of hard seed or dormant seed (if any).

■ 26. Revise § 201.30 to read as follows:

§ 201.30 Hard seed or dormant seed.

If hard seed or dormant seed as defined in §§ 201.57 or 201.57a, respectively, is present in the seed kinds indicated in those sections, the label shall show the percentage of hard seed or dormant seed present. The percentages of hard seed and dormant seed shall not be included as part of the germination percentage.

■ 27. Add § 201.30c to read as follows:

§ 201.30c Noxious-weed seeds of vegetable seed in containers of more than 1 pound.

Except for those kinds of noxious-weed seeds shown in § 201.16(b), the names of kinds of noxious-weed seeds and the rate of occurrence of each shall be expressed in the label in accordance with, and the rate shall not exceed the rate permitted by, the law and regulations of the State into which the seed is offered for transportation or is transported. If in the course of such transportation, or thereafter, the seed is diverted to another State of destination, the person or persons responsible for such diversion shall cause the seed to be relabeled with respect to noxious-weed seed content, if necessary, to conform to the laws and regulations of the State into which the seed is diverted.

■ 28. Amend § 201.31 by revising the heading and the introductory paragraph to read as follows:

§ 201.31 Minimum germination standards for vegetable seeds in interstate commerce.

The following minimum germination standards for vegetable seeds in interstate commerce, which shall be construed to include hard seed and dormant seed, are determined and established under section 403(c) of the Act:

* * * * *

■ 29. Amend § 201.31a by revising paragraph (b) to read as follows:

§ 201.31a Labeling treated seed.

* * * * *

(b) *Name of substance or active ingredient.* The name of any active ingredient substance as required by paragraph (a) of this section shall be the commonly accepted coined, chemical (generic), or abbreviated chemical name. The label shall include either the name of the genus and species or the brand name as identified on biological product labels. Commonly accepted coined names are free for general use by the public, are not private trademarks, and are commonly recognized as names of particular substances, such as thiram, captan, lindane, and dichlone. Examples of commonly accepted chemical (generic) names are blue-stone, calcium carbonate, cuprous oxide, zinc hydroxide, hexachlorobenzene, and ethyl mercury acetate. The terms ''mercury'' or ''mercurial'' may be used in labeling all types of mercurials. Examples of the genus and species names for brand named biologicals are *Bacillus subtilis* (Kodiak) for a single species, and *Bradyrhizobium japonicum, Penicillium bilaiae* (TagTeam Soybean Granular Inoculant) for a mixture. Examples of commonly accepted abbreviated chemical names are BHC (1, 2, 3, 4, 5, 6-Hexachlorocyclohexane) and DDT (dichloro diphenyl trichloroethane).

* * * * *

§ 201.33 [Amended]

■ 30. Amend § 201.33 paragraph (a) and (b) by removing wherever it appears the word ''act'' and adding in its places the word ''Act''.

§ 201.36b [Amended]

■ 31. Amend § 201.36b, in paragraph (a) by removing wherever it appears the word ''act'' and adding in its places the word ''Act''.

§ 201.37 [Amended]

■ 32. Amend § 201.37 by removing wherever it appears the word ''act'' and adding in its places the word ''Act''.

§ 201.38 [Removed and Reserved]

■ 33. Remove and reserve § 201.38.

§ 201.39 [Amended]

■ 34. Amend § 201.39, in paragraph (c), by removing the word ''proble'' in and adding in its place the word ''probe''.

■ 35. Amend § 201.46 by:

■ a. Revising paragraph (b); and

■ b. Adding in Table 1 to paragraph (d)(2)(iii), entries for ''Camelina'', ''Radish'', and ''Teff'' in the ''Agricultural Seed'' section in alphabetical order.

The revisions and additions read as follows:

§ 201.46 Weight of working sample.

* * * * *

(b) Mixtures consisting of one predominant kind of seed or groups of kinds of similar size. The weights of the purity and noxious-weed seed working samples in this category shall be determined by the kind or group of kinds which comprise more than 50 percent of the sample.

* * * * *

(d) * * *

(2) * * *

(iii) * * *

TABLE 1 TO PARAGRAPH (d)(2)(iii)

Name of seed	Minimum weight for purity analysis (grams)	Minimum weight for noxious-weed seed examination (grams)	Approximate number of seed per gram
Agricultural Seed:			
Camelina	4	40	880
Radish	30	300	75
Teff	1	10	3,288
* * * * *	*	*	

§ 201.47a [Amended]

■ 36. Amend § 201.47a by:

■ a. Removing in paragraph (b)(6) the words ''*Buchloe dactyloides*'' and adding in their place the words ''*Bouteloua dactyloides*'';

■ b. Removing in paragraph (c) the word ''Compositae'' and adding in its place the word ''Asteraceae'';

■ c. Removing in paragraph (d) the word ''Legumionsae'' and adding in its place the word ''Fabaceae'';

■ d. Removing in paragraph (e) the word ''Umbelliferae'' and adding in its place the word ''Apiaceae''; and

■ e. Removing in paragraph (f) the word ''Labiatae'' and adding in its place the word ''Lamiaceae''.

■ 37. Amend § 201.48 by revising the first sentence of the introductory text and paragraphs (a), (f), (g)(1) and (3) to read as follows:

§ 201.48 Kind or variety considered pure seed.

The pure seed shall include all seeds of each kind or each kind and variety under consideration present in excess of 5 percent by weight of the whole. * * *

(a) Immature or shriveled seeds and seeds that are cracked or injured. For seeds of legumes (Fabaceae) and crucifers (Brassicaceae) with the seed coats entirely removed refer to § 201.51(a)(1);

* * * * *

(f) Intact fruits, whether or not they contain seed, of species belonging to the following families: Sunflower (Asteraceae), buckwheat (Polygonaceae), carrot (Apiaceae), valerian (Valerianaceae), mint (Laminaceae) and other families in which the seed unit may be a dry, indehiscent one-seeded fruit. For visibly empty fruits, refer to inert matter, § 201.51(a)(6);

(g) * * *

(1) Intact burs of buffalograss (*Bouteloua dactyloides*) shall be considered pure seed whether or not a caryopsis is present. Refer to § 201.51(a)(6) for burs which are visibly empty.

* * * * *

(3) Special purity procedures for smooth brome, fairway crested wheatgrass, standard crested wheatgrass, intermediate wheatgrass, pubescent wheatgrass, tall wheatgrass, and western wheatgrass are listed in § 201.51a(b).

* * * * *

§ 201.51 [Amended]

■ 38. Amend § 201.51 by:

■ a. Removing in paragraph (a)(1) the words ''Leguminosae'', ''crucifers'', and ''Cruciferae'', and adding in their places the words ''Fabaceae'', ''brassica'', and Brassicaceae'', respectively;

■ b. Removing in paragraph (b)(2)(iv) the word ''Agropyron'' and adding in its place the word ''*Elymus*'';

■ c. Removing in paragraph (b)(2)(v) the words ''A. repens'' and adding in their place the words ''E. repens''; and

■ d. Removing in paragraph (b)(4) the word ''Compositae'' and adding in its place the word ''Asteraceae''.

■ 39. Amend § 201.51a by revising paragraph (a) and the table in paragraph (b)(2)(ii) to read as follows:

§ 201.51a Special procedures for purity analysis.

(a) The laboratory analyst shall use the Uniform Blowing Procedure described in this paragraph to separate pure seed and inert matter in the following: Kentucky bluegrass, Canada bluegrass, rough bluegrass, Pensacola variety of bahiagrass, orchardgrass, blue grama, and side-oats grama.

(1) *Separation of mixtures.* Separate seed kinds listed in this section from other kinds in mixtures before using the Uniform Blowing Procedure.

(2) *Calibration samples.* Obtain calibration samples and instructions, which are available on loan through the Seed Regulatory and Testing Division, S&T, AMS, 801 Summit Crossing Place, Suite C, Gastonia, North Carolina, 28054.

(3) *Blowing point.* Use the calibration samples to establish a blowing point prior to proceeding with the separation of pure seed and inert matter for these kinds.

(i) Refer to the specifications on the calibration samples for Kentucky bluegrass, orchardgrass, and Pensacola variety of bahiagrass to determine their appropriate blowing points for the Uniform Blowing Procedure.

(ii) Use the calibration sample for Kentucky bluegrass to determine the blowing points for Canada bluegrass, rough bluegrass, blue grama, and side-oats grama.

(A) The blowing point for Canada bluegrass shall be the same as the blowing point determined for Kentucky bluegrass.

(B) The blowing point for rough bluegrass shall be a factor of 0.82 (82 percent) of the blowing point determined for Kentucky bluegrass. The 0.82 factor is restricted to the General-type seed blower.

(C) The blowing point for blue grama shall be a factor of 1.157 of the blowing point determined for Kentucky bluegrass. Before blowing, extraneous material that will interfere with the blowing process shall be removed. The sample to be blown shall be divided into four approximately equal parts and each blown separately. The 1.157 factor is restricted to the General-type seed blower.

(D) The blowing point for side-oats grama shall be a factor of 1.480 of the blowing point determined for Kentucky bluegrass. Before blowing, extraneous material that will interfere with the blowing process shall be removed. The sample to be blown shall be divided into four approximately equal parts and each part blown separately. The 1.480 factor is restricted to the General-type seed blower.

(4) *Blower calibration.* Calibrate and test the blower according to the instructions that accompany the calibration samples before using the blower to analyze the seed sample. Use the anemometer to set the blower gate opening according to the calibration sample specifications.

(i) Determine the blowing point using a calibrated anemometer.

(ii) Position the anemometer fan precisely over the blower opening, set it at *meters per second* (m/s), run the blower at the calibrated gate setting, and wait 30 seconds before reading the anemometer.

(iii) Use this anemometer reading to determine the blower gate setting whenever the Uniform Blowing Procedure is required.

(5) *Pure seed and inert matter.* Use the calibrated blower to separate the seed sample into light and heavy portions. After completing the initial separation, remove and separate all weed and other crop seeds from the light portion. The remainder of the light portion shall be considered inert matter. Remove all weed and other crop seeds and other inert matter (stems, leaves, dirt) from the heavy portion and add them to the weed seed, other crop seed, or inert matter separations, as appropriate. The remainder of the heavy portion shall be considered pure seed.

(b) * * *

(2) * * *

(ii) * * *

TABLE OF FACTORS TO APPLY TO MULTIPLE UNITS [a]

Percent of single units of each kind	Crested wheat-grass [b]	Pubescent wheat-grass	Intermediate wheat-grass	Tall wheat-grass [c]	Western wheat-grass [c]	Smooth brome
50 or below	70	66	72	—	—	72
50.01–55.00	72	67	74	—	—	74
55.01–60.00	73	67	75	—	—	75
60.01–65.00	74	67	76	—	—	76
65.01–70.00	75	68	77	—	60	78
70.01–75.00	76	68	78	—	66	79
75.01–80.00	77	69	79	50	67	81
80.01–85.00	78	69	80	55	68	82
85.01–90.00	79	69	81	65	70	83

TABLE OF FACTORS TO APPLY TO MULTIPLE UNITS [a]—Continued

Percent of single units of each kind	Crested wheat-grass [b]	Pubescent wheat-grass	Intermediate wheat-grass	Tall wheat-grass [c]	Western wheat-grass [c]	Smooth brome
90.01–100.00	79	70	82	70	74	85

[a] The factors represent the percentages of the multiple unit weights which are considered pure seed. The remaining percentage is regarded as inert matter.
[b] Includes both standard crested wheatgrass and fairway crested wheatgrass.
[c] Dashes in table indicate that no factors are available at the levels shown.

§ 201.56 [Amended]

■ 40. Amend § 201.56, in paragraph (d), by removing the word ''Umbelliferae'' and adding in its place the word ''Apiaceae.''

■ 41. Amend § 201.58 by:

■ a. Revising paragraphs (a)(1) and (b)(13);

■ b. Adding in Table 2 to paragraph (c)(3) entries for ''Camelina'', ''Radish'', and ''Teff'' in the ''Agricultural Seed'' section in alphabetical order;

■ c. Revising in Table 2 to paragraph (c)(3) the entry for ''Oat'' in the ''Agricultural Seed'' section; and

■ d. Revising in Table 2 to paragraph (c)(3) the entry for ''Brussels Sprouts'' in the ''Vegetable Seed'' section.

The revisions and additions read as follows:

§ 201.58 Substrata, temperature, duration of test, and certain other specific directions for testing for germination and hard seed.

* * * * *

(a) *Definitions and explanations applicable to table 2*—(1) *Duration of tests.* The following deviations are permitted from the specified duration of tests: Any test may be terminated prior to the number of days listed under ''Final count'' if the maximum germination of the sample has then been determined. The number of days stated for the first count is approximate and a deviation of 1 to 3 days is permitted. If at the time of the prescribed test period the seedlings are not sufficiently developed for positive evaluation, it is possible to extend the time of the test period two additional days. If the prescribed test period or the allowed extension falls on a weekend or public holiday, the test may be extended to the next working day. (Also, see paragraph (a)(5) of this section and § 201.57.)

* * * * *

(b) * * *

(13) *Fourwing Saltbush (Atriplex canscens); preparation of seed for test.* De-wing seeds and soak for 2 hours in 3 liters of water, after which rinse with approximately 3 liters of distilled water. Remove excess water, air dry for 7 days at room temperature, then test for germination as indicated in Table 2.

(c) * * *

(3) * * *

TABLE 2 TO PARAGRAPH (c)(13)

Name of seed	Substrata	Temperature (°C)	First count days	Final count days	Additional directions	
					Specific requirements	Fresh and dormant seed
Agricultural Seed						
Camelina	TB	20	4	7		
Oat	B, T, S	20; 15	5	10	Prechill at 5 or 10 °C for 5 days and test for 7 days or predry and test for 10 days.	
Radish	B, T	20	4	6		
Teff	TB	20–30	4	7	KNO_3	
*	*	*	*	*	*	*
Vegetable Seed						
Brussels Sprouts	B, P, T	20–30	3	10	Prechill 5 days at 5 or 10 °C for 3 days; KNO_3 and Light.	
*	*	*	*	*	*	*

* * * * *

§ 201.59 [Amended]

■ 42. Amend § 209.59 by removing wherever it appears the word ''act'' and adding in its place the word ''Act''.

§ 201.60 [Amended]

■ 43. Amend § 201.60 by:

■ a. Adding in the second sentence of paragraph (a)(1) the word ''teff,'' after the words ''sweet vernalgrass,'';

■ b. Removing in the first sentence of paragraph (a)(2) the word ''act'' and adding in its place the word ''Act''; and

■ c. Adding in the first sentence of paragraph (b)(2) the word ''other'' before the words ''crop seeds''.

■ 44. Amend § 201.61 by revising the table heading to read as follows:

§ 201.61 Fluorescence percentages in ryegrasses.

* * *

FLUORESCENCE TOLERANCE, BASED ON TEST FLUORESCENCE (TFL)

* * * * *

■ 45. Amend § 201.63 by revising the introductory paragraph to read as follows:

§ 201.63 Germination.

The following tolerances are applicable to the percentage of germination and also to the sum of the germination plus the hard seed and dormant seed when 400 or more seeds are tested.

* * * * *

■ 46. Revise § 201.64 to read as follows:

§ 201.64 Pure live seed.

The tolerance for pure live seed shall be determined by applying the respective tolerances to the germination plus the hard seed and dormant seed, and the pure seed.

$$PLS = \frac{[\text{Germination \%} + \text{Hard Seed \%} + \text{Dormant Seed \%}]\text{x Pure Seed \%}}{100}$$

■ 47. Amend § 201.68 by revising the introductory text and paragraph (b) to read as follows:

§ 201.68 Eligibility requirements for certification of varieties.

When a seed originator, developer, owner of the variety, or agent thereof requests eligibility for certification, the certification agency shall require the person to provide the following information upon request:

* * * * *

(b) A statement concerning the variety's origin and the breeding technique(s) or the reproductive stabilization procedures used in its development.

* * * * *

■ 48. Amend § 201.70 by revising paragraph (a) to read as follows:

§ 201.70 Limitations of generations for certified seed.

* * * * *

(a) Recertification of the Certified class may be permitted when no Foundation or Registered seed is being maintained; or

* * * * *

§ 201.74 [Amended]

■ 49. Amend § 201.74 by removing in paragraphs (a), (b), and (c), the words ''(if certified as to variety)''.

§ 201.75 [Amended]

■ 50. Amend § 201.75 by removing in paragraphs (b)(1) and (c), wherever it appears the words ''(if certified as to variety)''.

■ 51. Amend § 201.76 Table 5 by adding in alphabetical order entries for ''Camelina'', ''Chickpea'', ''Hemp'', ''Radish'', ''Sunn hemp'' and footnotes ''60'' through ''63'' to read as follows:

§ 201.76 Minimum Land, Isolation, Field, and Seed Standards.

* * * * *

TABLE 5 TO § 201.76

Crop	Foundation				Registered				Certified			
	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed
Camelina	[8] 1	[61] 50 ([59] 15.24m).	5,000	0.1	[8] 1	[61] 50 ([59] 15.24m)	2,000	0.2	[8] 1	[61] 50 ([59] 15.24m)	1,000	0.3
Chickpea	[7] 1	[23] 0	10,000	0.1	[7] 1	[23] 0	2,000	0.2	[7] 1	[23] 0	1,000	0.2
Hemp	([63])	([63])	([63])	([63])	([63])	([63])	([63])	([63])	([63])	([63])	([63])	([63])
Radish	[60] 5	1,320 ([59] 402.34m).	0	0.05	[60] 5	1,320 ([59] 402.34m)	1,000	0.1	[60] 5	660 ([59] 201.17m)	500	0.25
Sunn hemp	[7] 1	1,320 ([59] 402.34m).	[62] 5000	0.1	[7] 1	660 ([59] 201.17m)	[62] 1,000	0.25	[7] 1	330 ([59] 100.58m)	[62] 500	0.5

* * * * \

PART 202—FEDERAL SEED ACT ADMINISTRATIVE PROCEDURES

■ 53. The authority citation for part 202 continues to read as follows:

Authority: 302, 305, 402, 408, 409, 413, 414, 53 Stat. 1275, as amended; 7 U.S.C. 1582, 1585, 1592, 1598, 1599, 1603, and 1604.

■ 54. In part 202, the heading is revised to read as set forth above.

Subpart C—Provisions Applicable to Other Proceedings

■ 55. In subpart C, revise the heading to read as set forth above.

Dated: January 9, 2020.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–00400 Filed 1–24–20; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 308

RIN 3064–AF19

Incorporation of Existing Statement of Policy Regarding Requests for Participation in the Affairs of an Insured Depository Institution by Convicted Individuals; Extension of Comment Period

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On December 16, 2019, the Federal Deposit Insurance Corporation (FDIC) published in the **Federal Register** a Notice of Proposed Rulemaking (Notice) that proposed to revise the existing regulations requiring persons convicted of certain criminal offenses to obtain prior written consent before participating in the conduct of the affairs of any depository institution to incorporate the FDIC's existing Statement of Policy, and to amend the regulations setting forth the FDIC's procedures and standards applicable to an application to obtain the FDIC's prior written consent. The FDIC has determined that an extension of the comment period until March 16, 2020, is appropriate.

DATES: The comment period for the Notice published on December 16, 2019 (84 FR 68353), is extended from February 14, 2020, to March 16, 2020.

ADDRESSES: You may submit comments by any of the methods identified in the proposal.

FOR FURTHER INFORMATION CONTACT: Brian Zeller, Review Examiner, (319) 395–7394 x4125, or Larisa Collado, Section Chief, (202) 898–8509, in the Division of Risk Management Supervision; or Graham N. Rehrig, Senior Attorney, (202) 898–3829, John Dorsey, Acting Supervisory Counsel, (202) 898–3807, or Andrea Winkler, Acting Assistant General Counsel, (202) 898–3727 in the Legal Division.

SUPPLEMENTARY INFORMATION: On December 16, 2019, the FDIC published in the **Federal Register** a Notice that proposed to revise the existing regulations requiring persons convicted of certain criminal offenses to obtain prior written consent before participating in the conduct of the affairs of any depository institution to incorporate the FDIC's existing Statement of Policy, and to amend the regulations setting forth the FDIC's procedures and standards applicable to an application to obtain the FDIC's prior written consent. The Notice sought comment from the public regarding ''the scope of Section 19, possible amendments to the relief process, the scope of the *de minimis* offense exemption, and the treatment of expunged criminal records,'' as well as comments related to the expected effects of the proposed rule. The Notice stated that the comment period would close on February 14, 2020. The FDIC has received a request to extend the comment period. An extension of the comment period would provide additional opportunity for the public to prepare comments to address questions posed by the FDIC. Therefore, the FDIC is extending the end of the comment period for the Notice from February 14, 2020, to March 16, 2020.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on January 22, 2020.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2020–01298 Filed 1–24–20; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1081; Product Identifier 2019–NM–153–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–100–1A10 airplanes. This proposed AD was prompted by reports of the loss of all air data system information provided to the flightcrew, which was caused by icing at high altitudes. This proposed AD would require revising the existing airplane flight manual (AFM) to provide the flightcrew with procedures to stabilize the airplane's airspeed and attitude. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 12, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this NPRM, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1081; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aerospace Engineer,

Mechanical Systems and Admin Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–1081; Product Identifier 2019–NM–153–AD'' at the beginning of your comments. The FAA specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this NPRM.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–24, dated July 5, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model BD–100–1A10 airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1081.

This proposed AD was prompted by reports of the loss of all air data system information provided to the flightcrew, which was caused by icing at high altitudes. The FAA is proposing this AD to address the loss of all air data system information provided to the flightcrew. If not addressed, this condition may adversely affect continued safe flight and landing. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information, which provides a procedure for ''Unreliable Airspeed'' in the Emergency Procedures section, and also provides a procedure for ''Go-Around'' in the Normal Procedures section of the applicable AFM. These documents are distinct since they apply to different airplane models.

- Bombardier Challenger 300 AFM, Publication No. CSP 100–1, Revision 56, dated July 8, 2019.
- Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 22, dated July 8, 2019.

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

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the existing AFM with procedures for ''Unreliable Airspeed'' in the Emergency Procedures section of the applicable AFM and with procedures for ''Go-Around'' in the Normal Procedures section of the applicable AFM, as described previously.

Costs of Compliance

The FAA estimates that this proposed AD affects 560 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$47,600

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2019–1081; Product Identifier 2019–NM–153–AD.

(a) Comments Due Date

The FAA must receive comments by March 12, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, serial numbers 20001 through 20688 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by reports of the loss of all air data system information provided to the flightcrew, which was caused by icing at high altitudes. The FAA is issuing this AD to address the loss of all air data system information provided to the flightcrew. If not addressed, this condition may adversely affect continued safe flight and landing.

(f) Compliance

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

(g) Revision of the Airplane Flight Manual (AFM)

Within 30 days after the effective date of this AD: Revise the Emergency Procedures—Avionics (section 03–17) of the existing AFM to include the information in the ''Unreliable Airspeed'' procedure of the applicable AFM specified in figure 1 to paragraph (g) of this AD, and revise the Normal Procedures—After Take-off (section 04–04) of the existing AFM to include the information in the ''Go-Around'' procedure of the applicable AFM specified in figure 1 to paragraph (g) of this AD.

Figure 1 to paragraph (g) – *AFM revisions*

Airplane Serial Numbers	AFM	AFM Revision	Issue Date
Serial numbers 20001 through 20500 inclusive	Bombardier Challenger 300 AFM, Publication No. CSP 100-1	Revision 56	July 8, 2019
Serial numbers 20501 through 20688 inclusive	Bombardier Challenger 350 AFM, Publication No. CH 350 AFM	Revision 22	July 8, 2019

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2019–24, dated July 5, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1081.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, Mechanical Systems and Admin Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on January 21, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–01235 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1079; Product Identifier 2019–NM–194–AD]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain ATR—GIE Avions de Transport Régional Model ATR72 airplanes. This proposed AD was prompted by occurrences of smoke in the flight deck and flap extension difficulties due to wire chafing on the electrical harness under a certain panel. This proposed AD would require modifying the clamp installation of the electrical routing on a certain rib of the left- and right-hand side of the wing rear spars, as specified in a European Union Aviation Safety

Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 12, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1079.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1079; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220; email *Shahram.Daneshmandi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–1079; Product Identifier 2019–NM–194–AD'' at the beginning of your comments. The FAA specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

The FAA will post all comments, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this NPRM.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0290, dated November 29, 2019 (''EASA AD 2019–0290'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain ATR—GIE Avions de Transport Régional Model ATR72 airplanes.

This proposed AD was prompted by occurrences of smoke in the flight deck and flap extension difficulties due to wire chafing on the electrical harness under panel 295CL, on rib 4 of the left-hand side of the wing rear spar. The FAA is proposing this AD to address wire chafing, which may lead to wire failure (cut or shorted) and uncontrolled fire with potential loss of multiple systems, and could possibly result in reduced control of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR part 51

EASA AD 2019–0290 describes procedures for modifying the clamp installation of the electrical routing on rib 4 of the left- and right-hand side of the wing rear spars. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0290 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0290 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0290 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need to comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0290 that is required for compliance with EASA AD 2019–0290 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1079 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 23 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$7	$347	$7,981

Authority for This Rulemaking

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

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

ATR—GIE Avions de Transport Régional: Docket No. FAA–2019–1079; Product Identifier 2019–NM–194–AD.

(a) Comments Due Date

The FAA must receive comments by March 12, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to ATR—GIE Avions de Transport Régional Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0290, dated November 29, 2019 (''EASA AD 2019–0290'').

(d) Subject

Air Transport Association (ATA) of America Code 92, Electrical routing.

(e) Reason

This AD was prompted by occurrences of smoke in the flight deck and flap extension difficulties due to wire chafing on the electrical harness under panel 295CL, on rib 4 of the left-hand side of the wing rear spar. The FAA is issuing this AD to address wire chafing, which may lead to wire failure (cut or shorted) and uncontrolled fire with potential loss of multiple systems, and could possibly result in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0290.

(h) Exceptions to EASA AD 2019–0290

(1) Where EASA AD 2019–0290 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0290 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or ATR—GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0290 that contains RC procedures and tests, except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2019–0290, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone

+49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1079.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220; email *Shahram.Daneshmandi@faa.gov.*

Issued on January 16, 2020.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2020–01263 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0011]

RIN 1625–AA87

Security Zone; Limetree Bay Terminals, St. Croix, U.S. Virgin Islands

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to modify the name and location of an existing security zone in St. Croix, U.S. Virgin Islands. This proposed rule would adjust the coordinates of the security zone and update the facility name from HOVENSA Refinery to Limetree Bay Terminals. The proposed rule would continue to prohibit persons and vessels from entering the security zone, unless authorized by the Captain of the Port San Juan or a designated representative. This action is necessary to better meet the safety and security needs of Limetree Bay Terminals in St. Croix, USVI. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before February 26, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0011 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander Pedro Mendoza, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787–729–2374, email *Pedro.L.Mendoza@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port
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
USVI U.S. Virgin Islands

II. Background, Purpose, and Legal Basis

The existing regulation in 33 CFR 165.770, contains a fixed security zone around the HOVENSA Refinery on the south coast of St. Croix, USVI. On November 21, 2019, the Coast Guard received a request to extend the regulated area of the security zone and update the facility name to Limetree Bay Terminals. Limetree Bay Terminals recently installed a Single Point Mooring system to enable deep draft vessel traffic to transfer to and from the facility. The location of the Single Point Mooring systems falls outside of the existing security zone. The proposed rule would increase the security zone by approximately 880 yards (.5 mile) to encompass their new mooring system.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters surrounding Limetree Bay Terminals. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).]

III. Discussion of Proposed Rule

The proposed rule would amend the existing fixed security zone in 33 CFR 165.770 to expand the regulated area and to update the facility name. We are proposing to increase the regulated area by approximately 880 yards (.5 mile) to encompass the new mooring system location installed by the facility. We are proposing to update the facility name to Limetree Bay Terminals to reflect its current ownership. Vessels may seek permission from the COTP to transit through the security zone.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size and location of the security zone. Vessel traffic would be able to continue to safely transit around the security which would impact a small designated area of southern St. Croix, USVI. The rule will allow vessels to seek permission to transit through the security zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves expanding an existing security zone and updating the facility name. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to 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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise § 165.770 to read as follows:

§ 165.770 Security Zone; Limetree Bay Terminals, St. Croix, U.S. Virgin Islands.

(a) *Regulated area.* The Coast Guard is establishing a security zone in and around Limetree Bay Terminals on the south coast of St. Croix, U.S. Virgin Islands. This security zone includes all waters from surface to bottom, encompassed by an imaginary line connecting the following points: Point 1 in position 17°41′48″ N, 064°44′26″ W; Point 2 in position 17°40′00″ N, 064°43′36″ W; Point 3 in position 17°39′36″ N, 064°44′48″ W; Point 4 in position 17°41′33″ N, 064°45′08″ W; then tracing the shoreline along the water's edge to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 1983).

(b) *Regulations.* (1) Under § 165.33, entry into or remaining within the regulated area in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port San Juan or vessels have a scheduled arrival at Limetree Bay Terminals, St. Croix, in accordance with the Notice of

Arrival requirements of 33 CFR part 160, subpart C.

(2) Persons desiring to transit the area of the security zone may contact the COTP San Juan or designated representative at telephone number 787–289–2041 or on VHF–FM Channel 16. If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative.

Dated: January 21, 2020.

E.P. King,

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

[FR Doc. 2020–01225 Filed 1–24–20; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register

Vol. 85, No. 17

Monday, January 27, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Massachusetts Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Massachusetts Advisory Committee to the Commission will convene at the law offices of Nutter McClennan and Fish, located at 155 Seaport Blvd. in Boston, MA 02210, at 12:00 p.m. (EST) on Tuesday, February 11, 2020. The purpose of the meeting is for project planning.

DATES: Tuesday, February 11, 2020, at 12:00 p.m. (EST).

ADDRESSES: Nutter McClennan and Fish, located at 155 Seaport Blvd., Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Time will be set aside at the end of the meeting so that members of the public may address the Committee after the planning meeting. Persons interested in the issue are also invited to submit written comments; the comments must be received in the regional office by Wednesday, March 11, 2018. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://facadatabase.gov/committee/meetings.aspx?cid=254* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Tuesday, February 11, 2020 at 12:00 p.m. (EDT)

I. Roll Call and Introduction
II. Planning to Discussion Potential Civil Rights Topics
III. Other Business
IV. Open Comment
IV. Adjournment

Dated: January 21, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–01262 Filed 1–24–20; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the California Advisory Committee (Committee) to the Commission will be held at 2:00 p.m. (Pacific Time) Friday, February 7, 2020. The purpose of the meeting is to plan community forum in San Diego and to discuss report outline for report on the impact of immigration enforcement on California children.

DATES: The meeting will be held on Friday, February 7, 2020 at 2:00 p.m. PT.

Public Call Information:
Dial: 800–367–2403.
Conference ID: 6547099.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–367–2403 conference ID number: 6547099. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ.* Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://*

www.usccr.gov, or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Discuss Community Forum
III. Discuss Report Outline
  a. Assign report sections
IV. Public Comment
V. Good of the Order
VI. Adjournment

Dated: January 22, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–01341 Filed 1–24–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Alaska Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Alaska Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. Alaska Time (AKT) on Wednesday, January 29, 2020. The purpose of the meeting is for the Committee to discuss next steps to address letter from USPS that provides feedback on AK SAC report on voting rights.

DATES: The meeting will be held on Wednesday, January 29, 2020 at 12:00 p.m. AKT.

Public Call Information:
Dial: 800–367–2403.
Conference ID: 7504778.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–367–2403, conference ID number: 7504778. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzljAAA.* Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Discussion Regarding Next Steps to Address USPS Letter Addressed to AK SAC
  a. Vote on Action
III. Public Comment
IV. Adjournment

Dated: January 22, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–01339 Filed 1–24–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Management and Organizational Practices Survey—Hospitals (MOPS–HP)

AGENCY: U.S. Census Bureau, 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 a proposed new collection called the Management and Organizational Practices Survey—Hospitals (MOPS–HP) as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before March 27, 2020.

ADDRESSES: Direct all written comments to Thomas Smith, PRA Liaison, U.S. Census Bureau, 4600 Silver Hill Road, Room 7K250A, Washington, DC 20233 (or via the internet at *PRAcomments@doc.gov*). You may also submit comments, identified by Docket Number USBC–2019–0020, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Edward Watkins at *edward.e.watkins.iii@census.gov* or 301–763–4750.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to conduct the Management and Organizational Practices Survey-Hospitals (MOPS–HP) for survey year 2019 as a joint project with Harvard Business School. The MOPS–HP will utilize a subset of the Service Annual Survey mail-out sample and will collect data on management practices from Chief Nursing Officers (CNOs) at general medical and surgical hospitals to assist in identifying determinants of clinical and financial performance.

Currently, no official statistics on management practices in hospitals exist. Past research shows these practices are related to health care providers' clinical and financial outcomes. This suggests that providing measures on management practices may potentially help the U.S.

health care system, which is challenged by rising health care costs, increased demand from an aging society, and quality objectives. These data would permit users, such as Harvard Business School, to examine relationships between management practices and financial outcomes using Census Bureau data (*e.g.,* revenues) and relationships with clinical outcomes using external data sources. Additionally, these data would provide hospital administrators and managers information to evaluate their practices in comparison to other hospitals at an aggregate level.

The MOPS–HP content was proposed by external researchers with past experience in surveying hospitals on management practices. Some questions are adapted from the Management and Organizational Practices Survey (MOPS), conducted in the manufacturing sector, allowing for inter-sectoral comparisons. Content for the MOPS–HP includes performance monitoring, financial and clinical targets, and incentives. The 39 questions are grouped into the following sections: Tenure, Management Practices, Management Training, Management of Team Interactions, Staffing and Allocation of Human Resources, Standardized Clinical Protocols, Documentation of Patients' Medical Records, and Organizational Characteristics.

II. Method of Collection

The MOPS–HP sample will consist of approximately 4,500 hospital locations for enterprises classified under General Medical and Surgical Hospitals (NAICS 6221) and sampled in the Service Annual Survey (SAS). The survey will be mailed separately from the 2019 SAS and collected electronically through the Census Bureau's Centurion online reporting system. Respondents will be sent an initial letter with instructions detailing how to log into the instrument and report their information. These letters will be addressed to the location's Chief Nursing Officer (CNO). Before mailing, the Census Bureau will attempt to identify the CNO at each location. In instances where the CNO is not identifiable, the letter will be addressed to the hospital's administrative office with attention to the CNO. Collection is scheduled to begin in September 2020 and end in April 2021.

III. Data

OMB Control Number: 0607–XXXX.
Form Number(s): MP–2000.
Type of Review: Regular submission.
Affected Public: General medical and surgical hospitals.
Estimated Number of Respondents: 4,500.
Estimated Time per Response: 45 minutes.
Estimated Total Annual Burden Hours: 3,375.
Estimated Total Annual Cost to Public: $0 (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)
Respondent's Obligation: Mandatory.
Legal Authority: Title 13 U.S.C. Sections 131 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–01264 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329307–9307–01]

RIN 0691–XC094

BE–30: Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers (BE–30). The data collected on the BE–30 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9189; or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–30 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 45 days after the end of each calendar quarter. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–30 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. ocean carriers that had total reportable revenues or total reportable expenses that were $500,000 or more during the prior year, or are expected to be $500,000 or more during the current year.

(b) Entities required to report will be contacted individually by BEA. Entities

not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. ocean freight carriers' foreign revenues and expenses.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–30 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-30help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0011. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 4 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0011, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2020–01248 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 1903292999–9299–01]

RIN 0691–XC090

BE–9: Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States (BE–9). The data collected on the BE–9 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9189; or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–9 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 45 days after the end of each calendar quarter. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–9 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. offices, agents, or other representatives of foreign airline operators that had total reportable revenues or total reportable expenses that were $5 million or more during the prior year, or are expected to be $5 million or more during the current year.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on foreign airline operators' revenues and expenses in the United States.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–9 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-9help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0068. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 6 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0068, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2020–01252 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329301–9301–01]

RIN 0691–XC092

BE–15: Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of Foreign Direct Investment in the United States (BE–15). The data collected on the BE–15 survey are needed to measure the size and economic significance of foreign direct investment in the United States and its impact on the U.S. economy. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Ricardo Limés, Chief, Multinational Operations Branch (BE–49), Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9659; or via email at *Ricardo.Limes@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–15 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. A completed report covering the entity's fiscal year ending during the previous calendar year is due by May 31, 2020 (or by June 30 for reporting companies that use BEA's eFile system). This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–15 survey forms and instructions are available at *www.bea.gov/fdi.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. business enterprise in which a foreign person has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, and that meets the additional conditions detailed in Form BE–15.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on the operations of U.S. affiliates of foreign companies.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/fdi* and submitted through mail or fax. Form BE–15 inquiries can be made by phone to BEA at (301) 278–9247 or by sending an email to *be12/15@bea.gov.*

When To Report: A completed report covering an entity's fiscal year ending during the previous calendar year is due by May 31, 2020 (or by June 30 for reporting companies that use BEA's eFile system).

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0034. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 19.7 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov*; under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0034, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2020–01244 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190401316–9316–01]

RIN 0691–XC100

BE–605: Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate With Foreign Parent

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate with Foreign Parent (BE–605). The data collected on the BE–605 survey are needed to measure the size and economic significance of foreign direct investment in the United States and its impact on the U.S. economy. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Jessica Hanson, Chief, Direct Transactions and Positions Branch (BE–49), Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9595; or via email at *Jessica.Hanson@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–605 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the

end of each calendar or fiscal quarter, or within 45 days if the report is for the final quarter of the financial reporting year. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–605 survey forms and instructions are available at *www.bea.gov/fdi.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. business enterprise in which a foreign person has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated business enterprise, or an equivalent interest in an unincorporated business enterprise, and that meets the additional conditions detailed in Form BE–605.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions between parent companies and their affiliates and on direct investment positions (stocks).

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey form and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/fdi* and submitted through mail or fax. Form BE–605 inquiries can be made by phone to BEA at (301) 278–9422 or by sending an email to *be605@bea.gov.*

When To Report: Reports are due to BEA 30 days after the close of each calendar or fiscal quarter, or 45 days if the report is for the final quarter of the financial reporting year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0009. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 1 hour per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0009, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2020–01251 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329302–9302–01]

RIN 0691–XC093

BE–29: Annual Survey of Foreign Ocean Carriers' Expenses in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of Foreign Ocean Carriers' Expenses in the United States (BE–29). The data collected on the BE–29 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9189; or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–29 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 90 days after the end of each calendar year. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–29 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. agents of foreign carriers who handle 40 or more foreign ocean carrier port calls in the reporting period, or had reportable expenses of $250,000 or more in the reporting period for all foreign ocean vessels handled by the U.S. Agent. See BE–29 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on foreign ocean carriers' expenses in the United States.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/*

ssb and submitted through mail or fax. Form BE–29 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-29help@bea.gov.*

When To Report: Reports are due to BEA 90 days after the end of each calendar year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0012. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 3 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0012, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2020–01246 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329308–9308–01]

RIN 0691–XC095

BE–37: Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses (BE–37). The data collected on the BE–37 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9189; or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–37 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 45 days after the end of each calendar quarter. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–37 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. airline operators that had total reportable revenues or total reportable expenses that were $500,000 or more during the prior year, or are expected to be $500,000 or more during the current year.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. airline operators' foreign revenues and expenses.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–37 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-37help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0011. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 4 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0011, 725 17th Street NW, Washington DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2020–01250 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329312–9312–01]

RIN 0691–XC098

BE–185: Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department

of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons (BE–185). The data collected on the BE–185 survey are needed to measure U.S. trade in financial services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9189; or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–185 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 45 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 90 days. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801, and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 4908(b)). Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–185 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person who had combined reportable sales of financial services to foreign persons that exceeded $20 million during the prior fiscal year, or are expected to exceed that amount during the current fiscal year; or had combined reportable purchases of financial services from foreign persons that exceeded $15 million during the prior fiscal year, or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the reporting requirements may apply only to sales, only to purchases, or to both.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions in financial services between U.S. financial services providers and foreign persons.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–185 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-185help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 90 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0065. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 10 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0065, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108 and 15 U.S.C. 4908(b).

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2020–01247 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329314–9314–01]

RIN 0691–XC099

BE–577: Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter With Foreign Affiliate

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter with Foreign Affiliate (BE–577). The data collected on the BE–577 survey are needed to measure the size and economic significance of U.S. direct investment abroad and its impact on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Jessica Hanson, Chief, Direct Transactions and Positions Branch (BE–49), Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9595; or via email at *Jessica.Hanson@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–577 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each calendar or fiscal quarter, or within 45 days if the report is for the final quarter of the financial reporting year. This Notice is being issued in conformance with the rule BEA issued

on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–577 survey forms and instructions are available at *www.bea.gov/dia.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person that has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, and that meets the additional conditions detailed in Form BE–577.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions between parent companies and their affiliates and on direct investment positions (stocks).

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey form and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/dia* and submitted through mail or fax. Form BE–577 inquiries can be made by phone to BEA at (301) 278–9261 or by sending an email to *be577@bea.gov.*

When To Report: Reports are due to BEA 30 days after the close of each calendar or fiscal quarter, or 45 days if the report is for the final quarter of the financial reporting year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0004. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 1 hour per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0004, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

(Authority: 22 U.S.C. 3101–3108)

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2020–01249 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329309–9309–01]

RIN 0691–XC096

BE–45: Quarterly Survey of Insurance Transactions by U.S. Insurance Companies With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons (BE–45). The data collected on the BE–45 survey are needed to measure U.S. trade in insurance services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9189; or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–45 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 60 days after the end of each calendar quarter, except for the final quarter of the calendar year when reports must be filed within 90 days. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–45 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. persons whose reportable transactions exceeded $8 million (positive or negative) during the prior calendar year, or are expected to exceed that amount during the current calendar year. See BE–45 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on cross-border insurance transactions between U.S. insurance companies and foreign persons.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–45 inquiries can be made by

phone to BEA at (301) 278–9303 or by sending an email to *be-45help@bea.gov.*

When To Report: Reports are due to BEA 60 days after the end of each calendar quarter, except for the final quarter of the calendar year when reports must be filed within 90 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0066. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 9 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0066, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2020–01243 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329311–9311–01]

RIN 0691–XC097

BE–125: Quarterly Survey of Transactions in Selected Services and Intellectual Property With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons (BE–125). The data collected on the BE–125 survey are needed to measure U.S. trade in services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9189; or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–125 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 45 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 90 days. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–125 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person who had combined reportable sales of services or intellectual property to foreign persons that exceeded $6 million during the prior fiscal year, or are expected to exceed that amount during the current fiscal year; or had combined reportable purchases of services or intellectual property from foreign persons that exceeded $4 million during the prior fiscal year, or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the reporting requirements may apply only to sales, only to purchases, or to both. See BE–125 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. international trade in selected services and intellectual property.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–125 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-125help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 90 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0067. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 21 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0067, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2020–01245 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–02–2020]

Foreign-Trade Zone 104—Savannah, Georgia; Application for Reorganization (Expansion of Service Area) Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by World Trade Center Savannah, LLC, grantee of Foreign-Trade Zone 104, requesting authority to reorganize the zone to expand its service area under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on January 14, 2020.

FTZ 104 was approved by the FTZ Board on April 18, 1984 (Board Order 256, 49 FR 17789, April 25, 1984), reorganized under the ASF on January 12, 2011 (Board Order 1736, 76 FR 4865, January 27, 2011) and the ASF service area was expanded on June 10, 2013 (Board Order 1904, 78 FR 36165, June 17, 2013) and on March 12, 2015 (Board Order 1965, 80 FR 14940–14941, March 20, 2015). The zone currently has a service area that includes Bulloch, Bryan, Candler, Chatham, Columbia, Effingham, Emanuel, Evans, Jenkins, Liberty, Long, Richmond, Screven, Tattnal, Toombs and Treulten Counties, Georgia.

The applicant is now requesting authority to expand the service area of the zone to include Burke County, Georgia, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The application indicates that the proposed expanded service area is adjacent to the Savannah, Georgia U.S. Customs and Border Protection Port of Entry

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is March 27, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 13, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.* For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: January 16, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–01318 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–028]

Hydrofluorocarbon Blends From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order; Unfinished R–32/R–125 Blends

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that imports of unfinished blends of hydrofluorocarbon (HFC) components R–32 and R–125 from the People's Republic of China (China) are circumventing the antidumping duty (AD) order on HFC blends from China. As a result, imports of blends of HFC components R–32 and R–125 from China will be subject to suspension of liquidation effective June 18, 2019. We invite interested parties to comment on this preliminary determination.

DATES: Applicable January 27, 2020.

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Jacob Garten, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4987 or (202) 482–3342, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce received information from U.S. Customs and Border Protection (CBP) relating to the *Order* on HFC blends from China regarding certain blends comprised of HFC components R–32 and R–125,[1] which closely resemble subject HFC blends from China.[2] On April 2, 2018, Commerce published a notice that it was opening a scope segment of the proceeding and provided an opportunity for interested parties to comment.[3] On June 12, 2018, the American HFC Coalition (the petitioner) filed comments on the CBP entry packages;[4] on June 18, 2018, Weitron, Inc. and Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. (Weitron Kunshan) (collectively, Weitron) filed rebuttal comments.[5]

On August 14, 2018, the petitioner filed a request that, pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), Commerce initiate an anti-circumvention inquiry regarding imports of unfinished blends of HFC components R–32 and R–125 from China that are further processed into finished HFC blends in the United States, which the petitioner alleged are circumventing the *Order*.[6] On August 23, 2018, Weitron submitted rebuttal comments.[7]

[1] R–32 is also known as Difluoromethane; R–125 is also known as Pentafluoroethane.

[2] *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order,* 81 FR 55436 (August 19, 2016) (*Order*).

[3] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China; Cold-Rolled Steel Flat Products from Japan; Hydrofluorocarbon Blends from the People's Republic of China; Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Opening of Scope Segments and Opportunity to Comment,* 83 FR 13952 (April 2, 2018).

[4] *See* Petitioner's Letter, ''Hydrofluorocarbon Blends from the People's Republic of China: Comments on Scope Segment for Certain R–32/R–125 Blends,'' dated June 12, 2018.

[5] *See* Petitioner's Letter, ''Weitron's Response to American HFC Coalition's Comments on Scope Segment, Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China,'' dated June 18, 2018.

[6] *See* Petitioner's Letter, ''Hydrofluorocarbon Blends from the People's Republic of China: Scope Investigation Regarding Certain R–32/R–125 Blends: Request to Apply Section 781(a) to Prevent Circumvention,'' dated August 14, 2018 (Initiation Request).

[7] *See* Weitron's Letter, ''Weitron's Response to Anti-Circumvention Allegation; Request to Reject, or Alternatively, Request for Extension of Time to Reply: Antidumping Duty Order on

On June 18, 2019, Commerce initiated the anti-circumvention inquiry with respect to unfinished blends of HFC components R–32 and R–125 from China that are further processed into finished HFC blends in the United States.[8] On June 24, 2019, we requested comments from interested parties on respondent selection and the period of inquiry (POI).[9] In July 2019, we received comments on respondent selection and the POI from the petitioner and ICool International Commerce Limited (ICool).[10] ICool requested treatment as a voluntary respondent.[11]

On October 31, 2019, we placed on the record CBP data for U.S. imports under Harmonized Tariff Schedule of the United States (HTSUS) numbers 3824.78.0020 and 3824.78.0050, and solicited comments on these data.[12] We issued quantity and value (Q&V) questionnaires to 19 companies on the same date.[13]

On November 7, 2019, we received comments on the CBP data from Shandong Huaan New Material Co. Ltd. (Shandong Huaan), Zhejiang Quhua Fluor-Chemistry Co., Ltd. (Zhejiang Quhua), Zhejiang Yonghe New Type Refrigerant Co., Ltd. (Zhejiang Yonghe), and Zibo Feiyuan Chemical Co., Ltd. (Zibo Feiyuan).[14] The Q&V questionnaire responses indicate that, of the 15 companies responding, Weitron Inc. is the only importer of R–32/R–125 blends, and Weitron Kunshan is the only exporter/producer of R–32/R–125 blends after the imposition of the *Order.*

On December 13, 2020, we selected Weitron Inc. and Weitron Kunshan as the only mandatory respondents in this inquiry.[15] On that same date we issued an initial questionnaire to Weitron Inc. and Weitron Kunshan.[16] On January 3, 2020, Weitron Inc. and Weitron Kunshan notified Commerce that they did not intend to respond to the initial questionnaire issued by Commerce.[17]

Scope of the Order

The products subject to the *Order* are HFC blends. HFC blends covered by the scope are R–404A, a zeotropic mixture consisting of 52 percent 1,1,1 Trifluoroethane, 44 percent Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R–407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R–407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R–410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane; and R–507A, an azeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R–507. The foregoing percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.[18]

Any blend that includes an HFC component other than R–32, R–125, R–143a, or R–134a is excluded from the scope of the *Order.*

Excluded from the *Order* are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrocarbons (HCs), or hydrofluoroolefins (HFOs).

Also excluded from the *Order* are patented HFC blends, including, but not limited to, ISCEON® blends, including MO99™ (R–438A), MO79 (R–422A), MO59 (R–417A), MO49Plus™ (R–437A) and MO29™ (R–4 22D), Genetron® Performax™ LT (R–407F), Choice® R–421A, and Choice® R–421B.

HFC blends covered by the scope of the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3824.78.0020 and 3824.78.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.[19]

Merchandise Subject to the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers imports of partially finished blends of HFC components R–32 (also known as Difluoromethane) and R–125 (also known as Pentafluoroethane) from China that must be further processed in the United States to create an HFC blend that would be subject to the *Order.*

Applicable Statute

Section 781 of the Act addresses circumvention of antidumping or countervailing duty orders. With respect to merchandise assembled or completed in the United States, section 781(a)(1) of the Act provides that if: (A) The merchandise sold in the United States is of the same class or kind as any other

Hydrofluorocarbon Blends from the People's Republic of China,'' dated August 23, 2018.

[8] *See Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order; Unfinished Blends,* 84 FR 28276 (June 18, 2019) (*Notice of Initiation*).

[9] *See* Memorandum, ''Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China—Unfinished Blends: Release of U.S. Customs and Border Protection Data and Clarification of Quantity and Value Questionnaires,'' dated October 31, 2019.

[10] *See* Petitioner's Letter, ''Hydrofluorocarbon Blends from the People's Republic of China; Unfinished Blends Anti-Circumvention Inquiry: Comments of the HFC Coalition on the Period of Investigation and Respondent Selection,'' dated July 5, 2019; and ICool's Letter, ''Hydrofluorocarbon Blends from China; A–570–028; Comments on Respondent Selection and Period of Investigation and Request for Voluntary Respondent Status,'' dated July 10, 2019 (ICool Respondent Selection Comments).

[11] *See* ICool Respondent Selection Comments.

[12] *See* Memorandum, ''Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China—Unfinished Blends: Release of U.S. Customs and Border Protection Data and Clarification of Quantity and Value Questionnaires,'' dated October 31, 2019.

[13] *Id.*

[14] *See* Shandong Huaan's Letter, ''Huaan Comments on CBP Data: Hydrofluorocarbon Blends from the People's Republic of China; Anti-circumvention Inquiry Covering R–32/R–125 Unfinished Blends, A–570–028,'' dated November 7, 2019; Zhejiang Quhua's Letter, ''Quhua Comments on CBP Data: Hydrofluorocarbon Blends from the People's Republic of China; Anti-circumvention Inquiry Covering R–32/R–125 Unfinished Blends, A–570–028,'' dated November 7, 2019; Zhejiang Yonghe's Letter, ''Yonghe Comments on CBP Data: Hydrofluorocarbon Blends from the People's Republic of China; Anti-circumvention Inquiry Covering R–32/R–125 Unfinished Blends, A–570–028,'' dated November 7, 2019; and Zibo Feiyuan's Letter, ''Feiyuan Comments on CBP Data: Hydrofluorocarbon Blends from the People's Republic of China; Anti-circumvention Inquiry Covering R–32/R–125 Unfinished Blends, A–570–028,'' dated November 7, 2019.

[15] *See* Memorandum, ''Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: R–32 R–125 Blends Anti-Circumvention Inquiry; Respondent Selection,'' dated December 13, 2019.

[16] *See* Commerce's Letter, ''Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: R–32 R–125 Blends Initial Questionnaire,'' dated December 13, 2019.

[17] *See* Weitron's Letter, ''Weitron's Notification of Its Intent Not to Respond to the Questionnaire: Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China,'' dated January 3, 2020 (Weitron Notification of Intent Not to Respond).

[18] R–404A is sold under various trade names, including Forane® 404A, Genetron® 404A, Solkane® 404A, Klea® 404A, and Suva®404A. R–407A is sold under various trade names, including Forane® 407A, Solkane® 407A, Klea®407A, and Suva®407A. R–407C is sold under various trade names, including Forane® 407C, Genetron® 407C, Solkane® 407C, Klea® 407C and Suva® 407C. R–410A is sold under various trade names, including EcoFluor R410, Forane® 410A, Genetron® R410A and AZ–20, Solkane® 410A, Klea® 410A, Suva® 410A, and Puron®. R–507A is sold under various trade names, including Forane® 507, Solkane® 507, Klea®507, Genetron®AZ–50, and Suva®507. R–32 is sold under various trade names, including Solkane®32, Forane®32, and Klea®32. R–125 is sold under various trade names, including Solkane®125, Klea®125, Genetron®125, and Forane®125. R–143a is sold under various trade names, including Solkane®143a, Genetron®143a, and Forane®125.

[19] *See Order.*

merchandise that is the subject of an AD order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components produced in the foreign country is a significant portion of the total value of the merchandise, then Commerce may include within the scope of the order the imported parts or components produced in the foreign country used in the completion or assembly of the merchandise in the United States, after taking into account any advice provided by the United States International Trade Commission (ITC) under section 781(e) of the Act.

In determining whether the process of assembly or completion in the United States is minor or insignificant, section 781(a)(2) of the Act directs Commerce to consider: (A) the level of investment; (B) the level of research and development; (C) the nature of the production process; (D) the extent of production facilities; and (E) whether the value of processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.

Section 781(a)(3) of the Act sets forth the factors to consider in determining whether to include parts or components in an AD order. Commerce shall take into account: (A) The pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States; and (C) whether imports into the United States of the parts or components produced in the foreign country have increased after the initiation of the investigation which resulted in the issuance of the order.

Affirmative Preliminary Determination of Circumvention

For the reasons described below, we preliminarily determine, pursuant to section 781(a) of the Act, that imports of unfinished blends of HFC components R–32 and R–125 from China are circumventing the *Order.*

Facts Available

As noted above, Weitron Inc. is the only importer of R–32/R–125 blends and Weitron Kunshan is the only exporter/producer of R–32/R–125 blends after the imposition of the *Order.* Weitron Inc., and its affiliated Chinese exporter, Weitron Kunshan, failed to respond to Commerce's requests for information.[20] The questionnaire Commerce issued to Weitron was designed to elicit information for purposes of conducting both qualitative and quantitative analyses in accordance with the criteria enumerated in section 781(a) of the Act, as outlined above. This approach is consistent with our analysis in previous anti-circumvention inquiries.[21]

Without this information Commerce has no choice but to resort to the use of facts available in making its determination pursuant to section 776(a)(2) of the Act. In selecting from among the facts available, Commerce determines that an adverse inference is warranted, pursuant to section 776(b) of the Act, because Weitron failed to comply to the best of its ability with Commerce's request for information.

Section 776(a) of the Act requires Commerce to resort to facts otherwise available if necessary information is not available on the record or when an interested party or any other person withholds information that has been requested by Commerce.[22] As provided in section 782(c)(1) of the Act, if an interested party, promptly after receiving a request from Commerce for information, notifies Commerce that such party is unable to submit the information requested in the requested form and manner, Commerce may modify the requirements to avoid imposing an unreasonable burden on that party. However, Weitron did not notify Commerce that it was unable to comply with Commerce's request. Rather, Weitron informed Commerce that, considering the cost and time, and in light of the fact that it had no further entries of subject unfinished blends after the date of initiation of this proceeding, nor any plans to import such unfinished blends, it did not intend to respond to the initial questionnaire issued in this proceeding.[23] Consequently, because Weitron failed to respond to Commerce's questionnaire, we must base the preliminary determination in this inquiry on the facts otherwise available.

Section 776(b) of the Act permits Commerce to use an inference that is adverse to the interests of an interested party if that party fails to cooperate by not acting to the best of its ability to comply with a request for information. Given that Weitron refused to comply with Commerce's request for information, we find that Weitron failed to cooperate by not acting to the best of its ability. The refusal by Weitron to respond to our questionnaire precludes Commerce from making a determination based on a complete record as to whether the importation of unfinished blends of R–32 and R–125 from China is circumventing the AD order. In addition, because Weitron failed to provide Commerce with any information, we are also unable to distinguish between their imports or purchases of unfinished blends of HFC components R–32 and R–125 from China for purposes other than U.S. assembly into merchandise covered by the *Order.* Accordingly, we are making an adverse inference pursuant to section 776(b) of the Act that unfinished blends of HFC components R–32 and R–125 from China are completed or assembled in the United States into merchandise covered by the *Order* within the meaning of section 781(a) of the Act. Therefore, we preliminarily find that these unfinished blends of HFC components R–32 and R–125 from China are subject merchandise.

Section 776(c) of the Act provides that when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, Commerce shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The Statement of Administrative Action (SAA), which accompanied the Uruguay Round Agreements Act,[24] states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the investigation or review.[25] The SAA also clarifies that ''corroborate'' means that Commerce will satisfy itself that the secondary

[20] *See* Weitron Notification of Intent Not to Respond.

[21] *See, e.g., Petroleum Wax Candles from the People's Republic of China: Partial Termination of Circumvention Inquiry and Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 72 FR 14519 (March 28, 2007), unchanged in *Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 72 FR 31053 (June 5, 2007); and *Polyethylene Retail Carrier Bags from Taiwan: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 79 FR 31302 (June 2, 2014), unchanged in *Polyethylene Retail Carrier Bags from Taiwan: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 79 FR 61056 (October 9, 2014).

[22] *See* sections 776(a)(1) and 776(a)(2)(A) of the Act.

[23] *See* Weitron Notification of Intent Not to Respond at 1.

[24] *See* H.R. Doc. No. 316, 103rd Congress, 2nd Session (1994).

[25] *See* SAA at 870.

information to be used has probative value.[26] To the extent practicable, Commerce will examine the reliability and relevance of the information used.[27]

We reviewed all information on the record including the petitioner's August 14, 2018, request for this anti-circumvention inquiry,[28] its subsequent submissions, and Commerce's initiation of this inquiry.[29] The petitioner demonstrated that imported unfinished blends of HFC components R–32/R–125 produced in China may be further processed into HFC blends covered by the *Order,* which satisfies section 781(a)(1)(A)(i) of the Act.[30] The petitioner demonstrated that the imported unfinished blends of HFC components R–32/R–125 cannot be sold in the U.S. market and, therefore, must be adjusted after importation to be sold in the United States, which satisfies section 781(a)(1)(B) of the Act.[31] The petitioner also provided evidence that the finished HFC blends assembly process in the United States is minor or insignificant under section 781(a)(1)(C) of the Act.[32] Although the petitioner did not have direct and specific information from U.S. assemblers, they were able to provide information based on the ITC's investigation, Commerce's underlying investigation, and proprietary data, which satisfies sections 781(a)(1)(C) and 781(a)(2) of the Act.[33] With respect to whether the value of the parts or components produced in China (*i.e.,* the unfinished blends of HFC components R–32 and R–125) is a significant portion of the total value of the merchandise subject to the *Order,* the petitioner was able to provide information from CBP, proprietary data, and import statistics.[34] The petitioner presented information demonstrating a change in the pattern of trade, which satisfies section 781(a)(3)(A) of the Act, and that there is a capability for numerous facilities to adopt this approach, which could result in a negation of the effect of the *Order.*[35] Thus, we conclude that the evidence on the record, considered in light of the non-cooperation of Weitron and our application of facts available with adverse inferences, is sufficient to preliminarily determine that there has been circumvention within the meaning of section 781(a) of the Act.

Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(2), Commerce will instruct CBP to suspend liquidation of all unfinished blends of HFC components R–32 and R–125 (as defined in the Merchandise Subject to the Anti-Circumvention Inquiry section above) from China that are entered, or withdrawn from warehouse, for consumption on or after June 18, 2019, the date of initiation of this anti-circumvention inquiry.[36] CBP shall require cash deposits in accordance with those rates prevailing at the time of entry, depending upon the exporter in question.

Notification to the ITC

Consistent with section 781(e) of the Act, Commerce is notifying the ITC of this affirmative preliminary determination to include the merchandise subject to this inquiry within the AD order on HFC blends from China. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning Commerce's proposed inclusion of the subject merchandise. These consultations must be concluded within 15 days after the date of the request. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days to provide written advice to Commerce.

Public Comment

Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[37] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[38] 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.[39] Case and rebuttal briefs should be filed electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[40]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically and received successfully in its entirety, via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[41] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[42]

Commerce will publish the final determination with respect to this anti-circumvention inquiry, including the results of its analysis of any written comments. The deadline for the final determination is currently April 7, 2020.

Notification to Interested Parties

This notice is published in accordance with section 781(a) of the Act and 19 CFR 351.225(g).

[26] *Id.*

[27] *See, e.g., Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry,* 71 FR 38608 (July 7, 2006), and accompanying Issues and Decision Memorandum (IDM) at Comment 2B.

[28] *See* Initiation Request.

[29] *See Notice of Initiation.*

[30] *Id.* at 28277 (citing Initiation Request at 7–9; and Memorandum, ''Hydrofluorocarbon Blends from the People's Republic of China: Placing Entry Documentation on the Record,'' dated April 11, 2018 (HFCs CBP Memo), at Attachments; and Petitioner's Letter, ''Hydrofluorocarbon Blends from the People's Republic of China: Comments on Scope Segment for Certain R–32/R–125 Blends,'' dated June 12, 2018 (Petitioner's June 12, 2018 Scope Comments), at 8–9).

[31] *Id.* at 28277 (citing Petitioner's June 12, 2018 Scope Comments at 4; and Weitron's Letter, ''Weitron's Response to American HFC Coalition's Comments on Scope Segment, Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China,'' dated June 18, 2018 (Weitron's Scope Comments), at 3; and Initiation Request at 7–9).

[32] *Id.* at 28277–78 (citing Initiation Request at 11–15 and Exhibits 1, 2, 3, and 4; and Weitron's Scope Comments).

[33] *Id.* at 282278 (citing Initiation Request at 16–17 and Exhibits 5 and 6; and *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 81 FR 42314 (June 29, 2016), and accompanying IDM at Comment 4).

[34] *Id.* at 28278 (citing Initiation Request at 17–19 and Exhibits 5 and 6; and HFCs CBP Memo at Attachments).

[35] *Id.* at 28278 (citing Initiation Request at 19–21 and Exhibit 3 and 4; and HFCs CBP Memo at Attachments).

[36] *See, e.g., Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 63 FR 18364, 18366 (April 15, 1998), unchanged in *Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 63 FR 54672, 54675–6 (October 13, 1998).

[37] *See* 19 CFR 351.309(c).

[38] *See* 19 CFR 351.309(d).

[39] *See* 19 CFR 351.309(c)(2) and (d)(2).

[40] *See* 19 CFR 351.303.

[41] *See* 19 CFR 351.310(c).

[42] *Id.*

Dated: January 17, 2020.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–01314 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from the People's Republic of China (China) for the period August 1, 2018, through July 31, 2019, based on the timely withdrawal of the request for review.

DATES: Applicable January 27, 2020.

FOR FURTHER INFORMATION CONTACT: Lochard Philozin, AD/CVD Operations, Office I Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4260.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2019, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on PRCBs from China for the period of review (POR) August 1, 2018, through July 31, 2019.[1] On August 30, 2019, the petitioners[2] timely requested an administrative review of the antidumping duty order with respect to Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively, Nozawa), and Crown Polyethylene Products (International) Ltd. (Crown).[3] Commerce received no other requests for an administrative review of the antidumping duty order. On October 7, 2019, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on PRCBs from China with respect to Nozawa and Crown (the respondents).[4] On January 2, 2020, the petitioners timely withdrew their administrative review request for Nozawa and Crown.[5]

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The petitioners withdrew their request for review within 90 days of the publication date of the *Initiation Notice.* No other parties requested an administrative review of the antidumping duty order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding the administrative review of the antidumping order on PRCBs from China for the period August 1, 2018, through July 31, 2019, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of PRCBs from China during the POR at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: January 17, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–01315 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 37834 (August 2, 2019).

[2] The petitioners are the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC and Superbag Corporation.

[3] *See* the petitioners' Letter, ''*Polyethylene Retail Carrier Bags from the People's Republic of China: Request for Administrative Review,*'' dated August 30, 2019.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 53411 (October 7, 2019) (*Initiation Notice*).

[5] *See* the petitioners' Letter, ''*Polyethylene Retail Carrier Bags from the People's Republic of China: Withdrawal of Request for Administrative Review,*'' dated January 2, 2020.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA022]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 60 South Atlantic Red Porgy Assessment Webinar III.

SUMMARY: The SEDAR 60 assessment of the South Atlantic stock of Red Porgy will consist of a data webinar, an in-person workshop, and a series assessment webinars.

DATES: The SEDAR 60 Red Porgy Assessment Webinar III has been scheduled for Friday, February 28, 2020, from 12 p.m. to 2:30 p.m., EST.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/7721994810978321163.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR

Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 60 Red Porgy Assessment Webinar III are as follows:

- Finalize modelling discussion.
- Review projection results and address the terms of reference.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 22, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–01427 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA023]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its System Management Plan (SMP) Workgroup via webinar.

DATES: The SMP Workgroup will meet via webinar on February 20, 2020, from 1 p.m. until 3 p.m.

ADDRESSES: The meeting will be held via webinar. The meeting is open to the public and will be available via webinar as it occurs. Registration is required. Webinar registration information, a public comment form, meeting agenda, and other meeting materials will be posted to the Council's website at: *https://safmc.net/safmc-meetings/other-meetings/* as they become available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The SMP Workgroup is an advisory group for the Council that reviews actions items, evaluates managed areas, and reviews management of managed areas recommended by the Council. The Workgroup is responsible for development of a report to the Council with recommendations. Components of the report include background information on managed areas; biological and habitat monitoring; socio-economic factors; enforcement and compliance; research recommendations; and outreach.

The workgroup is holding a meeting via webinar to discuss a review of the Oculina Bank Experimental Closed Area Evaluation Plan created by the Council. The Workgroup will also review the Spawning Special Management Zone web page currently under development.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 5 days prior to the public meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 22, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–01268 Filed 1–24–20; 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: Paperwork Submissions Under the Coastal Zone Management Act Federal Consistency Requirements.

OMB Control Number: 0648–0411.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 2,437.

Average Hours per Response: Federal Agency/License or Permit and

Assistance and State Response: 8 hours; Federal Assistance Applications and State Response: 2 hours; Unlisted Activities Requests and Remedial Action Requests: 4 hours each; Public Notices and Listing Notice/Coordination—State Listings: 1 hour each; Listing Notice/Coordination—Interstate Listing: 30 hours; Mediation Requests: 2 hours; and Secretarial Appeals: 210 hours.

Burden Hours: 35,799.

Needs and Uses: The Coastal Zone Management Act (CZMA) creates a State-federal partnership to improve the management of the nation's coastal zone through the development of federally approved State coastal management plans (CMPs). The CZMA provides two incentives for States to develop federally approved CMPs: (1) The National Oceanic and Atmospheric Administration (NOAA) has appropriated monies to grant to States to develop and implement State CMPs that meet statutory and regulatory criteria; and (2) The CZMA requires federal agencies, non-federal licensees, and State and local government recipients of federal assistance to conduct their activities in a manner ''consistent'' with the enforceable policies of NOAA-approved CMPs. The latter incentive, referred to as the ''federal consistency'' provision, is found at 16 U.S.C. 1456. NOAA's regulations at 15 CFR part 930 implement NOAA's responsibilities to provide procedures for the consistency provision, the procedures available for an appeal of a State's objection to a consistency certification as provided for in 16 U.S.C. 1456(c)(3)(A) and (B) and 1456(d), and changes in the appeal process created by Congressional amendments in 1990, 1996 and 2005, and found at 16 U.S.C. 1465.

Paperwork and information collection occurs largely outside of NOAA by: (1) State and Federal agencies engaged in licensing and permitting activities affecting coastal resources, (2) Federal agencies taking actions affecting State coastal zones, and (3) Federal agencies providing federal assistance to State and local governments in the coastal zone. In each of these cases, information is collected by the entity making the license, permit, assistance or action decision and NOAA's regulations provide for the use of that information already required by the State or Federal entity in the consistency process. Pursuant to 16 U.S.C. 1456, NOAA's regulations require the appropriate entity, Federal agency or applicant for license or permit, to prepare a consistency determination or certification. This information is provided to the relevant State CMP, not to NOAA. Information is provided to NOAA only when there is a State objection to a consistency certification, when informal mediation is sought by a Federal agency or State, or when an applicant for a federal license or permit appeals to the Secretary of Commerce for an override to a State CMPs objection to a consistency certification. Last, in 1990, Congress required State CMPs to provide for public participation in their permitting processes, consistency determinations and similar decisions, 16 U.S.C. 1455(d)(14), and NOAA regulations at part 930 implement that requirement.

A number of paperwork submissions are required by the Coastal Zone Management Act (CZMA) federal consistency provision, 16 U.S.C. 1456, and implementing regulations. These submissions are intended to provide a reasonable, efficient, and predictable means of complying with CZMA requirements. The paperwork submission requirements are detailed in 15 CFR part 930. The information will be used by coastal states with federally approved Coastal Zone Management Programs to determine if Federal agency activities, Federal license or permit activities, and Federal assistance activities that affect a state's coastal zone are consistent with the state's coastal management program. Information will also be used by NOAA and the Secretary of Commerce for appeals to the Secretary by non-federal applicants regarding state CZMA objections to federal license or permit activities or Federal assistance activities.

Affected Public: Federal and state agencies, federal license and permit applicants, lessees under the Outer Continental Shelf Lands Act, state and local governments applying for federal financial assistance.

Frequency: The frequency of reporting is occasional, as determined by the requirements of 16 U.S.C. 1456 and 15 CFR part 930.

Respondent's Obligation: Required to obtain or retain benefits.

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. 2020–01217 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XX031]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow commercial fishing vessels to use dredge fishing gear with a forward facing camera within the Great South Channel Habitat Management Area to characterize habitat substrate types where dredge fishing occurs, and conduct compensation fishing that would support research conducted by the Coonamessett Farm Foundation. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before February 11, 2020.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''CFF Great South Channel HMA Clam EFP.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on CFF Great South Channel HMA EFP.''

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, 978–281–9225.

SUPPLEMENTARY INFORMATION: On April 9, 2018, we approved the New England Fishery Management Council's Omnibus Essential Fish Habitat Amendment 2 that created the Great South Channel Habitat Management Area (GSC HMA). The Council also initiated a follow-up action in December of 2018 that approved limited exemption areas within the HMA for the surfclam fishery, and explicitly mentioned potential research in other parts of the HMA that could provide data necessary to support expanded exemptions in the future.

In an effort to address some of the Council's research priorities for the GSC HMA, Coonamessett Farm Foundation (CFF) has developed a multi-phase research project that would attempt to:

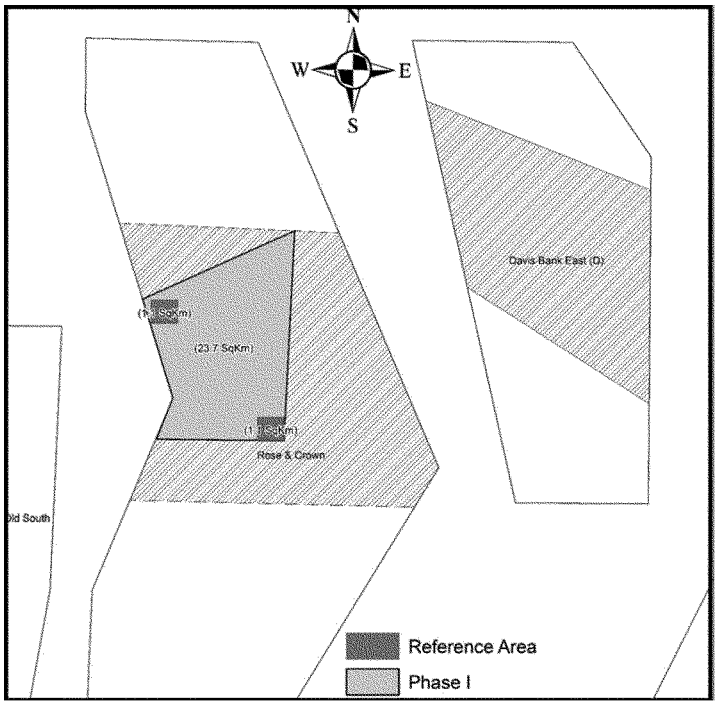
1. Characterize substrate types where surfclam and mussel fishing occurs within the GSC HMA;
2. Track spatiotemporal habitat change and benthic macrofauna distribution in an active fishing ground; and
3. Determine spatiotemporal occurrence of Atlantic cod and other species within the HMA that are subjected or adjacent to commercial clam and mussel dredging activities.

CFF submitted a complete application for an EFP on November 8, 2019, to enable research in support of the objective 1 (identified above). The exemptions would authorize participating vessels to fish with dredge gear in portions of the GSC HMA in order to characterize substrate types where surfclam and mussel fishing occurs, and to enable compensation fishing, which would fund research associated with objectives 2 and 3.

Under this EFP, five vessels targeting surfclams and mussels would fish with dredge-mounted, forward-facing cameras to characterize substrate types where surfclam and mussel fishing occurs within the GSC HMA. CFF contends that this information will support future consideration of HMA dredge emeption areas. A portion of the funds generated from these trips would be used to support future data collection using cameras to examine the habitat impacts of dredging, conduct habitat mapping and analysis, and research the presence of juvenile cod in the GSC HMA. If this EFP is approved, CFF has indicated their intention to broaden the scope of where they may fish with clam and mussel dredges once the initial phase of fishing is complete. Additional dredge fishing in the GSC HMA would entail a new EFP. We would evaluate future EFP applications on its own merits, which would include the utility of the information gathered from the first phase of dredge fishing before considering additional exemptions.

Figure 1 shows Rose and Crown and Davis Bank, the 24 km^2 phase 1 study area within Rose and Crown, and two reference points within the study area where fishing would not occur. CFF estimates that up to 120 clam fishing trips and 27 mussel fishing trips would be taken within the Rose and Crown study area. Clam and mussel trips are typically day trips, and effort would be constrained spatially within the 24 km^2 area and temporally to one year. CFF states that every dredge would be fitted with at least one forward viewing GoPro camera with lights. CFF plans to record 100 percent of each dredge tow, provided there are no equipment losses or malfunctions. Vessel crew would document retained catch of clams, estimate the volume of total bycatch by bushel for mussels and other species such as crab, weight for individual fish species, and bushel counts for cobble and rocks. A camera would be set up to take video and time lapse frames of the deck pile as it is picked. CFF stated that crew would take estimates of the catch on every tow through a visual estimate and a more thorough sampling of the catch would occur when CFF staff are on board. CFF staff would be on board for approximately 10 percent of EFP trips. Catch estimates for clam and other species are provided in Table 1. The catch estimates were based on experimental trips taken in the HMA from December 2018-April 2019. CFF would take some samples of blue mussels back to a lab for age and disease analysis. All other catch above a possession limit or below a minimum size would be discarded as soon as possible following data collection. All catch landed for sale would be accounted for in accordance with standard commercial catch accounting procedures, and applied against the applicable quota.

Figure 1 -- Map of Sub-Area of Rose and Crown Bank and EFP Area (CFF)



(The reference areas are represented by the smaller squares within the Phase 1 sampling area)

TABLE 1—ESTIMATED CATCH FOR EFP TRIPS

[Bushel = bu]

Species	Number	Weight (lb)	Weight (kg)
Atlantic Surfclam	200,000 bu	3,333,333	1,511,974
Mussel	5,000 bu	83,333	37,799
Winter Flounder	540	76	34
Windowpane Flounder	540	199	90
Skate (Misc.)	1,000	8,000	3,629

If approved, the applicant may request minor modifications and extensions to the EFP throughout the study period. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: January 22, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–01301 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA020]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of telephonic meeting.

SUMMARY: The North Pacific Fishery Management Council's Pacific Northwest Crab Industry Advisory Committee (PNCIAC) will meet February 11, 2020.

DATES: The meeting will be held on Tuesday, February 11, 2020, from 1 p.m. to 5 p.m., PST.

ADDRESSES: The meeting will be held telephonically. Telephone number is 1–855–464–2233, or connect online through *www.uberconference.com/abscconf* the PIN is 3261.

Council address: North Pacific Fishery Management Council, 1007 West Third, Suite 400, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Sarah Marrinan, Council staff; telephone: (907) 271–2809, or Lance Farr, Committee Chair, (206) 669–7163.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, February 11, 2020

The Committee will discuss: (a) Selection of new officers; (b) Board of Fisheries proposals; and (c) other business. Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/*.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

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

Dated: January 22, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–01271 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA021

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public webinar.

SUMMARY: The Caribbean Fishery Management Council's (Council) Ecosystem-Based Fishery Management Technical Advisory Panel (EBFM TAP) will hold a two-hours webinar meeting to address the items contained in the agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The webinar meeting will be held on February 19, 2020, from 9 a.m. to 11 a.m.

ADDRESSES: The webinar meeting will be held through GoToMeeting. You can join the meeting from your computer, tablet or smartphone at *https://global.gotomeeting.com/join/771316093*.

You can also dial in using your phone. United States: +1 (571) 317–3122 Access Code: 771–316–093. If joining from a video-conferencing room or system, depending on your device, dial in or type: 771316093@67.217.95.0 or 67.217.95.2##771316093.

FOR FURTHER INFORMATION CONTACT: Miguel Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION:

February 19, 2020, 9 a.m.–11 a.m.

- Introduction of Ecosystem-Based Fishery Management Technical Advisory Panel (EBMF TAP) Members and Staff
- Purpose and Goals of EBFM TAP
- Review of Caribbean EBFM Development Progress to Date
  - a. Conceptual Models Status and Next Steps
  - b. Risk Assessment/Ecosystem Status Report/Other Plan Components
- Discussion on the Development of an Outline for the Fishery Ecosystem Plan
- Planning for In-Person Meeting Ahead of April Caribbean Council Meeting

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on February 19, 2020, at 9 a.m.

Special Accommodations

For more information on this webinar, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 766–5926.

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

Dated: January 22, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–01270 Filed 1–24–20; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m., Thursday, January 30, 2020.

PLACE: CFTC Headquarters, Lobby-Level Hearing Room, Three Lafayette Centre, 1155 21st Street NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') will hold this meeting to consider the following matters:

- *Proposed Rule:* Position Limits for Derivatives; and
- *Proposed Rule:* Amendments to Codify No-Action Relief in Swap Execution Facility and Real-Time Reporting Requirements.

This meeting will consist of a morning and an afternoon session. The morning session will convene at 9:00 a.m. and will include consideration of the Proposed Rule on Position Limits for Derivatives. The afternoon session will convene at 1:30 p.m. and will include consideration of the Proposed Rule on Amendments to Codify No-Action Relief in Swap Execution Facility and Real-Time Reporting Requirements.

The agenda for this meeting will be available to the public and posted on the Commission's website at *https://www.cftc.gov.* In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's website.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: January 23, 2020.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2020–01460 Filed 1–23–20; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, January 29, 2020; 1:30 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, MD 20814.

STATUS: Commission Meeting—Open to the Public.

MATTER TO BE CONSIDERED: Briefing Matter: Age Determination Guidelines.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504–7479.

Dated: January 22, 2020.

Alberta E. Mills,

Secretary.

[FR Doc. 2020–01361 Filed 1–23–20; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to State Entities

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

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for fiscal year (FY) 2020 for CSP Grants to State Entities, Catalog of Federal Domestic Assistance (CFDA) number 84.282A. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: January 27, 2020.

Date of Pre-Application Webinar: January 30, 2020, 2:00 p.m., Eastern Time.

Deadline for Transmittal of Applications: April 13, 2020.

Deadline for Intergovernmental Review: June 10, 2020.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *https://www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Ashley Gardner, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E113, Washington, DC 20202–5970. Telephone: (202) 453–6787. Email: *charterschools@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The major purposes of the CSP are to expand opportunities for all students, particularly traditionally underserved students, to attend public *charter schools* [1] and meet challenging *State* academic standards; provide financial assistance for the planning, program design, and initial implementation of *charter schools;* increase the number of *high-quality charter schools* available to students across the United States; evaluate the impact of *charter schools* on student achievement, families, and communities; share best practices between *charter schools* and other public schools; encourage *States* to provide facilities support to *charter schools;* and support efforts to strengthen the charter school authorizing process.

Through the CSP Grants to State Entities (CSP State Entities) competition (CFDA number 84.282A), the Department awards grants to *State entities* that, in turn, award subgrants to *eligible applicants* for the purpose of opening new *charter schools* and *replicating* and *expanding high-quality charter schools.* Grant funds may also be used to provide technical assistance to *eligible applicants* and *authorized public chartering agencies* in opening new *charter schools* and *replicating* and *expanding high-quality charter schools;* and to work with *authorized public chartering agencies* in the *State* to improve authorizing quality, including developing capacity for, and conducting, fiscal oversight and auditing of *charter schools.*

Background: The CSP State Entities program provides financial assistance to *State entities* to support *charter schools* that serve elementary and secondary school students in a given *State. Charter schools* receiving funds under the CSP State Entities program also may serve students in *early childhood education programs* or postsecondary students.

The CSP State Entities program is authorized under Title IV, Part C of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA) (20 U.S.C. 7221–7221j). This notice contains information regarding eligibility, priorities, definitions, application requirements, and selection criteria under the CSP State Entities program.

All *charter schools* receiving CSP funds must meet each element of the definition of *charter school* in section 4310(2) of the ESEA, including the requirement to comply with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, section 444 of the General Education Provisions Act (GEPA), and part B of the Individuals with Disabilities Education Act (IDEA).

Priorities: This notice includes seven competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), Competitive Preference Priority 1 is from the notice of final priority, published in the **Federal Register** on November 27, 2019 (84 FR 65300) (Opportunity Zones NFP), and Competitive Preference Priorities 2–7 are from section 4303(g)(2) of the ESEA.

Competitive Preference Priorities: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award:

- An additional four points to an application that meets Competitive Preference Priority 1;
- An additional two points to an application that meets Competitive Preference Priority 2; and
- Up to an additional 16 points to an application, depending on whether and how well the application addresses Competitive Preference Priorities 3–7.

An application may receive a total of up to 22 additional points under the competitive preference priorities.

These priorities are:

Competitive Preference Priority 1—Spurring Investment in Qualified Opportunity Zones (0 or 4 points).

Under this priority, an applicant must demonstrate that the area in which the applicant proposes to provide services overlaps with a Qualified Opportunity Zone, as designated by the Secretary of the Treasury under section 1400z–1 of the Internal Revenue Code (IRC). An applicant must—

(a) Provide the census tract number of the Qualified Opportunity Zone(s) in which it proposes to provide services; and

(b) Describe how the applicant will provide services in the Qualified Opportunity Zone(s).

Note: In responding to this priority, an applicant is encouraged to explain how it will encourage prospective subgrantees to open, replicate, or expand one or more charter schools in a Qualified Opportunity Zone and how that might align to the application requirement response for (I)(C)(i).

Competitive Preference Priority 2—At Least One Authorized Public Chartering Agency Other than a Local Educational Agency, or an Appeals Process (0 or 2 points).

To meet this priority, an applicant must demonstrate that it is located in a *State* that—

(a) Allows at least one entity that is not a local educational agency (LEA) to be an *authorized public chartering* agency for *developers* seeking to open a *charter school* in the *State;* or

(b) In the case of a *State* in which LEAs are the only *authorized public chartering agencies,* the *State* has an

[1] The statutory or regulatory definitions for italicized terms are provided in the Definitions section of this notice.

appeals process for the denial of an application for a *charter school.*

Competitive Preference Priority 3—Equitable Financing (up to 3 points).

To be eligible to receive points under this priority, an applicant must demonstrate the extent to which the *State* in which it is located ensures equitable financing, as compared to traditional public schools, for *charter schools* and students in a prompt manner.

Competitive Preference Priority 4—Charter School Facilities (up to 4 points).

To be eligible to receive points under this priority, an applicant must demonstrate the extent to which the *State* in which it is located provides *charter schools* one or more of the following:

(a) Funding for facilities.

(b) Assistance with facilities acquisition.

(c) Access to public facilities.

(d) The ability to share in bonds or mill levies.

(e) The right of first refusal to purchase public school buildings.

(f) Low- or no-cost leasing privileges.

Competitive Preference Priority 5—Best Practices to Improve Struggling Schools and LEAs (up to 2 points).

To be eligible to receive points under this priority, an applicant must demonstrate the extent to which the *State* in which it is located uses best practices from *charter schools* to help improve struggling schools and LEAs.

Competitive Preference Priority 6—Serving At-Risk Students (up to 3 points).

To be eligible to receive points under this priority, an applicant must demonstrate the extent to which it supports *charter schools* that serve at-risk students through activities such as dropout prevention, dropout recovery, or comprehensive career counseling services.

Competitive Preference Priority 7—Best Practices for Charter School Authorizing (up to 4 points).

To be eligible to receive points under this priority, an applicant must demonstrate the extent to which it has taken steps to ensure that all *authorized public chartering agencies* implement best practices for charter school authorizing.

Note: For purposes of this competition, ''best practices for charter school authorizing'' includes, but is not limited to, the practices for monitoring *charter schools* described in Assurance (E) in paragraph (II) below.

Application Requirements:

These application requirements are from section 4303(f) of the ESEA (20 U.S.C. 7221b(f)). The Department will reject an application that does not meet each application requirement.

In responding to the application requirements, applicants must clearly identify which application requirement they are addressing. An applicant must respond to requirements (I)(A)(1), (I)(A)(7), (I)(A)(9), (I)(B)(2), and (I)(B)(3) in its response to paragraph (a)(1) of the Quality of the Project Design selection criterion; requirements (I)(A)(2), (I)(A)(13),(I)(C), (I)(E), and (I)(G) in its response to the Quality of Eligible Subgrant Applicants selection criterion; requirements (I)(A)(6) and (I)(A)(10) in its response to paragraph (c)(1) of the State Plan selection criterion; requirements (I)(A)(3), (I)(A)(4), (I)(A)(8), and (I)(A)(11) in its response to paragraph (c)(3) of the State Plan selection criterion; and requirement (I)(D) in its response to paragraph (d)(1) of the Quality of the Management Plan selection criterion. An applicant must respond to the application requirements in paragraph (I) that are not listed above in the Project Narrative.

Applications for funding under the CSP State Entities program must contain the following:

(I) Description of Program—A description of the *State entity's* objectives in running a quality charter school program and how the objectives of the program will be carried out, including—

(A) A description of how the *State entity* will—

(1) Support the opening of *charter schools* through the startup of new *charter schools* and, if applicable, the *replication* of *high-quality charter schools,* and the *expansion* of *high-quality charter schools* (including the proposed number of new *charter schools* to be opened, *high-quality charter schools* to be opened as a result of the *replication* of a *high-quality charter school,* or *high-quality charter schools* to be *expanded* under the *State entity's* program);

(2) Inform eligible *charter schools, developers,* and *authorized public chartering agencies* of the availability of funds under the program;

(3) Work with *eligible applicants* to ensure that the *eligible applicants* access all Federal funds that such applicants are eligible to receive, and help the *charter schools* supported by the applicants and the students attending those *charter schools*—

(a) Participate in the Federal programs in which the schools and students are eligible to participate;

(b) Receive the commensurate share of Federal funds the schools and students are eligible to receive under such programs; and

(c) Meet the needs of students served under such programs, including students with disabilities [2] and *English learners;*

(4) Ensure that *authorized public chartering agencies,* in collaboration with surrounding LEAs where applicable, establish clear plans and procedures to assist students enrolled in a *charter school* that closes or loses its charter to attend other high-quality schools;

(5) In the case of a *State entity* that is not a *State educational agency* (*SEA*)—

(a) Work with the *SEA* and *charter schools* in the *State* to maximize *charter school* participation in Federal and State programs for which *charter schools* are eligible; and

(b) Work with the *SEA* to operate the *State entity's* program under section 4303 of the ESEA, if applicable;

(6) Ensure that each *eligible applicant* that receives a subgrant under the *State entity's* program—

(a) Is using funds provided under this program for one of the activities described in section 4303(b)(1) of the ESEA; and

(b) Is prepared to continue to operate *charter schools* funded under section 4303 of the ESEA in a manner consistent with the *eligible applicant's* application for such subgrant once the subgrant funds under this program are no longer available;

(7) Support—

(a) *Charter schools* in LEAs with a significant number of schools identified by the *State* for comprehensive support and improvement under section 1111(c)(4)(D)(i) of the ESEA; and

(b) The use of *charter schools* to improve struggling schools, or to turn around struggling schools;

(8) Work with *charter schools* on—

(a) Recruitment and enrollment practices to promote inclusion of all students, including by eliminating any barriers to enrollment for educationally disadvantaged students (who include foster youth and unaccompanied homeless youth); and

(b) Supporting all students once they are enrolled to promote retention, including by reducing the overuse of discipline practices that remove students from the classroom;

(9) Share best and promising practices between *charter schools* and other public schools;

(10) Ensure that *charter schools* receiving funds under the *State entity's*

[2] For purposes of this competition, ''students with disabilities'' or ''student with a disability'' has the same meaning as *children with disabilities* or *child with a disability.*

program meet the educational needs of their students, including *children with disabilities* and *English learners;*

(11) Support efforts to increase charter school quality initiatives, including meeting the quality authorizing elements described in section 4303(f)(2)(E) of the ESEA;

(12)(a) In the case of a *State entity* that is not a *charter school support organization,* a description of how the *State entity* will provide oversight of authorizing activity, including how the *State* will help ensure better authorizing, such as by establishing authorizing standards that may include approving, monitoring, and re-approving or revoking the authority of an *authorized public chartering agency* based on the performance of the *charter schools* authorized by such agency in the areas of student achievement, student safety, financial and operational management, and compliance with all applicable statutes and regulations; and

(b) In the case of a *State entity* that is a *charter school support organization,* a description of how the *State entity* will work with the *State* to support the *State's* system of technical assistance and oversight, as described in paragraph (a), of the authorizing activity of *authorized public chartering agencies;* and

(13) Work with *eligible applicants* receiving a subgrant under the *State entity's* program to support the opening of new *charter schools* or *charter school* models described in application requirement (I)(A)(1) that are high schools;

(B) A description of the extent to which the *State entity*—

(1) Is able to meet and carry out Competitive Preference Priorities 2 through 7; [3]

(2) Is working to develop or strengthen a cohesive statewide system to support the opening of new *charter schools* and, if applicable, the *replication* of *high-quality charter schools,* and the *expansion* of *high-quality charter schools;* and

(3) Is working to develop or strengthen a cohesive strategy to encourage collaboration between *charter schools* and LEAs on the sharing of best practices;

(C) A description of how the *State entity* will award subgrants, on a competitive basis, including—

(1) A description of the application each *eligible applicant* desiring to receive a subgrant will be required to submit, which application shall include—

(a) A description of the roles and responsibilities of *eligible applicants,* partner organizations, and *charter management organizations,* including the administrative and contractual roles and responsibilities of such partners;

(b) A description of the quality controls agreed to between the *eligible applicant* and the *authorized public chartering agenc*y involved, such as a contract or performance agreement, how a school's performance in the *State's* accountability system and impact on student achievement (which may include student academic growth) will be one of the most important factors for renewal or revocation of the school's charter, and how the *State entity* and the *authorized public chartering agency* involved will reserve the right to revoke or not renew a school's charter based on financial, structural, or operational factors involving the management of the school;

(c) A description of how the autonomy and flexibility granted to a *charter school* is consistent with the definition of *charter school* in section 4310 of the ESEA;

(d) A description of how the *eligible applicant* will solicit and consider input from *parents* and other members of the community on the implementation and operation of each *charter school* that will receive funds under the *State entity's* program;

(e) A description of the *eligible applicant's* planned activities and expenditures of subgrant funds to support opening and preparing for the operation of new *charter schools,* opening and preparing for the operation of *replicated high-quality charter schools,* or *expanding high-quality charter school*s, and how the *eligible applicant* will maintain financial sustainability after the end of the subgrant period; and

(f) A description of how the *eligible applicant* will support the use of effective *parent,* family, and community engagement strategies to operate each *charter school* that will receive funds under the *State entity's* program; and

(2) A description of how the *State entity* will review applications from *eligible applicants;*

(D) In the case of a *State entity* that partners with an outside organization to carry out the *State entity's* quality charter school program, in whole or in part, a description of the roles and responsibilities of the partner;

(E) A description of how the *State entity* will ensure that each *charter school* receiving funds under the *State entity's* program has considered and planned for the transportation needs of the school's students;

(F) A description of how the *State* in which the *State entity* is located addresses *charter schools* in the *State's* open meetings and open records laws; and

(G) A description of how the *State entity* will support diverse charter school models, including models that serve rural communities.

(II) Assurances—Assurances that—

(A) Each *charter school* receiving funds through the *State entity's* program will have a high degree of autonomy over budget and operations, including autonomy over personnel decisions;

(B) The *State entity* will support *charter schools* in meeting the educational needs of their students, including *children with disabilities* and *English learners;*

(C) The *State entity* will ensure that the *authorized public chartering agency* of any *charter school* that receives funds under the *State entity's* program adequately monitors each *charter school* under the authority of such agency in recruiting, enrolling, retaining, and meeting the needs of all students, including *children with disabilities* and *English learners;*

(D) The *State entity* will provide adequate technical assistance to *eligible applicants* to meet the objectives described in application requirement (I)(A)(8);

(E) The *State entity* will promote quality authorizing, consistent with *State* law, such as through providing technical assistance to support each *authorized public chartering agenc*y in the *State* to improve such agency's ability to monitor the *charter schools* authorized by the agency, including by—

(1) Assessing annual performance data of the schools, including, as appropriate, graduation rates, student academic growth, and rates of student attrition;

(2) Reviewing the schools' independent, annual audits of financial statements prepared in accordance with generally accepted accounting principles and ensuring that any such audits are publically reported; and

(3) Holding *charter schools* accountable to the academic, financial, and operational quality controls agreed to between the *charter school* and the *authorized public chartering agency*

[3] In accordance with 34 CFR 105(c)(2)(i), applications are not required to address competitive preference priorities but may receive additional points if they do so. However, to meet this application requirement, the *State entity* must describe the extent to which it is able to meet and carry out competitive preference priorities 2 through 7. If the *State entity* is unable to meet and carry out one or more of these competitive preference priorities, the description for that priority should state that the *State entity* is unable to meet or carry out the priority.

involved, such as renewal, non-renewal, or revocation of the school's charter;

(F) *The State entity* will work to ensure that *charter schools* are included with the traditional public schools in decisionmaking about the public school system in the *State;* and

(G) The *State entity* will ensure that each *charter school* receiving funds under the *State entity's* program makes publicly available, consistent with the dissemination requirements of the annual *State* report card under section 1111(h) of the ESEA, including on the website of the school, information to help *parents* make informed decisions about the education options available to their children, including—

(1) Information on the educational program;

(2) Student support services;

(3) Parent contract requirements (as applicable), including any financial obligations or fees;

(4) Enrollment criteria (as applicable); and

(5) Annual performance and enrollment data for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such disaggregation of performance and enrollment data shall not be required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student.

(III) Waivers—Requests for information about waivers, including—

(A) A request and justification for waivers of any Federal statutory or regulatory provisions that the *State entity* believes are necessary for the successful operation of the *charter schools* that will receive funds under the *State entity's* program under section 4303 of the ESEA or, in the case of a *State entity* that is a *charter school support organization,* a description of how the *State entity* will work with the *State* to request such necessary waivers, where applicable; and

(B) A description of any *State* or local rules, generally applicable to public schools, that will be waived or otherwise not apply to such schools.

Definitions:

The following definitions are from sections 4303(a), 4310, and 8101 of the ESEA (20 U.S.C. 7221b(a), 7221i, and 7801); and 34 CFR 77.1.

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a *performance target,* whether a *performance target* is *ambitious* depends upon the context of the *relevant performance measure* and the *baseline* for that measure (34 CFR 77.1).

Authorized public chartering agency means a *State educational agency,* local educational agency, or other public entity that has the authority pursuant to *State* law and approved by the Secretary to authorize or approve a *charter school* (ESEA section 4310(1)).

Baseline means the starting point from which performance is measured and targets are set (34 CFR 77.1).

Charter school means a public school that—

(a) In accordance with a specific *State* statute authorizing the granting of charters to schools, is exempt from significant *State* or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(b) Is created by a *developer* as a public school, or is adapted by a *developer* from an existing public school, and is operated under public supervision and direction;

(c) Operates in pursuit of a specific set of educational objectives determined by the school's *developer* and agreed to by the *authorized public chartering agency;*

(d) Provides a program of elementary or secondary education, or both;

(e) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(f) Does not charge tuition;

(g) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of GEPA (20 U.S.C. 1232g) (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the IDEA;

(h) Is a school to which *parents* choose to send their children, and that—

(1) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA, if more students apply for admission than can be accommodated; or

(2) In the case of a school that has an affiliated *charter school* (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated *charter school* and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated *charter school* and the enrolling school, admits students on the basis of a lottery as described in paragraph (1);

(i) Agrees to comply with the same Federal and *State* audit requirements as do other elementary schools and secondary schools in the *State,* unless such State audit requirements are waived by the *State;*

(j) Meets all applicable Federal, *State,* and local health and safety requirements;

(k) Operates in accordance with *State* law;

(l) Has a written performance contract with the *authorized public chartering agency* in the *State* that includes a description of how student performance will be measured in *charter schools* pursuant to *State* assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the *authorized public chartering agency* and the *charter school;* and

(m) May serve students in *early childhood education programs* or postsecondary students (ESEA section 4310(2)).

Charter management organization means a nonprofit organization that operates or manages a network of *charter schools* linked by centralized support, operations, and oversight (ESEA section 4310(3)).

Charter school support organization means a nonprofit, non-governmental entity that is not an *authorized public chartering agency* and provides, on a statewide basis—

(a) Assistance to *developers* during the planning, program design, and initial implementation of a *charter school;* and

(b) Technical assistance to operating *charter schools* (ESEA section 4310(4)).

Child with a disability means—

(a) A child (1) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to as ''emotional disturbance''), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (2) who, by reason thereof, needs special education and related services.

(b) For a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the *State* and the LEA, include a child (1) experiencing developmental delays, as defined by the *State* and as

measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and (2) who, by reason thereof, needs special education and related services (ESEA section 8101(4)).

Demonstrates a rationale means a key *project component* included in the project's *logic model* is informed by research or evaluation findings that suggest the *project component* is likely to improve *relevant* outcomes (34 CFR 77.1).

Developer means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, *parents,* or other members of the local community in which a charter school project will be carried out (ESEA section 4310(5)).

Early childhood education program means (a) a Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 *et seq.*), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding; (b) a State licensed or regulated child care program; or (c) a program that (1) serves children from birth through age six that addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and (2) is (i) a *State* prekindergarten program; (ii) a program authorized under section 619 or part C of the IDEA; or (iii) a program operated by an LEA (ESEA section 8101(16)).

Eligible applicant means a *developer* that has—

(a) Applied to an *authorized public chartering authority* to operate a *charter school;* and

(b) Provided adequate and timely notice to that authority (ESEA section 4310(6)).

English learner, when used with respect to an individual, means an individual—

(a) Who is aged 3 through 21;

(b) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(c)(1) Who was not born in the United States or whose native language is a language other than English;

(2)(i) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(ii) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(3) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(d) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(1) The ability to meet the challenging State academic standards;

(2) The ability to successfully achieve in classrooms where the language of instruction is English; or

(3) The opportunity to participate fully in society (ESEA section 8101(20)).

Expand, when used with respect to a *high-quality charter school,* means to significantly increase enrollment or add one or more grades to the *high-quality charter school* (ESEA section 4310(7)).

High-quality charter school means a *charter school* that—

(a) Shows evidence of strong academic results, which may include strong student academic growth, as determined by a *State*;

(b) Has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance;

(c) Has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the *charter school*; and

(d) Has demonstrated success in increasing student academic achievement, including graduation rates where applicable, for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such demonstration is not required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student (ESEA section 4310(8)).

Logic model (also referred to as theory of action) means a framework that identifies key *project components* of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the *relevant* outcomes) and describes the theoretical and operational relationships among the key *project components* and *relevant* outcomes (34 CFR 77.1).

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare) (ESEA section 8101(38)).

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance (34 CFR 77.1).

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project (34 CFR 77.1).

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual *project component* or to a combination of *project components* (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers) (34 CFR 77.1).

Relevant outcome means the student outcome(s) or other outcome(s) the key *project component* is designed to improve, consistent with the specific goals of the program (34 CFR 77.1).

Replicate, when used with respect to a *high-quality charter school,* means to open a new *charter school,* or a new campus of a *high-quality charter school,* based on the educational model of an existing *high-quality charter schoo*l, under an existing charter or an additional charter, if permitted or required by *State* law (ESEA section 4310(9)).

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas (ESEA section 8101(48)).

State educational agency means the agency primarily responsible for the *State* supervision of public elementary schools and secondary schools (ESEA section 8101(49)).

State entity means—

(a) A *State educational agency*;

(b) A *State* charter school board;

(c) A Governor of a *State*; or

(d) A *charter school support organization* (ESEA section 4303(a)).

Program Authority: Title IV, part C of the ESEA (20 U.S.C. 7221–7221j).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 76, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of

the Department in 2 CFR part 3474. (d) The Opportunity Zones NFP.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $82,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $2,000,000 to $25,000,000 per year.

Estimated Average Size of Awards: $10,000,000 per year.

Maximum Award: See section III.4(a) of this notice, *Reasonable and Necessary Costs,* for information regarding the maximum amount of funds that *State Entities* may award for each *charter school* receiving subgrant funds.

Estimated Number of Awards: 3–6.

Note: The Department is not bound by any estimates in this notice. The estimated range and average size of awards are based on a single 12-month budget period. We may use FY 2020 funds to support multiple 12-month budget periods for one or more grantees.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Entities: State entities* in *States* with a specific *State* statute authorizing the granting of charters to schools.

Under section 4303(e)(1) of the ESEA, no *State entity* may receive a grant under this competition for use in a *State* in which a *State entity* is currently using a CSP State Entities grant. Accordingly, *State entities* in *States* in which a *State entity* has a current CSP State Entities grant that is not in its final budget period (*i.e.,* Alabama, Arizona, Arkansas, Colorado, Delaware, Idaho, Indiana, Maryland, Michigan, Minnesota, Mississippi, New Hampshire, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, Washington, and Wisconsin) are ineligible to apply for a CSP State Entities grant under this competition. *State entities* in *States* in which a *State entity* has a current CSP State Entity grant that is in its final budget period (*i.e.,* Texas), however, are eligible to apply for a new CSP State Entity grant under this competition.

Consistent with section 4303(e)(1), if a *State entity* is approved for a new CSP State Entities grant under this competition for use in a *State* in which a *State entity* has a current CSP State Entities grant that is in its final budget period, all funding under the current CSP State Entities grant must be obligated prior to the end of the final budget period. Likewise, if multiple *State entities* in a *State* submit applications that receive high enough scores to be recommended for funding under this competition, only the highest-scoring application among such *State entities* would be funded.

State entities in *States* in which an *SEA* has a current CSP Grant for SEAs that was awarded under the No Child Left Behind Act of 2001 (*i.e.,* prior to FY 2017) are eligible to apply for a CSP State Entities grant under this competition, so long as no other *State entity* in the *State* has a current CSP State Entities grant that is not in its final budget period.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* (a) Under section 4303(b) and (c)(2) of the ESEA, a *State entity* may award subgrants to *eligible applicants* and technical assistance providers.

(b) Under section 4303(d)(2) of the ESEA, a *State entity* awarding subgrants to eligible applicants must use a peer-review process to review applications.

Note: An *eligible applicant* (*i.e.,* charter school *developer* or *charter school*) in a *State* in which no *State entity* has an approved grant application under section 4303 of the ESEA may apply for funding directly from the Department under the CSP Grants to Developers (CFDA number 84.282B or 84.282E) competition. Additional information about the CSP Grants to Developers program and any upcoming competitions is available at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/charter-schools-program-non-state-educational-agencies-non-sea-planning-program-design-and-initial-implementation-grant/.*

4. *Other:* (a) *Reasonable and Necessary Costs:* The Secretary may elect to impose maximum limits on the amount of subgrant funds that a *State entity* may award to an *eligible applicant* per new *charter school* created or *replicated,* per *charter school expanded,* or per new school seat created.

For this competition, the maximum amount of subgrant funds a *State entity* may award to a subgrantee per new *charter school, replicated high-quality charter school,* or *expanded high-quality charter school* over a five-year subgrant period is $1,500,000.

Note: Applicants must ensure that all costs included in the proposed budget are necessary and reasonable to meet the goals and objectives of the proposed project. Any costs determined by the Secretary to be unreasonable or unnecessary will be removed from the final approved budget.

(b) *Audits:* (i) A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR part 200. (2 CFR 200.501(a))

(ii) A non-Federal entity that expends less than $750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office. (2 CFR 200.501(d)).

IV. Application and Submission Information

1. *Application Submission Instructions:* For information on how to submit an application please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *https://www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of *projects* that may be proposed in applications for funds under the CSP State Entities grant competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information.

For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* In accordance with section 4303(c) of the ESEA, a *State entity* receiving a grant under this program shall: (a) Use not less than 90 percent of the grant funds to award subgrants to *eligible applicants,* in accordance with the quality charter school program described in the *State entity's* application pursuant to section 4303(f), for activities related to opening and preparing for the operation of new *charter schools* and *replicated high-quality charter schools,* or *expanding high-quality charter schools*; (b) reserve not less than 7 percent of the grant funds to provide technical assistance to *eligible applicants* and *authorized public chartering agencies* in carrying out such activities, and to work with *authorized public chartering agencies* in the *State* to improve authorizing quality, including developing capacity for, and conducting, fiscal oversight and auditing of *charter schools*; and (c) reserve not more than 3 percent of the grant funds for administrative costs, which may include technical assistance. A *State entity* may use a grant received under this program to provide technical assistance and to work with *authorized public chartering agencies* to improve authorizing quality under section 4303(b)(2) of the ESEA directly or through grants, contracts, or cooperative agreements.

Limitation on Grants and Subgrants: Under section 4303(d) of the ESEA, a grant awarded by the Secretary to a *State entity* under this competition shall be for a period of not more than five years.

A subgrant awarded by a *State entity* under this program shall be for a period of not more than five years, of which an *eligible applicant* may use not more than 18 months for planning and program design. An *eligible applicant* may not receive more than one subgrant under this program for each individual *charter school* for a five-year period, unless the *eligible applicant* demonstrates to the *State entity* that such individual *charter school* has at least three years of improved educational results for students enrolled in such *charter school,* with respect to the elements described in section 4310(8)(A) and (D) of the ESEA.[4]

Other CSP Grants: A *charter school* that previously received funds for opening or preparing to operate a new charter school, or *replicating* or *expanding a high-quality charter school,* under the CSP Grants to State Entities program (CFDA number 84.282A), the CSP Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO) program (CFDA number 84.282M), or the CSP Grants to Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-quality Charter Schools (Developer) program (CFDA numbers 84.282B and 84.282E) may not use funds under this program to carry out the same or substantially similar activities. However, such *charter school* may be eligible to receive funds under this competition to *expand* the *charter school* beyond the existing grade levels or student count.

Likewise, a *charter school* that previously was awarded a subgrant from a *State entity* under this program (or the former CSP Grants for SEAs program) is ineligible to receive funds to carry out the same activities under the CMO program (CFDA number 84.282M) or Developer program (CFDA numbers 84.282B and 84.282E), including for opening or preparing to operate a new charter school, *replication,* or *expansion.*

Uses of Subgrant Funds: Under section 4303(b) of the ESEA, *State entities* awarded grants under this competition shall award subgrants to *eligible applicants* to enable such *eligible applicants* to—

(a) Open and prepare for the operation of new *charter schools*;

(b) Open and prepare for the operation of *replicated high-quality charter schools*; or

(c) *Expand high-quality charter schools.*

Under section 4303(h) of the ESEA, an *eligible applicant* receiving a subgrant under this program shall use such funds to support activities related to opening and preparing for the operation of new *charter schools* or *replicating* or *expanding high-quality charter schools,* which shall include one or more of the following:

(a) Preparing teachers, school leaders, and specialized instructional support personnel, including through paying costs associated with—

(i) Providing professional development; and

(ii) Hiring and compensating, during the *eligible applicant's* planning period specified in the application for subgrant funds, one or more of the following:

(A) Teachers.

(B) School leaders.

(C) Specialized instructional support personnel.

(b) Acquiring supplies, training, equipment (including technology), and educational materials (including developing and acquiring instructional materials).

(c) Carrying out necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction).

(d) Providing one-time, startup costs associated with providing transportation to students to and from the *charter school.*

(e) Carrying out community engagement activities, which may include paying the cost of student and staff recruitment.

(f) Providing for other appropriate, non-sustained costs related to opening, *replicating,* or *expanding high-quality charter schools* when such costs cannot be met from other sources.

Diversity of Projects: Per section 4303(d)(4) of the ESEA, each *State entity* awarding subgrants under this competition shall award subgrants in a manner that, to the extent practicable and applicable, ensures that such subgrants—

(a) Are distributed throughout different areas, including urban, suburban, and rural areas; and

(b) Will assist *charter schools* representing a variety of educational approaches.

Award Basis: In determining whether to approve a grant award and the amount of such award, the Department will consider, among other things, the applicant's performance and use of funds under a previous or existing award under any Department program (34 CFR 75.217(d)(3)(ii) and 233(b)). In assessing the applicant's performance and use of funds under a previous or existing award, the Secretary will consider, among other things, the outcomes the applicant has achieved and the results of any Departmental grant monitoring, including the applicant's progress in remedying any deficiencies identified in such monitoring.

We reference additional regulations outlining funding restrictions in the

[4] Section 4303(e)(2) of the ESEA prescribes the circumstances under which an *eligible applicant* may be eligible to apply to an *SE* for a second subgrant for an individual *charter school* for a five-year period. The *eligible applicant* still would have to meet all program requirements, including the requirements for *replicating* or *expanding* a *high-quality charter school.*

Applicable Regulations section of this notice.

5. *Recommended Page Limit and English Language Requirement:* The application narrative (Part III of the application) is where you, the applicant, address the priorities, selection criteria, and application requirements that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 60 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Applications must be in English, and peer reviewers will only consider supporting documents submitted with the application that are in English.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Pre-Application Webinar Information:* The Department will hold a pre-application meeting via webinar for prospective applicants on January 30, 2020, 2:00 p.m., Eastern Time. There is no registration fee for attending this meeting.

For further information about the pre-application meeting, contact Ashley Gardner, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E113, Washington, DC 20202–5970. Telephone: (202) 453–6787. Email: *charterschools@ed.gov.*

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from section 4303(g)(1) of the ESEA (20 U.S.C. 7221b(g)(1)) and 34 CFR 75.210. The maximum possible total score an application can receive for addressing the criteria is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion.

(a) *Quality of the Project Design (up to 35 points).* The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers:

(1) The extent to which the proposed project *demonstrates a rationale* (34 CFR 75.210(c)(2)(xxix)) (up to 15 points);

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (34 CFR 75.210(h)(2)(iv))(up to 15 points); and

(3) The *ambitiousness* of the *State entity's* objectives for the quality charter school program carried out under the CSP State Entities program (section 4303(g)(1)(B) of the ESEA (20 U.S.C. 7221b(g)(1)(B))) (up to 5 points).

(b) *Quality of Eligible Subgrant Applicants (up to 15 points):* The likelihood that the *eligible applicants* receiving subgrants under the program will meet the State entity's objectives and improve educational results for students (section 4303(g)(1)(C) (20 U.S.C. 7221b(g)(1)(C))).

(c) *State Plan (up to 35 points):* The *State entity's* plan to—

(1) Adequately monitor the *eligible applicants* receiving subgrants under the *State entity's program* (section 4303(g)(1)(D)(i) (20 U.S.C. 7221b(g)(1)(D)(i))) (up to 10 points);

(2) Work with the *authorized public chartering agencies* involved to avoid duplication of work for the *charter schools* and *authorized public chartering agencies* (section 4303(g)(1)(D)(ii) (20 U.S.C. 7221b(g)(1)(D)(ii))) (up to 5 points);

(3) Provide technical assistance and support for—

(i) The *eligible applicants* receiving subgrants under the *State entity's* program; and

(ii) Quality authorizing efforts in the *State* (section 4303(g)(1)(D)(iii) of ESEA (20 U.S.C. 7221b(g)(1)(D)(iii))) (up to 10 points);

(4) The *State entity's* plan to solicit and consider input from *parents* and other members of the community on the implementation and operation of *charter schools* in the *State* (section 4303(g)(1)(E) of ESEA (20 U.S.C. 7221b(g)(1)(E))) (up to 5 points); and

(5) The degree of flexibility afforded by the *State's* charter school law and how the *State entity* will work to maximize the flexibility provided to *charter schools* under such law (section 4303(g)(1)(A) of ESEA (20 U.S.C. 7221b(g)(1)(A))) (up to 5 points).

(d) *Quality of the Management Plan (up to 15 points).* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (34 CFR 75.210(g)(2)(i)) (up to 10 points);

(2) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project (34 CFR 75.210(g)(2)(ii)) (up to 3 points); and

(3) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (34 CFR 75.210(g)(2)(iv)) (up to 2 points).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this

competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit annual performance reports that provide the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) In accordance with section 4303(i) of the ESEA, each *State entity* receiving a grant under this section must submit to the Secretary, at the end of the third year of the five-year grant period (or at the end of the second year if the grant period is less than five years), and at the end of such grant period, a report that includes the following:

(1) The number of students served by each subgrant awarded under this section and, if applicable, the number of new students served during each year of the period of the subgrant.

(2) A description of how the *State entity* met the objectives of the quality charter school program described in the *State entity's* application, including—

(A) How the *State entity* met the objective of sharing best and promising practices as outlined in section 4303(f)(1)(A)(ix) of the ESEA in areas such as instruction, professional development, curricula development, and operations between *charter schools* and other public schools; and

(B) If known, the extent to which such practices were adopted and implemented by such other public schools.

(3) The number and amount of subgrants awarded under this program to carry out activities described in section 4303(b)(1)(A) through (C) of the ESEA.

(4) A description of—

(A) How the *State entity* complied with, and ensured that *eligible applicants* complied with, the assurances included in the *State entity's* application; and

(B) How the *State entity* worked with *authorized public chartering agencies,* and how the agencies worked with the management company or leadership of the schools that received subgrant funds under this program, if applicable.

(d) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:*

(a) The Secretary has established two performance indicators to measure annual progress towards achieving the purposes of the program, which are discussed elsewhere in this notice. The performance indicators are: (1) The number of *charter schools* in operation around the Nation; and (2) the percentage of fourth- and eighth-grade *charter school* students who are achieving at or above the proficient level on State assessments in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: The Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific *performance measures* and *performance targets* consistent with the objectives of the proposed project. Applications must provide the following information as directed under 34 CFR 75.110(b) and (c).

(1) *Performance measures.* How each proposed *performance measure* would accurately measure the performance of the project and how the proposed *performance measure* would be consistent with the *performance measures* established for the program funding the competition.

(2) *Baseline data.* (i) Why each proposed *baseline* is valid; or (ii) if the applicant has determined that there are no established *baseline* data for a particular *performance measure,* an explanation of why there is no established *baseline* and of how and

when, during the project period, the applicant would establish a valid *baseline* for the *performance measure.*

(3) *Performance targets.* Why each proposed *performance target* is *ambitious* yet achievable compared to the *baseline* for the *performance measure* and when, during the project period, the applicant would meet the *performance target(s).*

(4) *Data collection and reporting.* (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

All grantees must submit an annual performance report with information that is responsive to these *performance measures.*

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the *performance targets* in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

7. *Project Director's Meeting:* Applicants approved for funding under this competition must attend a two-day meeting for project directors at a location to be determined in the continental United States during each year of the project. Applicants may include the cost of attending this meeting in their proposed budgets as allowable administrative costs.

VII. Other Information

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

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

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

Dated: January 22, 2020.

Frank Brogan,

Assistant Deputy Secretary for Elementary and Secondary Education.

[FR Doc. 2020–01324 Filed 1–24–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0144]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Assistance General Provisions—Subpart K—Cash Management

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 26, 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–0144. 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: Student Assistance General Provisions—Subpart K—Cash Management.

OMB Control Number: 1845–0038.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments; Individuals or Households.

Total Estimated Number of Annual Responses: 22,225,738.

Total Estimated Number of Annual Burden Hours: 1,011,358.

Abstract: This request is for an extension to the current information collection 1845–0038 that is expiring. This collection pertains to the recordkeeping requirements contained in the regulations related to the administration of the Subpart K—Cash Management section of the Student Assistance General Provisions. The regulatory language has not changed. These program regulations are designed to provide benefits to Title IV, HEA applicants, and protect the taxpayers' interest. The information collection requirements in these regulations are necessary to provide students with required information about their eligibility to receive funding under the federal student financial aid programs and to prevent fraud and abuse of program funds by allowing students to reduce or reject aid being offered as well as being made aware of when such funding can be expected to be available.

Dated: January 22, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–01328 Filed 1–24–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0143]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Lender's Request for Payment of Interest and Special Allowance—LaRS

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 26, 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–0143. 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: Lender's Request for Payment of Interest and Special Allowance—LaRS.

OMB Control Number: 1845–0013.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 2,175.

Total Estimated Number of Annual Burden Hours: 4,241.

Abstract: The Department of Education (the Department) is submitting the Lender's Interest and Special Allowance Request & Report, ED Form 799 for approval. The information collected on the ED Form 799 is needed to pay interest and special allowance to holders of Federal Family Education Loans, for internal financial reporting, budgetary projections, and for audit and lender reviews by the Department, Servicers, External Auditors and General Accounting Office (GAO). The legal authority for collecting this information is Title IV, Part B of the Higher Education Act of 1965, as amended by the Higher Education Reconciliation Act of 2005 (''the HERA''), (Pub. L. 109–171). The Department is requesting the continual approval for regulatory sections 682.304 and 682.414.

Dated: January 22, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–01327 Filed 1–24–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0017]

Agency Information Collection Activities; Comment Request; William D. Ford Federal Direct Loan Program—150% Limitation

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before March 27, 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–0017. 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: William D. Ford Federal Direct Loan Program—150% Limitation.

OMB Control Number: 1845–0116.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals or Households; Private Sector.

Total Estimated Number of Annual Responses: 7,102,732.

Total Estimated Number of Annual Burden Hours: 240,824.

Abstract: On July 6, 2012, the Moving Ahead for Progress in the 21st Century Act (MAP–21) was signed into law. MAP–21 included two changes to the William D. Ford Federal Direct Loan (Direct Loan) Program. Specifically, MAP–21 amended section 455 of the Higher Education Act of 1965, as amended (HEA) to extend the 3.4 percent fixed interest rate that applies to Direct Subsidized Loans made to undergraduate students to loans for which the first disbursement is made before July 1, 2013. Second, the law placed a limit on Direct Subsidized Loan eligibility for new borrowers on or after July 1, 2013. Specifically, a new borrower on or after July 1, 2013 is no longer eligible to receive additional Direct Subsidized Loans if the period during which the borrower has received such loans exceeds 150 percent of the published length of the borrower's educational program. Additionally, the borrower becomes responsible for accruing interest on any Direct Subsidized Loan made to the borrower on or after July 1, 2013 if he or she is enrolled after reaching this 150 percent limit. The Department of Education (the Department) is requesting an extension of the current information collection.

Dated: January 21, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–01236 Filed 1–24–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, February 26, 2020; 1:00 p.m.–5:15 p.m.

ADDRESSES: Ohkay Conference Center, 68 New Mexico 291, San Juan, New Mexico 87566.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *Menice.Santistevan@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Call to Order
- Welcome and Introductions
- Approval of Agenda
- Approval of November 13, 2019 Meeting Minutes
- Old Business
  - Report from NNMCAB Chair
  - Other Items
- New Business
  - Consideration and Action on Draft Recommendation 2020–01, Requesting NNMCAB Input on EM Los Alamos Field Office Annual Budget
  - Other Items
- Presentation on Installing Groundwater Wells at the Los Alamos National Laboratory
- Break-out Session with Subject Matter Experts
- Break
- Discussion Regarding Standing Committees and Election of Committee Officers
- Public Comment Period
- Update from New Mexico Environment Department
- Update from EM Los Alamos Field Office
- Update from NNMCAB Deputy Designated Federal Officer and Executive Director
- Wrap-Up Comments from NNMCAB Members
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the

agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or telephone number listed above. Minutes and other Board documents are on the internet at: *https://www.energy.gov/em/nnmcab/meeting-materials.*

Signed in Washington, DC, on January 21, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–01220 Filed 1–24–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Methane Hydrate Advisory Committee

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Methane Hydrate Advisory Committee. The Federal Advisory Committee Act (FACA) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, February 26, 2020, 11:30 a.m. to 12:00 p.m. (CST)—Registration, 12:00 p.m. to 6:00 p.m. (CST)—Meeting.

ADDRESSES: Hotel Galvez, Navigation Room, 2024 Seawall Blvd., Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Gabby Intihar, U.S. Department of Energy, Office of Oil and Natural Gas, 1000 Independence Avenue SW, Washington, DC 20585. *Phone:* (202) 586–2092; email: *gabby.intihar@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Methane Hydrate Advisory Committee is to provide advice on potential applications of gas hydrates to the Secretary of Energy, and assist in developing recommendations and priorities for the Department of Energy's Gas Hydrates Research and Development Program.

Tentative Agenda: The agenda will include: Welcome and Introduction by the Designated Federal Officer; Committee Business including election of Committee Chair and Vice-Chair; Report of Committee Representatives Meeting with the Assistant Secretary of Fossil Energy; Update on Gas Hydrates Major Projects; Advisory Committee Discussion; and Public Comments, if any.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chair of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Gabby Intihar at the phone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the three-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the following website: *https://energy.gov/fe/services/advisory-committees/methane-hydrate-advisory-committee.*

Signed in Washington, DC, on January 9, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–01219 Filed 1–24–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD19–19–000]

Grid-Enhancing Technologies; Notice Inviting Post-Workshop Comments

On November 5 and 6, 2019, Federal Energy Regulatory Commission (Commission) staff convened a workshop to discuss grid-enhancing technologies (GETs) that increase the capacity, efficiency, or reliability of transmission facilities.

All interested persons are invited to file post-workshop comments on any or all of the questions listed in the attachment to this Notice. Commenters are encouraged to organize responses using the numbering and order in the attached questions. Commenters are also invited to reference material previously filed in this docket, including workshop transcripts and submitted opening remarks, but are encouraged to avoid repetition or replication of previous material. To the extent your response addresses issues raised in other current proceedings before the Commission, such as the Inquiry Regarding the Commission's Electric Transmission Incentives (Docket No. PL19–3–000) or Managing Transmission Line Ratings (Docket No. AD19–15–000), please provide references to pertinent comments in those proceedings in your response. Comments must be submitted on or before 21 days from the date of this Notice.

For more information about this Notice, please contact:

Samin Peirovi (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8080, *Samin.Peirovi@ferc.gov*

Meghan O'Brien (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6137, *Meghan.O'Brien@ferc.gov*

Dated: January 17, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–01183 Filed 1–24–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0329; FRL–10004–74–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Rubber Tire Manufacturing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Rubber Tire Manufacturing (EPA ICR Number 1158.13, OMB Control Number 2060–0156) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2020. Public comments were previously requested via the **Federal Register** on May 6, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection

of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 26, 2020.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0329, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Abstract: The New Source Performance Standards (NSPS) for Rubber Tire Manufacturing (40 CFR part 60, subpart BBB) apply to existing and new facilities with the following processes: Undertread cementing operations, sidewall cementing operations, tread end cementing operations, bead cementing operations, green tire spraying operations, Michelin-A operations, Michelin-B operations, and Michelin-C automatic operations. Affected facilities include those that commenced construction, modification, or reconstruction after January 20, 1983. This information is being collected to assure compliance with 40 CFR part 60, subpart BBB.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Owners or operators of the rubber tire manufacturing industry.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart BBB).

Estimated number of respondents: 41 (total).

Frequency of response: Initially, occasionally, semiannually, and annually.

Total estimated burden: 17,700 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,070,000 (per year), includes $16,400 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–01295 Filed 1–24–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA–HQ–ORD–2014–0859; FRL–10004–64–ORD]

Integrated Science Assessment for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a final document titled, ''Integrated Science Assessment for Particulate Matter'' (EPA/600/R–19/188). The document was prepared by the Center for Public Health and Environmental Assessment (CPHEA) within EPA's Office of Research and Development (ORD) as part of the review of the primary (health-based) and secondary (welfare-based) National Ambient Air Quality Standards (NAAQS) for particulate matter (PM) and represents an update of the 2009 Integrated Science Assessment (ISA) for PM. The welfare-based effects evaluated consist of non-ecological effects, specifically visibility impairment, climate effects, and effects on materials. The ISA provides the scientific basis for EPA's decisions, in conjunction with additional technical and policy assessments, on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. EPA is currently developing a separate ISA to support the secondary NAAQS review for ecological effects for oxides of nitrogen, oxides of sulfur, and particulate matter.

DATES: The document is available on or about January 6, 2020.

ADDRESSES: The ''Integrated Science Assessment for Particulate Matter (Final)'' will be available primarily via the internet on EPA's Integrated Science Assessment Particulate Matter page at *https://www.epa.gov/isa/integrated-science-assessment-isa-particulate-matter* or the public docket at *http://www.regulations.gov,* Docket ID: EPA–HQ–ORD–2014–0859. A limited number of CD–ROM copies will be available. Contact Ms. Marieka Boyd by phone: 919–541–0031; fax: 919–541–5078; or email: *boyd.marieka@epa.gov* to request a CD–ROM, and please provide your name, your mailing address, and the document title, ''Integrated Science Assessment for Particulate Matter'' to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Mr. Jason Sacks, CPHEA; phone: 919–541–9729; fax: 919–541–1818; or email: *sacks.jason@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants which, among other things, ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air . . .'' Under

section 109 of the Act, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires review every five years and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also required to review and, if appropriate, revise the NAAQS, based on the revised air quality criteria (for more information on the NAAQS review process, see *http://www.epa.gov/ttn/naaqs/review.html*).

Particulate matter is one of six criteria pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an ISA (formerly called an Air Quality Criteria Document). The ISA provides the scientific basis for EPA's decisions, in conjunction with additional technical and policy assessments, on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee whose review and advisory functions are mandated by Section 109(d)(2) of the Clean Air Act, is charged (among other things) with independent scientific review of the EPA's air quality criteria.

On December 3, 2014 (79 FR 71764), EPA formally initiated its current review of the air quality criteria for the health and welfare effects of particulate matter and the primary (health-based) and secondary (welfare-based) NAAQS, requesting the submission of recent scientific information on specified topics. EPA conducted a workshop from February 9 to 11, 2015 to gather input from invited scientific experts, both internal and external to EPA, as well as from the public, regarding key science and policy issues relevant to the review of the primary and secondary NAAQS (79 FR 71764). These science and policy issues were incorporated into EPA's ''Draft Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter,'' which was available for public comment (81 FR 22977) and discussion by the CASAC via publicly accessible teleconference consultation (81 FR 13362). The ''Final Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter'' was released December 6, 2016 (81 FR 87933).

Subsequent webinar workshops were held on June 9, 13, 20, and 22, 2016, to discuss initial draft materials prepared in the development of the particulate matter ISA with invited EPA and external scientific experts (81 FR 29262). The input received during these webinar workshops aided in the development of the materials presented in the ''Integrated Science Assessment for Particulate Matter (External Review Draft), which was released on October 23, 2018'' (83 FR 53471), and is available at: *https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=341593.* The CASAC met at a public meeting on December 12–13, 2018 (83 FR 55529), to review the draft PM ISA. A public teleconference was then held on March 28, 2019 for CASAC to review their draft letter to the Administrator on the draft ISA. This meeting was announced in the **Federal Register** on March 8, 2019 (84 FR 8523). Subsequently, on April 11, 2019, the CASAC provided a letter of their review to the Administrator of the EPA, available at: *https://yosemite.epa.gov/sab/sabproduct.nsf/264cb1227d55e02c85257402007446a4/6CBCBBC3025E13B4852583D90047B352/$File/EPA-CASAC-19-002+.pdf.* The letter from the CASAC, as well as public comments received on the draft PM ISA, can be found in Docket ID No. EPA–HQ–ORD–2014–0859.

The Administrator responded to the CASAC's letter on the External Review Draft of the PM ISA on July 25, 2019, and is available at: *https://yosemite.epa.gov/sab/sabproduct.nsf/264cb1227d55e02c85257402007446a4/6CBCBBC3025E13B4852583D90047B352/$File/EPA-CASAC-19-002_Response.pdf.* Administrator Wheeler's letter to the CASAC indicated the Agency will ''incorporate the CASAC's comments and recommendations, to the extent possible, and create a final PM ISA so that it may be available to inform a proposed decision on any necessary revisions of the NAAQS in early 2020.'' The U.S. EPA focused on addressing comments presented in the main body of the CASAC letter (*i.e.,* the cover letter and consensus responses to charge questions), and to the extent possible, in the statutorily provided timeframe, addressed individual CASAC member comments as well as public comments on the draft PM ISA. The consensus CASAC comments on the draft PM Policy Assessment (December 16, 2019) stated ''. . . the Draft PM ISA, does not provide a comprehensive, systematic review of relevant scientific literature; inadequate evidence and rationale for altered causal determinations; and a need for clearer discussion of causality and causal biological mechanisms and pathways.'' To address these comments in the Final PM ISA, the EPA: (1) Added text to the Preface and developed a new Appendix to more clearly articulate the process of ISA development; (2) revised the causality determination for long-term ultrafine particle (UFP) exposure and nervous system effects to *suggestive of, but not sufficient to infer, a causal relationship;* and (3) added additional text to the Preface of the PM ISA as well as text in the health effects chapters to clarify the discussion of biological plausibility and its role in forming causality determinations. Additionally, the U.S. EPA focused on addressing those comments that contributed to improving clarity, could be addressed in the near-term, and identified errors in the draft PM ISA. Lastly, Administrator Wheeler noted, ''for those comments and recommendations that are more significant or cross-cutting and which were not fully addressed, the Agency will develop a plan to incorporate these changes into future PM ISAs as well as ISAs for other criteria pollutant reviews.''

Dated: December 31, 2019.

Wayne E. Cascio,

Director, Center for Public Health and Environmental Assessment.

[FR Doc. 2020–01223 Filed 1–24–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10004–48–OA]

Notification of a Public Meeting of the Chartered Clean Air Scientific Advisory Committee (CASAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the Chartered Clean Air Scientific Advisory Committee (CASAC) to discuss their Draft Report on EPA's *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (External Review Draft—September 2019)* and their Draft Report on EPA's *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards (External Review Draft).*

DATES: The public meeting will be held on Tuesday, February 11, 2020, from 12:00 p.m. to 4:00 p.m. (Eastern Time) and Wednesday, February 12, 2020, from 12:00 p.m. to 4:00 p.m. (Eastern Time).

ADDRESSES: The public meeting will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain information concerning these public meetings may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), at (202) 564–2050 or at *yeow.aaron@epa.gov.* General information about the CASAC, as well as any updates concerning the meetings announced in this notice, may be found on the CASAC website at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. The CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and the National Ambient Air Quality Standards (NAAQS). The CASAC shall also: Advise the EPA Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQS; describe the research efforts necessary to provide the required information; advise the EPA Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and advise the EPA Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such NAAQS. The CAA requires that the Agency, at five-year intervals, review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including ozone. EPA is currently reviewing the NAAQS for ozone.

The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The Chartered CASAC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the Chartered CASAC will hold a public meeting to discuss their Draft Report on EPA's *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (External Review Draft—September 2019)* and their Draft Report on EPA's *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards (External Review Draft).*

Technical Contacts: Any technical questions concerning EPA's *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (External Review Draft—September 2019)* should be directed to Dr. Tom Luben (*luben.tom@epa.gov*) and Dr. Meredith Lassiter (*lassiter.meredith@epa.gov*). Any technical questions concerning EPA's *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards (External Review Draft)* should be directed to Dr. Deirdre Murphy (*murphy.deirde@epa.gov*).

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/casac/.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments on the topic of this advisory activity, including the charge to the CASAC and the EPA review documents, and/or the group conducting the activity, for the CASAC to consider as it develops advice for EPA. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instructions below to submit comments.

Oral Statements: Individuals or groups requesting an oral presentation during the public meeting will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via email) at the contact information noted above by February 4, 2020, to be placed on the list of public speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by CASAC members, statements should be supplied to the DFO (preferably via email) at the contact information noted above by February 4, 2020. It is the SAB Staff Office general policy to post written comments on the web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or *yeow.aaron@epa.gov.* To request accommodation of a disability, please contact Mr. Yeow preferably at least ten days prior to each meeting to give EPA as much time as possible to process your request.

Dated: January 10, 2020.

Khanna Johnston,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2020–01222 Filed 1–24–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0301; FRL–10004–53–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Beryllium (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Beryllium (EPA ICR Number 0193.13, OMB Control Number 2060–0092), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2020. Public comments were previously requested via the **Federal Register** on May 6, 2019, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted either on or before February 26, 2020.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ–OECA–2013–0301, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Beryllium (40 CFR part 61, subpart C) apply to all extraction plants, ceramic plants, foundries, incinerators, and propellant plants which process beryllium ore, beryllium, beryllium oxides, beryllium alloys, or beryllium-containing waste. All sources known to have either caused, or to have the potential to cause, dangerous levels of beryllium in the ambient air are covered by this standard. This information is being collected to assure compliance with 40 CFR part 61, subpart C. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: Facilities processing beryllium and its derivatives.

Respondent's obligation to respond: Mandatory (40 CFR part 61, subpart C).

Estimated number of respondents: 33 (total).

Frequency of response: Initially, occasionally, and monthly.

Total estimated burden: 2,670 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $344,000 (per year), which includes $35,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is no change in the labor hours or cost in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–01297 Filed 1–24–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0499; FRL–10003–92]

Carbon Tetrachloride; Draft Toxic Substances Control Act (TSCA) Risk Evaluation and TSCA Science Advisory Committee on Chemicals (SACC) Meetings; Notice of Availability, Public Meetings, and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of and soliciting public comment on the draft Toxic Substances Control Act (TSCA) risk evaluation of carbon tetrachloride. EPA is also submitting the same document to the TSCA Science Advisory Committee on Chemicals (SACC) for peer review and is announcing that there will be an in-person public meeting of the TSCA SACC to consider and review the draft risk evaluation. Preceding the in-person meeting, there will be a preparatory virtual public meeting for the panel to consider the scope and clarity of the draft charge questions for the peer review. The purpose of conducting risk evaluations under TSCA is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation.

DATES: *Virtual Meeting:* The preparatory virtual meeting will be held on February 4, 2020, from 1:00 p.m. to approximately 4:00 p.m. (EST). You must register online on or before February 4, 2020 to receive the webcast meeting link and audio teleconference information. Submit your comments for the preparatory virtual meeting, or request time to present oral comments, on or before noon, January 31, 2020.

In-Person Meetings: The in-person meeting will be held on February 25–26, 2020, from 9:00 a.m. to approximately 5:30 p.m. (EST) (final times for each day will be provided in the Meeting Agenda that will be posted). Any comments submitted on the draft risk evaluation on or before February 19, 2020, will be provided to the TSCA SACC committee for their consideration before the meeting. Comments received after February 19, 2020 and prior to the oral public comment period during the meeting will be available to the SACC for their consideration during the meeting. Please submit requests to present oral comments during the in-person meeting on or before February 19, 2020, to be included on the meeting agenda. All comments received by the end of the comment period will be considered by EPA.

Comments: All comments on the draft risk evaluation must be received on or before March 27, 2020. For additional instructions, see Unit III. of the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: *Virtual Meeting:* Please visit *http://www.epa.gov/tsca-peer-review* to register.

In-Person Meeting: The location of the in-person meeting will be at the Holiday Inn Rosslyn, 1900 N Fort Myer Drive, Arlington, Virginia 22209.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0499, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online

instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPPT Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

Requests to present oral comments and requests for special accommodations. Submit requests for special accommodations, or requests to present oral comments during the virtual meeting and/or in-person peer review meeting to the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT** by the deadline identified in the **DATES** section.

FOR FURTHER INFORMATION CONTACT:

TSCA SACC: Tamue Gibson, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–7642; email address: *gibson.tamue@epa.gov.*

Draft Risk Evaluation: Dr. Stan Barone, Office of Pollution Prevention and Toxics (7403M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1169; email address: *barone.stan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may be of interest to persons who are or may be required to conduct testing and those interested in risk evaluations of chemical substances under TSCA, 15 U.S.C. 2601 *et seq.* Since other entities may also be interested in this draft risk evaluation, the EPA has not attempted to describe all the specific entities that may be affected by this action.

B. What is EPA's authority for taking this action?

TSCA section 6, 15 U.S.C. 2605, requires EPA to conduct risk evaluations to ''determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.'' 15 U.S.C. 2605(b)(4)(A). TSCA sections 6(b)(4)(A) through (H) enumerate the deadlines and minimum requirements applicable to this process, including provisions that provide instruction on chemical substances that must undergo evaluation, the minimum components of a TSCA risk evaluation, and the timelines for public comment and completion of the risk evaluation. TSCA also requires that EPA operate in a manner that is consistent with the best available science, make decisions based on the weight of the scientific evidence and consider reasonably available information. 15 U.S.C. 2625(h), (i), and (k).

The statute identifies the minimum components for all chemical substance risk evaluations. For each risk evaluation, EPA must publish a document that outlines the scope of the risk evaluation to be conducted, which includes the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations that EPA expects to consider. 15 U.S.C. 2605(b)(4)(D). The statute further provides that each risk evaluation must also: (1) Integrate and assess available information on hazards and exposures for the conditions of use of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on relevant potentially exposed or susceptible subpopulations; (2) describe whether aggregate or sentinel exposures were considered and the basis for that consideration; (3) take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use; and (4) describe the weight of the scientific evidence for the identified hazards and exposures. 15 U.S.C. 2605(b)(4)(F)(i)–(ii) and (iv)–(v). Each risk evaluation must not consider costs or other nonrisk factors. 15 U.S.C. 2605(b)(4)(F)(iii).

The statute requires that the risk evaluation process last no longer than three years, with a possible additional six-month extension. 15 U.S.C. 2605(b)(4)(G). The statute also requires that the EPA allow for no less than a 30-day public comment period on the draft risk evaluation, prior to publishing a final risk evaluation. 15 U.S.C. 2605(b)(4)(H).

C. What action is EPA taking?

EPA is announcing the availability of and seeking public comment on the draft risk evaluation of the chemical substance identified in Unit II. EPA is seeking public comment on all aspects of the draft risk evaluation, including any preliminary conclusions, findings, and determinations, and the submission of any additional information that might be relevant to the draft risk evaluation, including the science underlying the risk evaluation and the outcome of the systematic review associated with the chemical substance. This 60-day comment period on the draft risk evaluation satisfies TSCA section 6(b)(4)(H), which requires EPA to ''provide no less than 30 days public notice and an opportunity for comment on a draft risk evaluation prior to publishing a final risk evaluation'' and 40 CFR 702.49(a), which states that ''EPA will publish a draft risk evaluation in the **Federal Register**, open a docket to facilitate receipt of public comment, and provide no less than a 60-day comment period, during which time the public may submit comment on EPA's draft risk evaluation.'' In addition to any new comments on the draft risk evaluation, the public should resubmit or clearly identify any previously filed comments, modified as appropriate, that are relevant to the draft risk evaluation and that the submitter feels have not been addressed. EPA does not intend to respond to comments submitted prior to the release of the draft risk evaluation unless they are clearly identified in comments on the draft risk evaluation.

EPA is also submitting the draft risk evaluation and associated supported documents to the TSCA SACC for peer review and announcing the meeting for the peer review panel. All comments submitted to the docket on the draft risk evaluation by the deadline identified in the **DATES** section will be provided for consideration to the TSCA SACC peer review panel, which will have the opportunity to consider the comments during its discussions.

D. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed CBI. In addition to one complete version of the comment that

includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Draft TSCA Risk Evaluation

A. What is EPA's risk evaluation process for existing chemicals under TSCA?

The risk evaluation process is the second step in EPA's existing chemical process under TSCA, following prioritization and before risk management. As this chemical is part of the first ten chemical substances undergoing risk evaluation, the chemical substance was not required to go through prioritization (81 FR 91927, December 19, 2016) (FRL–9956–47). The purpose of conducting risk evaluations is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation. As part of this process, EPA must evaluate both hazard and exposure, not consider costs or other nonrisk factors, use reasonably available information and approaches in a manner that is consistent with the requirements in TSCA for the use of the best available science, and ensure decisions are based on the weight-of-scientific-evidence.

The specific risk evaluation process that EPA has established by rule to implement the statutory process is set out in 40 CFR part 702 and summarized on EPA's website at *http://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluations-existing-chemicals-under-tsca.* As explained in the preamble to EPA's final rule on procedures for risk evaluation (82 FR 33726, July 20, 2017) (FRL–9964–38), the specific regulatory process set out in 40 CFR part 702, subpart B will be followed for the first ten chemical substances undergoing risk evaluation to the maximum extent practicable.

B. What is carbon tetrachloride?

Carbon tetrachloride is a solvent used primarily as a feedstock in the production of hydrochlorofluorocarbons, hydrofluorocarbons and hydrofluoroolefins and as a process agent in the manufacturing of other chlorinated compounds and petrochemicals-derived and agricultural products. The Montreal Protocol and Title VI of the Clean Air Act Amendments of 1990 led to a phase-out of carbon tetrachloride production in the United States for most non-feedstock domestic uses in 1996. The Consumer Product Safety Commission banned the use of carbon tetrachloride in consumer products (excluding unavoidable residues not exceeding 10 parts per million atmospheric concentration) in 1970. Information from the 2016 Chemical Data Reporting for carbon tetrachloride indicates the reported yearly production volume was 117 to 143 million pounds (manufacture and import) between 2012 and 2015.

Information about the problem formulation and scope phases of the TSCA risk evaluation for this chemical is available at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-carbon-tetrachloride.*

III. TSCA SACC

A. What is the purpose of the TSCA SACC?

The TSCA SACC was established by EPA in 2016 and operates in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2 *et seq.* The TSCA SACC provides expert independent scientific advice and consultation to the EPA on the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures and approaches for chemicals regulated under TSCA.

The TSCA SACC is comprised of experts in: Toxicology; human health and environmental risk assessment; exposure assessment; and related sciences (*e.g.,* synthetic biology, pharmacology, biotechnology, nanotechnology, biochemistry, biostatistics, physiologically based pharmacokinetic modelling (PBPK) modeling, computational toxicology, epidemiology, environmental fate, and environmental engineering and sustainability). When needed, the committee will be assisted in their reviews by ad hoc participants with specific expertise in the topics under consideration.

B. How can I access the TSCA SACC documents?

EPA's background documents, related supporting materials, and draft charge questions to the TSCA SACC are available on the TSCA SACC website and in the docket established for the specific chemical substance. In addition, EPA will provide additional background documents (*e.g.,* TSCA SACC members participating in this meeting and the meeting agenda) as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available, in the docket at *http://www.regulations.gov* and the TSCA SACC website at *http://www.epa.gov/tsca-peer-review.*

After the public meeting, the TSCA SACC will prepare meeting minutes summarizing its recommendations to the EPA. The meeting minutes will be posted on the TSCA SACC website and in the relevant docket.

C. What do I need to know about the TSCA SACC public meetings?

The focus of the public meetings is to peer review EPA's draft risk evaluation. After the peer review process, EPA will consider peer reviewer comments and recommendations and public comments, in finalizing the risk evaluation. The draft risk evaluation contains: Discussion of chemistry and physical-chemical properties; characterization of conditions of use; environmental fate and transport assessment; human health exposures; environmental hazard assessment; risk characterization; risk determination; and a detailed description of the systematic review process developed by the Office of Pollution Prevention and Toxics to search, screen, and evaluate scientific literature for use in the risk evaluation process.

D. How do I participate in the public meetings?

You may participate in the public meetings by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify the corresponding docket ID number in the subject line on the first page of your request.

1. Preparatory virtual meeting. The preparatory virtual meeting will be conducted via webcast and telephone. You may participate in the preparatory virtual meeting by registering to join the webcast. You may also submit written or oral comments.

i. *Registration.* You must register to participate in the preparatory virtual meeting. To participate by listening or making a comment during this meeting, please go to the EPA website to register: *http://www.epa.gov/tsca-peer-review.* Registration online will be confirmed by an email that will include the webcast meeting link and audio teleconference information.

ii. *Written comments.* Written comments for consideration during the preparatory virtual meeting should be submitted, using the instructions in **ADDRESSES** and this unit, on or before the date set in the **DATES** section.

iii. *Oral comments.* Requests to make brief oral comments to the TSCA SACC during the preparatory virtual meeting should be submitted when registering online or with the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before noon on the date set in the **DATES** section. Oral comments before the TSCA SACC during the preparatory virtual meeting are limited to approximately 5 minutes due to the time constraints of this virtual meeting.

2. *In-person meeting.* You may participate in the in-person public meeting by attending and by providing written or oral comments. The in-person meeting may also be webcast. Please refer to the TSCA SACC website at *http://www.epa.gov/tsca-peer-review* for information on how to access the webcast. Please note that for the in-person meeting, the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the in-person meeting will continue as planned.

i. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

ii. *Written comments.* To provide the TSCA SACC the time necessary to consider and review your comments, written comments must be submitted by the date set in the **DATES** section and using the instructions in the **ADDRESSES** section and this unit. Comments received after the date set in the **DATES** section and prior to the end of the oral public comment period during the meeting will still be provided to the TSCA SACC for their consideration.

iii. *Oral comments.* To be included on the meeting agenda, submit your request to make brief oral comments at the in-person meeting to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before the date set in the **DATES** section. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment. Oral comments before TSCA SACC during the in-person meeting are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should email their comments and presentation to the DFO listed under **FOR FURTHER INFORMATION CONTACT**, preferably, at least 24 hours prior to the oral public comment period.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: January 21, 2020.

Andrew R. Wheeler,

Administrator.

[FR Doc. 2020–01221 Filed 1–24–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0677; FRL–10003–14]

Preliminary Lists Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations Under Section 6 of the Toxic Substances Control Act (TSCA); Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required by EPA's Final Rule on Fees for the Administration of TSCA (the Fees Rule), in which EPA established fees to defray some of the costs of administering certain provisions of the Toxic Substances Control Act (TSCA), this Notice identifies the preliminary lists of manufacturers (including importers) of 20 chemical substances that have been designated as a High-Priority Substance for risk evaluation and for which fees will be charged. EPA is providing a 60-day comment period during which manufacturers (including importers) are required to self-identify as a manufacturer of a High-Priority Substance irrespective of whether they are included on the preliminary lists. Where appropriate, entities may also avoid or reduce fee obligations by making certain certifications consistent with the Fees Rule. During this 60-day comment period, the public will have the opportunity to correct errors or provide comments on the preliminary lists. EPA expects to publish final lists of manufacturers (including importers) subject to fees no later than concurrently with the publication of the final scope document for risk evaluations of these 20 High-Priority Substances. Manufacturers (including importers) identified on the final lists will be subject to applicable fees.

DATES: Comments must be received on or before March 27, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0677, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Benjamin Dyson, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 774–8976; email address: *dyson.benjamin@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to entities that manufacture a chemical substance (including import of the chemical substance or import of an article containing the chemical substance) undergoing a risk evaluation under TSCA section 6(b) (*e.g.,* entities identified under North American Industrial Classification System (NAICS) codes 325 and 324110). The action may also be of interest to chemical processors, distributors in commerce, and users; non-governmental organizations in the environmental and public health sectors; state and local government agencies; and members of the public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities and corresponding NAICS codes for entities that may be interested in or affected by this action.

B. What action is the Agency taking?

EPA is publishing preliminary lists identifying manufacturers (including importers) that may be subject to fee

obligations under 40 CFR 700.45, associated with each EPA-initiated risk evaluation of 20 High-Priority Substances under TSCA section 6. EPA is also providing an opportunity for public comment during which manufacturers (including importers) are required to self-identify as a manufacturer (including importer) of a High-Priority Substance, irrespective of whether they are listed on the preliminary list. During this comment period, manufacturers and importers may make certain certifications to EPA to avoid or reduce fee obligations. The public will also have the opportunity to correct errors or provide comments on the preliminary lists. EPA's 60-day comment period exceeds the minimum 30-day comment period established in the Fees Rule codified at 40 CFR 700.45(b)(4) to maximize public participation during the first comment period for an initial lists of manufacturers (including importers) subject to fee obligations for EPA-initiated risk evaluations under TSCA section 6. EPA expects to publish final lists of manufacturers (including importers) subject to fees no later than concurrently with the publication of the final scope document for risk evaluations of these 20 High-Priority Substances. Manufacturers (including importers) identified on the final lists will be subject to applicable fees under 40 CFR 700.45.

C. Why is the Agency taking this action?

As amended in by the *Frank R. Lautenberg Chemical Safety for the 21st Century Act* of 2016 (Pub. L. 114–182), TSCA authorized EPA to establish, by rule, a fee structure to defray some of the costs of administering certain provisions of TSCA. Pursuant to Fees Rule, the Agency will collect payment from manufacturers (including importers) who manufacture (including import) a chemical substance that is the subject of a risk evaluation under TSCA section 6(b). As intended by Congress, these fees are a sustainable source of funds for EPA to fulfill its legal obligations such as conducting risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, as required under TSCA section 6. Pursuant to section 6(b) of TSCA and its implementing regulations, EPA has designated 20 chemical substances as High-Priority Substances for risk evaluation (84 FR 71924, December 30, 2019) (FRL–10003–15); those substances are also listed in Unit III. EPA is now preliminarily identifying the manufacturers (including importers) that may be subject to fee obligations associated with the risk evaluations of these High-Priority Substances.

D. What is the Agency's authority for this action?

TSCA provides EPA with authority to establish fees to defray a portion of the costs associated with administering EPA-initiated TSCA section 6 risk evaluations. On September 27, 2018, EPA finalized a rule imposing a fee for any person who manufactures (including imports) a chemical substance that is the subject of an EPA-initiated risk evaluation under TSCA section 6 (Ref. 1). The requirements for those fee payments are codified in 40 CFR 700.45.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

TSCA section 6(b)(1) requires EPA to prioritize 20 chemical substances as High-Priority Substances. In accordance with TSCA section 6(b) and 40 CFR 702.7, on March 21, 2019, EPA initiated the prioritization process for 20 chemical substances identified as candidates for High-Priority Substance designation (Ref. 2). On August 23, 2019, EPA proposed to designate the same 20 chemical substances as High-Priority Substances for risk evaluation (Ref. 3). After considering additional information collected during the comment periods following initiation of prioritization and the proposed designation, EPA finalized, in a separate action, the High-Priority Substance designations of the same 20 chemical substance proposed for High-Priority Substance designations (Ref. 4). EPA is now announcing the availability of the preliminary lists for the 20 High-Priority Substances designated (Refs. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24).

A. Preliminary Lists, Final Lists, and Fee Obligations of Manufacturers/Importers

This Notice describes EPA's preliminary lists of manufacturers (including importers) who are potentially responsible for payment of fees, as required by 40 CFR 700.45, and associated with each TSCA section 6 risk evaluation that EPA will initiate for 20 High-Priority Substances (Ref. 1). The preliminary lists are available at docket number EPA–HQ–OPPT–2019–0677 at *http://www.regulations.gov* and on EPA's website at *http://www.epa.gov/TSCA-fees.* As described in Unit III.C. of the preamble to the Fees Rule (Ref. 2), EPA developed each preliminary list using the most up-to-date information available, including information submitted to the Agency (*e.g.,* information submitted under TSCA section 8(a) (including the Chemical Data Reporting (CDR) Rule) and section 8(b), and to the Toxics Release Inventory (TRI)). EPA considered using other sources of information available to the Agency, such as publicly available information (*e.g.,* Panjiva, Datamyne) or information submitted to other agencies to which EPA has access (*e.g.,* U.S. Custom and Border Patrol data) but concluded that data quality limitations would create more false positives than appropriate additions to the lists. Additionally, EPA believes the Self-Identification process, established by 40 CFR 700.45(b)(5), will be sufficient to identify additional manufacturers (including importers), as appropriate. To include the two most recent CDR reporting cycle data (collected every four years) and to account for annual or other typical fluctuations in manufacturing (including import), EPA used six years of data submitted or available to the Agency under CDR and TRI to create the preliminary lists (2012—2018).

This Notice initiates a 60-day comment period during which manufacturers (including importers) of the chemical substance must self-identify to EPA irrespective of whether they are included on a preliminary list. Where appropriate, entities may also certify as to no manufacture or cessation of manufacture in accordance with 40 CFR 700.45(b)(5). Manufacturers (including importers) are required to provide EPA with the contact information as described in 40 CFR 700.45(b)(5)(i). Other stakeholders also

have the opportunity to correct errors in the preliminary lists. This process is explained further in Unit II.B.

Following the comment period and no later than the date EPA issues the final scope document as part of the risk evaluations for these 20 High-Chemical Substances, EPA expects to publish a final list of manufacturers subject to fees for each chemical substance. Manufacturers listed on the final lists will be subject to applicable fees under 40 CFR 700.45.

Fee obligations are set forth in 40 CFR 700.45 and include a total fee of $1,350,000 for EPA-initiated risk evaluations, with a reduced fee amount for small business concerns (Ref. 2). The total fee is shared amongst all identified manufacturers (including importers). The Fees Rule provides more detailed information on how EPA determined the fee amounts (Ref. 2). The fees established in 2018 are fees for the 2019, 2020, and 2021 fiscal years. Fees for the 2022 and later fiscal years may be adjusted on a three-year cycle as described in the final Fees Rule (Ref. 2).

As required by 40 CFR 700.45(g)(3)(iv)(A), payment of fees are due within 120 days following the publication of the final scope of a chemical risk evaluation. Manufacturers may also form a consortium to pay fees in accordance with 40 CFR 700.45(f)(3). The consortium must notify EPA that a consortium has formed within 60 days of the publication of the final scope of a risk evaluation. Once established, the consortium would determine how the fee would be split among the members, and ultimately paid to EPA. For additional information on the possible division of costs amongst consortia and individual manufacturers, please see the fees rule Unit III.J, Multiple Parties Subject to Fee Obligation (Ref. 1).

B. Self-Identification Requirement

In accordance with 40 CFR 700.45(b)(5), all manufacturers who have manufactured or imported any of the 20 chemical substances designated as High-Priority Substances (Ref. 5) in the previous five years, must submit notice to EPA, irrespective of whether they are included in the preliminary lists. The notice must be submitted electronically via EPA's Central Data Exchange (CDX), the Agency's electronic reporting portal, and must contain the following information: Name and address of the submitting company, the name and address of the authorized official for the submitting company, and the name and telephone number of a person who will serve as technical contact for the submitting company and who will be able to answer questions about the information submitted by the company to EPA. EPA has also made the Chemical Information Submission System (CISS) reporting tool available for this electronic reporting.

All manufacturers (including importers) of these chemical substances, including those who import the chemical as part of an article, or manufacture (including import) chemical substances that are considered an impurity or byproduct, or in small amounts are subject to the Fees Rule requirements. TSCA requires EPA to evaluate chemicals under their conditions of use, and conditions of use evaluated may involve import of articles containing the chemical, the manufacture of the chemical as an impurity or byproduct, or in small amounts. As described in Unit III.E. of the Fees Rule, EPA does not exempt these manufacturers from fee obligations for TSCA section 6 activities.

Manufacturers (including importers) on the preliminary lists have an opportunity to certify through CDX that: (1) They have already ceased manufacturing prior to the defined cutoff dates and will not manufacture (including import) for five years; or (2) they have not manufactured the chemical substance in the five-year period preceding publication of the preliminary lists. For this group of 20 chemicals, the cutoff date for ceasing manufacture or import of a chemical substance is March 20, 2019, which is the day prior to initiation of the prioritization process for the applicable designated High-Priority Substance. If EPA receives such a certification statement from a manufacturer, then the manufacturer will not be obligated to pay the fee. Manufacturers who are not listed on the preliminary lists and otherwise believe they can ''certify out'' as described in this Unit and in 40 CFR 700.45(b)(5) may choose to attest to these facts to EPA. In addition, entities will have the opportunity to certify as to whether they meet the definition of a ''small business concern'' as defined in the Fees Rule and qualify for a reduced fee amount.

If information received during the public comment period would prompt the addition of manufacturers (including importers) to the final lists, then EPA plans to first notify those manufacturers (including importers). Manufacturers (including importers) who plan to cease manufacture (including import) in the future (but have not yet done so), or those who have already ceased but may re-enter the market within the next five years, would not be permitted to ''certify out'', and would still be subject to the fee obligation.

C. Failure To Self-Identify

Manufacturers (including importers) who fail to identify themselves as manufacturers subject to fee obligations, as required by the Fees Rule (Ref. 1), may be subject to a penalty under TSCA section 16. Each day of failed self-identification by a manufacturer (including importer) past the payment due date is a separate TSCA violation subject to penalty. Likewise, manufacturers (including importers) who falsely certify to having ceased manufacture (including import) or not re-initiating manufacture (including import) within five years will also be subject to penalty, as described in Unit III.C.7. of the Fees Rule.

III. Request for Comments and Manufacturer Information

With publication of the preliminary lists, EPA is providing a 60-day comment period for manufacturers and the public to correct errors, self-identify as a manufacturer, or certify that they have already exited the market and that they will not resume manufacture (including import) for a period of five years.

A. The Preliminary Lists

The preliminary lists of manufacturers (including importers) that may be subject to fee obligations under 40 CFR 700.45 associated with EPA-initiated risk evaluations of 20 High-Priority Substances are in this docket; there is a separate preliminary list for each substance (Refs. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24). Each list is provided in two formats: A searchable Excel file and in two PDF files—the first file presenting manufacturers in parent company name order and the second file presenting manufacturers in parent company Dun & Bradstreet Number order. Instructions for using the searchable Excel file are presented in the READ ME FIRST tab. Instructions for accessing the TSCA section 6 User Fees application through CDX are also provided in the READ ME FIRST tab and at the top of the PDF files.

EPA is soliciting public comments that would inform the final lists defining the universe of manufacturers (including importers) obligated to pay fees associated with each TSCA section 6 EPA-initiated risk evaluation for the 20 following chemicals, which separately have been designated as High Priority Substances for risk evaluation (Ref. 4):

1. *1,3-Butadiene, CASRN 106–99–0.*

2. *Butyl benzyl phthalate (BBP) (1,2-Benzenedicarboxylic acid, 1-butyl 2-(phenylmethyl) ester), CASRN 85–68–7.*

3. *Dibutyl phthalate (DBP) (1,2-Benzenedicarboxylic acid, 1,2-dibutyl ester), CASRN 84–74–2.*

4. *o-Dichlorobenzene (Benzene, 1,2-dichloro-), CASRN 95–50–1.*

5. *p-Dichlorobenzene (Benzene, 1,4-dichloro-), CASRN 106–46–7.*

6. *1,1-Dichloroethane, CASRN 75–34–3.*

7. *1,2-Dichloroethane, CASRN 107–06–2.*

8. *trans-1,2-Dichloroethylene (Ethene, 1,2-dichloro-, (1E)-), CASRN 156–60–5.*

9. *1,2-Dichloropropane, CASRN 78–87–5.*

10. *Dicyclohexyl phthalate (1,2-Benzenedicarboxylic acid, 1,2-dicyclohexyl ester), CASRN 84–61–7.*

11. *Di-ethylhexyl phthalate (DEHP) (1,2-Benzenedicarboxylic acid, 1,2-bis(2-ethylhexyl) ester), CASRN 117–81–7.*

12. *Di-isobutyl phthalate (DIBP) (1,2-Benzenedicarboxylic acid, 1,2-bis(2-methylpropyl) ester), CASRN 84–69–5.*

13. *Ethylene dibromide (Ethane, 1,2-dibromo-), CASRN 106–93–4.*

14. *Formaldehyde, CASRN 50–00–0.*

15. *1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta [g]-2-benzopyran (HHCB), CASRN 1222–05–5.*

16. *4,4′-(1-Methylethylidene)bis[2, 6-dibromophenol] (TBBPA), CASRN 79–94–7.*

17. *Phosphoric acid, triphenyl ester (TPP) CASRN 115–86–6.*

18. *Phthalic anhydride (1,3-Isobenzofurandione), CASRN 85–44–9.*

19. *1,1,2-Trichloroethane, CASRN 79–00–5.*

20. *Tris(2-chloroethyl) phosphate (TCEP) (Ethanol, 2-chloro-, 1,1′,1″-phosphate), CASRN 115–96–8.*

B. Self-Identifying as a Manufacturer or Importer

Instructions for self-identifying as a manufacturer (including importer) of any of the 20 High Priority Substances are in each preliminary list Excel and PDF files in the docket (Refs. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24).

C. Certifying an Exit from the Market (i.e., Cessation) or No Manufacture

Instructions for certifying an exit from the market (*i.e.,* cessation of manufacture and import), and for certifying no manufacture (including import) of any of the 20 High Priority substances are in each preliminary list Excel and PDF files in the docket (Refs. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24).

D. Providing Public Comments

Please see Unit I.E for more information on how to submit comments to EPA. After the comment period for the preliminary lists of entities subject to a fee obligation, EPA expects to make any necessary updates or corrections before publishing final lists of manufacturers for each of the 20 High-Priority Substances. EPA expects that these final lists will indicate if any manufacturers were identified in error, any additional manufacturers that were identified through the comment period or self-identification process, and if any manufacturers have certified that they have already ceased manufacture (including import) prior to the cutoff date of March 20, 2019 and will not manufacture the subject chemical substance for five years. Each final list will be published concurrently with the final scope document for each risk evaluation initiated by EPA under TSCA section 6 for these 20 High-Priority Substances.

IV. References

The following is a listing of the documents that are specifically referenced in this Notice. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Fees for Administration of Toxic Substances Control Act. **Federal Register**. (83 FR 52694, October 17, 2018) (FRL–9984–41).

2. EPA. Initiation of Prioritization Under the Toxic Substances Control Act (TSCA). Notice. **Federal Register**. (84 FR 10491, March 21, 2019) (FRL–9991–06).

3. EPA. Proposed High-Priority Substance Designations Under the Toxic Substances Control Act (TSCA). **Federal Register**. (84 FR 44300, August 23, 2019) (FRL–9998–29).

4. EPA. High-Priority Substance Designations Under the Toxic Substances Control Act (TSCA). **Federal Register**. (84 FR 71924, December 30, 2019) (FRL–10003–15).

5. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of 1,3-Butadiene, CASRN 106–99–0. December 2019.

6. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of Butyl benzyl phthalate (BBP) (1,2-Benzenedicarboxylic acid, 1-butyl 2-(phenylmethyl) ester), CASRN 85–68–7. December 2019.

7. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of Dibutyl phthalate (DBP) (1,2-Benzenedicarboxylic acid, 1,2-dibutyl ester), CASRN 84–74–2. December 2019.

8. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of o-Dichlorobenzene (Benzene, 1,2-dichloro-), CASRN 95–50–1. December 2019.

9. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of p-Dichlorobenzene (Benzene, 1,4-dichloro-), CASRN 106–46–7. December 2019.

10. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of 1,1-Dichloroethane, CASRN 75–34–3. December 2019.

11. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of 1,2-Dichloroethane, CASRN 107–06–2. December 2019.

12. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of trans-1,2-Dichloroethylene (Ethene, 1,2-dichloro-, (1E)-), CASRN 156–60–5. December 2019.

13. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of 1,2-Dichloropropane, CASRN 78–87–5. December 2019.

14. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of Dicyclohexyl phthalate (1,2-Benzenedicarboxylic acid, 1,2-dicyclohexyl ester), CASRN 84–61–7. December 2019.

15. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of Di-ethylhexyl phthalate (DEHP) (1,2-Benzenedicarboxylic acid, 1,2-bis(2-ethylhexyl) ester), CASRN 117–81–7. December 2019.

16. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of Di-isobutyl phthalate (DIBP) (1,2-Benzenedicarboxylic acid, 1,2-bis(2-methylpropyl) ester), CASRN 84–69–5. December 2019.

17. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of Ethylene dibromide (Ethane, 1,2-dibromo-), CASRN 106–93–4. December 2019.

18. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of Formaldehyde, CASRN 50–00–0. December 2019.

19. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of 1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta [g]-2-benzopyran (HHCB), CASRN 1222–05–5. December 2019.

20. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of 4,4′-(1-Methylethylidene)bis[2, 6-dibromophenol] (TBBPA), CASRN 79–94–7. December 2019.

21. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of Phosphoric

acid, triphenyl ester (TPP) CASRN 115–86–6. December 2019.

22. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of Phthalic anhydride (1,3-Isobenzofurandione), CASRN 85–44–9. December 2019.

23. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of 1,1,2-Trichloroethane, CASRN 79–00–5. December 2019.

24. EPA. Preliminary List Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations of Tris(2-chloroethyl) phosphate (TCEP) (Ethanol, 2-chloro-, 1,1′,1″-phosphate), CASRN 115–96–8. December 2019.

Authority: 15 U.S.C. 2625

Dated: January 21, 2020.

Andrew R. Wheeler,

Administrator.

[FR Doc. 2020–01320 Filed 1–24–20; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Regular Meeting; Farm Credit System Insurance Corporation Board

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATES: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 30, 2020, from 10:00 a.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056, *aultmand@fca.gov.*

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- December 12, 2019 Regular Board Minutes

B. New Business

- Review of Insurance Premium Rates
- Policy Statement—Concerning Investments
- Policy Statement—Concerning Contracting
- Policy Statement—Addressing Dual Board Governance Structure
- Policy Statement—Addressing FCSIC Examination Authorities

C. Closed Session—Audit Committee

- CFO Report—List & Status of All Contracts
- Annual Report on Whistleblower Activity

Dated: January 21, 2020.

Dale Aultman,

Secretary, Farm Credit System Insurance Corporation.

[FR Doc. 2020–01282 Filed 1–24–20; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine; Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 9:30 a.m. on Thursday, January 30, 2020.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets NW, Washington, DC 20551.

STATUS: Open.

On the day of the meeting, you will be able to view the meeting via webcast from a link available on the Board's website. *You do not need to register to view the webcast of the meeting.* A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's website at *www.federalreserve.gov.*

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202–452–2474 or you may register online. You may pre-register until close of business on Wednesday, January 29, 2020. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras/recording devices; please call 202–452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

Privacy Act Notice: The information you provide will be used to assist us in prescreening you to ensure the security of the Board's premises and personnel. In order to do this, we may disclose your information consistent with the routine uses listed in the Privacy Act Notice for BGFRS–32, including to appropriate federal, state, local, or foreign agencies where disclosure is reasonably necessary to determine whether you pose a security risk or where the security or confidentiality of your information has been compromised. We are authorized to collect your information by 12 U.S.C. 243 and 248, and Executive Order 9397. In accordance with Executive Order 9397, we collect your SSN so that we can keep accurate records, because other people may have the same name and birth date. In addition, we use your SSN when we make requests for information about you from law enforcement and other regulatory agency databases. Furnishing the information requested is voluntary; however, your failure to provide any of the information requested may result in disapproval of your request for access to the Board's premises. You may be subject to a fine or imprisonment under 18 U.S.C. 1001 for any false statements you make in your request to enter the Board's premises.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Notice of Proposed Rulemaking on Section 13 of the Bank Holding Company Act (Volcker Rule).

2. Final Rule to Revise the Board's Control Framework.

Notes: 1. The staff memos to the Board will be made available to attendees on the day of the meeting. The documentation package (staff memos to the Board and background materials) will be available on the Board's public website approximately 20 minutes

before the start of the meeting. If you require a paper copy of the entire document, please call Penelope Beattie on 202–452–3982. The documentation will not be available to the public until about 20 minutes before the start of the meeting.

2. This meeting will be recorded for the benefit of those unable to attend. The webcast recording and a transcript of the meeting will be available after the meeting on the Board's website *http://www.federalreserve.gov/aboutthefed/boardmeetings/.*

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may access the Board's website at *www.federalreserve.gov* for an electronic announcement. (The website also includes procedural and other information about the open meeting.)

Dated: January 23, 2020

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–01468 Filed 1–23–20; 4:15 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''Evaluation of Patient-Centered Outcomes Research Trust Fund—Training Program.''

This proposed information collection was previously published in the **Federal Register** on December 13th, 2019 and allowed 60 days for public comment. AHRQ did not receive comments from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by 30 days after date of publication.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

SUPPLEMENTARY INFORMATION:

Proposed Project

Evaluation of Patient-Centered Outcomes Research Trust Fund—Training Program

AHRQ Authorization To Provide Researcher Training in Comparative Effectiveness Research/Patient-Centered Outcomes Research (CER/PCOR) Methods

Section 6301(b) of the Patient Protection and Affordable Care Act, Public Law 111–148 (the ''Affordable Care Act''), enacted section 937(e) of the Public Health Service Act (''PHS Act''), which authorizes AHRQ to build capacity for comparative effectiveness research (CER) by establishing grant programs that provide training for researchers in methods used to conduct research. It also notes that, ''[at] a minimum, such training shall be in methods that meet the methodological standards adopted [by the Patient Centered Outcomes Research Institute (PCORI)] under section 1181(d)(9) of the Social Security Act.'' In addition, section 937(a) of the PHS Act charges AHRQ with disseminating patient-centered outcomes research (PCOR) and CER findings into practice. AHRQ's PCOR Trust Fund Training Program (PCORTF–TP) invests in training grants that build researchers' skills and enhance research capacity in these practice areas.

PCOR is research that assesses the benefits and harms of preventive, diagnostic, therapeutic, palliative, or health delivery system interventions. This research helps clinicians, patients, and caregivers make decisions about health care choices by highlighting comparisons and outcomes that matter to people, such as survival, function, symptoms, and health-related quality of life. The AHRQ PCORTF–TP supports individuals and academic institutions to train researchers and clinicians in CER methods applied within the context of CER/PCOR via mentored career development award mechanisms for emerging independent investigators, as well as targeted skill development and applied experiences via research grant mechanisms for independent researchers. PCORTF–TP grants support training for recent graduates, mid-career professionals, and established professionals in research and clinical settings. The program prioritizes expanding capacity in underserved and predominantly minority communities.

AHRQ recognizes the importance of ensuring that its training activities are useful, well implemented, and effective in achieving their intended goals. Therefore, the PCORTF–TP evaluation reflects AHRQ's commitment to ensuring responsible stewardship. The PCORTF–TP evaluation comprises analysis of grantee progress reports, a bibliometric analysis of grantee publications, key informant interviews with AHRQ program staff responsible for managing PCORTF–TP grants, focused discussions with the PCORTF–TP evaluation Stakeholder Working Group, and surveys of grantees and mentors.

The purpose of this evaluation is to assess the outputs, outcomes, and impact of AHRQ's PCORTF–TP. The evaluation will address the following questions:

- What is the nature of PCORTF–TP activities for scholar/investigator development?
- Which activities for PCORTF–TP scholars/investigators have the greatest influence on intended outcomes (*e.g.,* PCOR careers)?
- How have PCORTF–TP and partner institutions developed the capacity for PCOR training and mentoring, and in what ways is this sustainable?
- What do mentors and mentees perceive to be the most important ways that the program has contributed to the field of CER/PCOR?

This evaluation is being conducted by AHRQ through its contractor, AFYA, Inc., pursuant to AHRQ's authority to carry out the activities described in section 937 of the PHS Act. 42 U.S.C. 299b–37.

Method of Collection

To achieve the goals of this project, the evaluator will survey PCORTF–TP awardees, scholars, and mentors. Online surveys: K Awardee Survey/K12 Scholar Survey and K Awardee/K12 Scholar Primary Mentor Survey will be used to: (1) Collect non-identifying demographic information; and (2) ask respondents about their training activities and outcomes. Key informant interviews: Key Informant Interview Guide will be used to collect qualitative data about program processes, outcomes, and lessons learned from K12 scholar program directors.

AHRQ will use the information collected through this Information Collection Request to assess progress toward achieving the PCORTF–TP aims. The information collected will facilitate program planning. Results will indicate whether grantees are conducting

activities relevant to CER/PCOR training and whether those activities are increasing CER/PCOR capacity. Two surveys, each tailored for four respective PCORTF–TP respondent groups as well as key informant interviews will yield data on training activities, trainees' career plans, trainees' research and clinical activities relevant to CER/PCOR, and primary mentor experiences. The surveys are designed to capture primarily quantitative data with some qualitative data. The interview guide is designed to collect qualitative data.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this evaluation. The survey will be completed by approximately 288 awardees, scholars, principal investigators (PI), and mentors. The surveys will each require approximately 30 minutes to complete. The key informant interview will be conducted with approximately 13 PIs. These interviews are expected to take one hour each. The total hour burden is expected to be 150.5 hours for this participant data collection effort.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
K Awardee/K12 Scholar * Survey	147	1	0.5	73.5
K Awardee/K12 Primary Mentor Survey	128	1	0.5	64
Key Informant Interview Guide for K12 Program Directors	13	1	1	13
Total	288			150.5

* K Awardee/K12 Scholar survey = K01/K08/K99/K18 Awardees and K12 Scholars.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to participate in this project. The total cost burden is estimated to be $11,134.34.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
K Awardee/K12 Scholar Survey	147	73.5	* $74.43	$5,434.59
K Awardee/K12 Primary Mentor Survey	128	64	* 74.43	4,732.16
Key Informant Interview Guide for K12 Program Directors	13	13	* 74.43	967.59
	288	150.5		11,134.34

* Average hourly wage ($73.94) based on the average annual salary for three categories of Health Specialties Teachers, Postsecondary (25–1071; Scientific Research and Development Services—$178,090; General Medical and Surgical Hospitals—$153,790; and Colleges, Universities, and Professional Schools—$126,890). *Data Source:* National Occupational Employment and Wage Estimates in the United States, May 2018, "U.S. Department of Labor, Bureau of Labor Statistics" (available at *http://www.bls.gov/oes/current/naics4_621400.htm*).

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: January 21, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–01261 Filed 1–24–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Domestic Victims of Human Trafficking Program Data (New Collection)

AGENCY: Office on Trafficking in Persons, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office on Trafficking in Persons (OTIP), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is proposing to collect data for the Domestic Victims of Human Trafficking Program (DVHT). The DVHT Program is inclusive of three distinct programs: The Domestic Victims of Human Trafficking and Services Outreach Program, Demonstration Grants to Strengthen the Response to Victims of Human Trafficking in Native Communities Program, and the Strengthen the Health Care Response for Victims of Human Trafficking Program grants. The data collection instruments are intended to collect information for all three DVHT programs.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment

is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Trafficking Victims Protection Act of 2000, as amended, authorizes the Secretary of Health and Human Services to establish a program to assist United States citizens and lawful permanent residents who are victims of severe forms of trafficking (22 U.S.C. 7105(f)). OTIP will award cooperative agreements to implement the DVHT program, which will include: (1) The Domestic Victims of Human Trafficking and Services Outreach Program, (2) Demonstration Grants to Strengthen the Response to Victims of Human Trafficking in Native Communities Program, and (3) the Strengthen the Health Care Response for Victims of Human Trafficking Program. Through the DVHT program, grantees will provide comprehensive case management to domestic survivors of severe forms of human trafficking in a traditional case management, Native community, or health care setting. The intent of the program is to connect survivors with the services they need to improve their lives and health outcomes.

OTIP proposes to collect information to measure grant project performance, provide technical assistance to grantees, assess program outcomes, improve program evaluation, respond to congressional inquiries and mandated reports, and inform policy and program development that is responsive to the needs of victims.

The information collection captures information on participant demographics (*e.g.,* age, sex, and country of origin); types of trafficking experienced (*e.g.,* sex, labor, or both); types of enrollment; types of services requested and provided, along with their cost; barriers to service delivery; subrecipients enrolled into the grantee's network; victim outreach activities; and the types of training provided to subrecipient organizations or other partners.

Respondents: Domestic Victims of Human Trafficking and Services Outreach Program grantees, Demonstration Grants to Strengthen the Response to Victims of Human Trafficking in Native Communities Program grantees, and the Strengthen the Health Care Response for Victims of Human Trafficking Program grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Client Characteristics and Enrollment Form	1,908	1	1	1,908	636
Client Service Use and Delivery Form	1,908	3	.25	1,431	477
Client Case Closure Form	1,908	1	.167	319	106
Barriers to Service Delivery and Monitoring Form	36	15	.167	90	30
DVHT Spending Form	36	3	.75	81	27
Partnership Development and Expansion: Enrollment Form	25	1	.25	6	3
Partnership Development and Expansion: Exit Form	25	1	.083	2	1
Training Form	36	15	.5	270	90
Victim Outreach Reporting Form	36	15	.3	162	54

Estimated Total Annual Burden Hours: 1,424.

Authority: 22 U.S.C. 7105(f).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–01265 Filed 1–24–20; 8:45 am]

BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3090]

Hematologic Malignancies: Regulatory Considerations for Use of Minimal Residual Disease in Development of Drug and Biological Products for Treatment; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Hematologic Malignancies: Regulatory Considerations for Use of Minimal Residual Disease in Development of Drug and Biological Products for Treatment.'' This guidance is intended to help sponsors planning to use minimal residual disease (MRD) as a biomarker in clinical trials conducted under an investigational new drug application (IND) or to support marketing approval of drugs and biological products for treating specific hematologic malignancies. An analysis of marketing applications showed inconsistent quality of MRD data. Based on this analysis and discussion at various public workshops on MRD, FDA identified a need to provide guidance on the use of MRD as a biomarker in regulatory submissions. This guidance finalizes the draft guidance of the same title issued on October 16, 2018.

DATES: The announcement of the guidance is published in the **Federal Register** on January 27, 2020.

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

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2018–D–3090 for ''Hematologic Malignancies: Regulatory Considerations for Use of Minimal Residual Disease in Development of Drug and Biological Products for Treatment.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

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

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Nicole Gormley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2310, Silver Spring, MD 20993–0002, 240–402–0210; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Hematologic Malignancies: Regulatory Considerations for Use of Minimal Residual Disease in Development of Drug and Biological Products for Treatment.'' This guidance is intended to help sponsors planning to use MRD as a biomarker in clinical trials conducted under an IND or to support marketing approval of drugs and biological products for treating specific hematologic malignancies.

This guidance finalizes the draft guidance of the same title issued on October 16, 2018 (83 FR 52225). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include editorial changes and clarifications throughout the document and the addition of definitions for individual-level and trial-level associations.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the current thinking of FDA on ''Hematologic Malignancies: Regulatory Considerations for Use of Minimal Residual Disease in Development of Drug and Biological Products for Treatment.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in 21 CFR part 312 for submitting INDs has been approved under OMB control

number 0910–0014. The collection of information in 21 CFR part 314 for the submission of new drug applications has been approved under OMB control number 0910–0001. The submission of special protocol assessments has been approved under OMB control number 0910–0470. The submission of biologics license applications has been approved under OMB control number 0910–0338. The submission of investigational device exemptions has been approved under OMB control number 0910–0078.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: January 22, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–01312 Filed 1–24–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–4964]

Demonstrating Substantial Evidence of Effectiveness for Human Drug and Biological Products; Draft Guidance for Industry; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is extending the comment period for the notice entitled ''Demonstrating Substantial Evidence of Effectiveness for Human Drug and Biological Products; Draft Guidance for Industry; Availability'' that appeared in the **Federal Register** of December 20, 2019. The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period for the notice published on December 20, 2019 (84 FR 70196). Submit either electronic or written comments on the draft guidance by March 19, 2020, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit either electronic or written comments as follows.

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2019–D–4964 for ''Demonstrating Substantial Evidence of Effectiveness for Human Drug and Biological Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

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

Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002 or Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research, Food and

Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; or Ei Thu Lwin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–0728.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 20, 2019 (84 FR 70196), FDA published a notice with a 60-day comment period to request comments on the draft guidance for industry entitled ''Demonstrating Substantial Evidence of Effectiveness for Human Drug and Biological Products.'' The Agency has received requests for extension of the comment period. The requests conveyed that additional time is needed to provide comments. FDA has considered the requests and is extending the comment period for 30 days, until March 19, 2020. The Agency believes that an additional 30 days will allow adequate time for interested persons to submit comments without compromising the timely publication of the final version of the guidance.

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: January 22, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–01322 Filed 1–24–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA or the Council) will be holding the 66th full Council meeting in Washington, DC. Agenda items will include: Discussion of *Ending the HIV Epidemic: A Plan for America* (EHE) Jurisdictional Plans, Focusing on the Four Pilot Sites: DeKalb County, Georgia; Baltimore, Maryland; East Baton Rouge, Louisiana; and the Cherokee Nation of Oklahoma; the Ready, Set, PrEP National Program; Stigma as a Barrier—Shared Experiences and Challenges from International and Domestic Perspectives; and Women and HIV. The meeting will be open to the public; a public comment session will be held during the meeting. Pre-registration is encouraged for members of the public who wish to attend the meeting and who wish to participate in the public comment session. Individuals who wish to attend the meeting and/or send in their public comment via email should send an email to *PACHA@hhs.gov*. Pre-Registration must be complete by Monday, February 3, 2020.

DATES: The Council meeting is scheduled to convene on Monday, February 10, 2020 from approximately 1:00 p.m. to 7:00 p.m. ET and Tuesday, February 11, 2020 from approximately 9:00 a.m. to 5:00 p.m. ET (times are tentative and subject to change). The meeting agenda will be posted on the PACHA web page at *https://www.hiv.gov/federal-response/pacha/about-pacha*. Public attendance is limited to available space.

ADDRESSES: Grand Hyatt Washington, 1000 H Street NW, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline Talev, MPA, Public Health Analyst, Presidential Advisory Council on HIV/AIDS, 330 C Street SW, Room L609A, Washington, DC 20024; (202) 795–7622 or *PACHA@hhs.gov*. Additional information can be obtained by accessing the Council's page on the *HIV.gov* site at *www.hiv.gov/pacha*.

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996 and is currently operating under the authority given in Executive Order 13889, dated September 27, 2019. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective prevention and care of HIV infection and AIDS. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House.

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Caroline Talev at *PACHA@hhs.gov*. Due to space constraints, pre-registration for public attendance is advisable and can be accomplished by contacting *PACHA@hhs.gov* by close of business Monday, February 3, 2020. Members of the public will have the opportunity to provide comments during the meeting. Comments will be limited to no more than three minutes per speaker. Any individual who wishes to participate in the public comment session must register with Caroline Talev at *PACHA@hhs.gov* by close of business Monday, February 3, 2020; registration for public comment will not be accepted by telephone. Individuals are encouraged to provide a written statement of any public comment(s) for accurate minute taking purposes. Any members of the public who wish to have printed material distributed to PACHA members at the meeting are asked to submit, at a minimum, 1 copy of the material(s) to Caroline Talev, no later than close of business Monday, February 3, 2020.

Dated: January 15, 2020.

B. Kaye Hayes,

Principal Deputy Director, Office of Infectious Disease and HIV/AIDS Policy, Executive Director, Presidential Advisory Council on HIV/AIDS, Office of the Assistant Secretary for Health, Department of Health and Human Services.

[FR Doc. 2020–01336 Filed 1–24–20; 8:45 am]

BILLING CODE 4150–43–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 Collaborative Innovation Awards Review Meeting.

Date: February 20, 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 Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: M. Lourdes Ponce, 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 1073, Bethesda, MD 20892, 301–435–0810, *lourdes.ponce@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 21, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–01258 Filed 1–24–20; 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: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Nutrition and Metabolic Processes Study Section.

Date: February 20–21, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance, Washington, DC Hotel, 999 Ninth Street NW, Washington, DC 20001–4427.

Contact Person: Gregory S. Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, 301–755–4335, *greg.shelness@nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Molecular Neuropharmacology and Signaling Study Section.

Date: February 20–21, 2020.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW, Washington, DC 20037.

Contact Person: Vanessa S. Boyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4016F, MSC 7812, Bethesda, MD 20892, (301) 435–0908, *boycevs@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Chronic Dysfunction and Integrative Neurodegeneration Study Section.

Date: February 20–21, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bayside, 4875 North Harbor Drive, San Diego, CA 92106.

Contact Person: Jenny R. Browning, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 5207, Bethesda, MD 20892, *jenny.browning@nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biodata Management and Analysis Study Section.

Date: February 20–21, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301–435–0681, *liangw3@csr.nih.gov*.

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Molecular Neurogenetics Study Section.

Date: February 20–21, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Mary G. Schueler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, 301–915–6301, *marygs@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Electrical Signaling, Ion Transport, and Arrhythmias Study Section.

Date: February 20, 2020.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission, Bay Drive, San Diego, CA 92109.

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Social Psychology, Personality and Interpersonal Processes Study Section.

Date: February 20–21, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Le Meridien Delfina Santa Monica, 530 Pico Blvd., Santa Monica, CA 90405.

Contact Person: Marc Boulay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 300–6541, *boulaymg@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Developmental Therapeutics Study Section.

Date: February 20–21, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Nicholas J. Donato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040, Bethesda, MD 20892, 301–827–4810, *nick.donato@nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Myocardial Ischemia and Metabolism Study Section.

Date: February 20–21, 2020.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Silver Spring Downtown, 8506 Fenton Street, Silver Spring, MD 20910.

Contact Person: Richard D. Schneiderman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, Bethesda, MD 20817, 301–402–3995, *richard.schneiderman@nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical and Integrative Cardiovascular Sciences Study Section.

Date: February 20–21, 2020.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Long Beach and Executive Center, 701 West Ocean Boulevard, Long Beach, CA 90831.

Contact Person: Chee Lim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, 301–435–1850, *limc4@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: February 20, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Edgewater Hotel, 2411 Alaskan Way, Seattle, WA 98121.

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Bacterial Pathogenesis Study Section.

Date: February 20–21, 2020.

Time: 8:30 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: Marci Scidmore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–435–1149, *marci.scidmore@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cellular, Molecular and Integrative Reproduction Study Section.

Date: February 20, 2020.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *gary.hunnicutt@nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Cancer Etiology Study Section.

Date: February 20–21, 2020.

Time: 11:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ola Mae Zack Howard, Ph.D., Scientific Review Officer Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Integrative Nutrition and Metabolic Processes Study Section.

Date: February 20, 2020.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance, Washington, DC Hotel, 999 Ninth Street NW, Washington, DC 20001–4427.

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, EMNR IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, 301 435–2514, *riverase@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Mechanisms of Emotion, Stress, and Health.

Date: February 20, 2020.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort, 3999 Mission Boulevard, San Diego, CA 92109 (Telephone Conference Call).

Contact Person: Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7759, Bethesda, MD 20892, 301–594–3163, *champoum@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 21, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–01256 Filed 1–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Alcohol Abuse and Alcoholism Special Emphasis Panel; Neurobiology of Adolescent Drinking in Adulthood Review Panel.

Date: April 24, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room: To Be Determined, Bethesda, MD 20817.

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2116, MSC 6902, Bethesda, MD 20892, (301) 443–0800, *bbuzas@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: January 21, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–01259 Filed 1–24–20; 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: Tissue Chips to Inform Clinical Trials.

Date: February 18–19, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: The Ritz Carlton Hotel, 1700 Tysons Boulevard, Conference Room: Old Dominion, McLean, VA 22102.

Contact Person: Christine A. Livingston, 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 1073, Bethesda, MD 20892, (301) 435–1348, *livingsc@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 21, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–01257 Filed 1–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel; NCI U01 Review: Integrating Biospecimen Science Approaches into Clinical Assay.

Date: February 26, 2020.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W244, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: John Paul Cairns, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W244, National Cancer Institute, NIH, Bethesda, MD 20892, 240–276–5415, *paul.cairns@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Improving Outcomes for Pediatric, Adolescent and Young Adult Cancer Survivors (U01).

Date: March 17, 2020.

Time: 10:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W618, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W618, National Cancer Institute, NIH, Rockville, MD 20850 240–276–6611, *mukesh.kumar3@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; R13 Conference Grant Review.

Date: April 2, 2020.

Time: 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W554, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Christopher L. Hatch, Ph.D., Chief, Program Coordination & Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W554, Rockville, MD 20850, 240–276–6454, *ch29v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 21, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–01255 Filed 1–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke, Muscular Dystrophy Coordinating Committee Call for Committee Membership Nominations

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Office of the Secretary of the Department of Health and Human Services (HHS) is seeking nominations for an individual to serve as a nonfederal public member on the Muscular Dystrophy Coordinating Committee.

DATES: Nominations are due by 5:00 p.m. EDT on February 28, 2020.

ADDRESSES: Nominations must be sent to Glen Nuckolls, Ph.D., by email to *nuckollg@ninds.nih.gov.*

FOR FURTHER INFORMATION CONTACT: Glen Nuckolls, Ph.D., by email to *nuckollg@ninds.nih.gov.* or (301) 496–5745.

SUPPLEMENTARY INFORMATION: The Muscular Dystrophy Coordinating Committee (MDCC) is a federal advisory committee established in accordance with the Muscular Dystrophy Community Assistance, Research, and Education Amendments of 2001 (MD–CARE Act; Pub. L. 107–84). The MD–CARE Act was reauthorized in 2008 by Public Law 110–361, and again in 2014 by Public Law 113–166. The MD–CARE Act specifies that the committee membership be composed of ⅔ governmental agency representatives and ⅓ public members. We are seeking nominations for four non-federal, public members at this time, due to turnover of committee membership. Nominations will be accepted between January 28 and February 28, 2020.

Who is Eligible: Nominations are encouraged for new or reappointment of non-federal public members who can provide the public and/or patient perspectives to discussions of issues considered by the Committee. Self-nominations and nominations of other individuals are both permitted. Only one nomination per individual is required. Multiple nominations for the same individual will not increase likelihood of selection. Non-federal, public members may be selected from the pool of submitted nominations or other sources as needed to meet statutory requirements and to form a balanced committee that represents the diversity within the muscular dystrophy communities. Nominations are especially encouraged from leaders or representatives of muscular dystrophy research, advocacy, or service organizations, individuals with muscular dystrophy or their parents or guardians. In accordance with White House Office of Management and Budget guidelines (FR Doc. 2014–19140), federally-registered lobbyists are not eligible.

Committee Composition: The Department strives to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that the views of all genders, all ethnic and racial groups, and people with disabilities are

represented on HHS Federal advisory committees and, therefore, the Department encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in the composition of the Committee. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status. Requests for reasonable accommodation to enable participation on the Committee should be indicated in the nomination submission.

Member Terms: Non-Federal public members of the Committee serve for a term of 3 years, and may serve for an unlimited number of terms if reappointed. Members may serve after the expiration of their terms, until their successors have taken office.

Meetings and Travel: As specified by Public Law 113–166, the MDCC ''shall meet no fewer than two times per calendar year.'' Travel expenses are provided for non-federal public Committee members to facilitate attendance at in-person meetings. Members are expected to make every effort to attend all full committee meetings, twice per year, either in person or via remote access. Participation in relevant subcommittee, working and planning group meetings, and workshops, is also encouraged.

Submission Instructions and Deadline: Nominations are due by 5 p.m. EDT on February 28, 2020, and should be sent to Glen Nuckolls, Ph.D., by email to *nuckollg@ninds.nih.gov*.

Nominations must include contact information for the nominee, a current curriculum vitae or resume of the nominee and a paragraph describing the qualifications of the person to represent some portion(s) of the muscular dystrophy research, advocacy and/or patient care communities.

More information about the MDCC is available at *https://mdcc.nih.gov/*.

Dated: January 16, 2020.

Walter J. Koroshetz,

Director, National Institute of Neurological Disorders and Stroke, National Institutes of Health.

[FR Doc. 2020–01319 Filed 1–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0048]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: ICE Mutual Agreement Between Government and Employers (IMAGE)

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: In accordance with the Paperwork Reductions Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

DATES: Comments are encouraged and will be accepted until March 27, 2020.

ADDRESSES: All submissions received must include the OMB Control Number 1653–0048 in the body of the letter, the agency name and Docket ID ICEB–2020–0001. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number ICEB–2020–0001;

(2) *Mail:* Submit written comments to DHS, ICE, Office of the Chief Information Officer (OCIO), PRA Clearance, Washington, DC 20536–5800.

FOR FURTHER INFORMATION CONTACT: For specific question related to collection activities, please contact: John Morris (202–732–5409), *john.j.morris@ice.dhs.gov,* U.S. Immigration and Customs Enforcement.

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 agencies 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:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* U.S. Immigration and Customs Enforcement (ICE) Mutual Agreement between Government and Employers (IMAGE) Self-Assessment Questionnaire

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* ICE Form 73–028; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. The U.S. Immigration and Customs Enforcement Mutual Agreement between Government and Employers (IMAGE) program is the outreach and education component of the Homeland Security Investigations (HSI) Worksite Enforcement (WSE) program. IMAGE is designed to build cooperative relationships with the private sector to enhance compliance with immigration laws and reduce the number of unauthorized aliens within the American workforce. Under this program ICE will partner with businesses representing a cross-section of industries. A business will initially complete and prepare an IMAGE application so that ICE can properly evaluate the company for inclusion in the IMAGE program. The information provided by the company plays a vital role in determining its suitability for the program. While 8 U.S.C. 1324(a) makes it illegal to knowingly employ a person who is not in the U.S. legally, there is no requirement for any entity in the private sector to participate in the program and the information obtained from the company should also be available to the public.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* ICE estimates a total of 100 responses at 90 minutes (1.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 150 annual burden hours.

Dated: January 21, 2020.

Scott Elmore,

PRA Clearance Officer.

[FR Doc. 2020–01303 Filed 1–24–20; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6109–N–04]

Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees; Commonwealth of Puerto Rico Allocation

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice allocates $8.285 billion of Community Development Block Grant mitigation (CDBG–MIT) funds to the Commonwealth of Puerto Rico pursuant to the requirements of the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018 (Pub. L. 115–123).

DATES: Applicability Date: February 3, 2020.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Acting Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Ms. Kome at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

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I. CDBG–MIT Allocations

I.A. Background

The Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018, Pub. L. 115–123, approved February 9, 2018) (the ''Appropriations Act''), made available $28 billion in Community Development Block Grant disaster recovery (CDBG–DR) funds, and directed HUD to allocate not less than $12 billion for mitigation activities proportional to the amounts that CDBG–DR grantees received for qualifying disasters in 2015, 2016, and 2017. A **Federal Register** Notice published by the Department on August 30, 2019 (84 FR 45838), allocated $6.875 billion of CDBG–MIT funds to 14 state and local governments and described the grant requirements and procedures, including waivers and alternative requirements applicable to CDBG–MIT funds (''the CDBG–MIT Notice'').

The CDBG–MIT Notice recognizes that CDBG–MIT funds are to be used for distinctly different purposes than CDBG–DR funds and that the level of funding and nature of programs and projects that are likely to be funded requires all CDBG–MIT grantees and their subrecipients to strengthen their program management capacity, financial management, and internal controls. Under the CDBG–MIT Notice, each grantee is required to strengthen its internal audit function, specify the criteria for subrecipient selection, increase subrecipient monitoring, and establish a process for promptly identifying and addressing conflicts under the grantee's conflict of interest policy. The CDBG–MIT Notice also states the Department's intent to establish special grant conditions for individual CDBG–MIT grants based upon the risks posed by the grantee, including risks related to the grantee's capacity to carry out the specific programs and projects proposed in its action plan. These conditions are designed to provide additional assurances that mitigation programs are implemented in a manner to prevent waste, fraud, and abuse and that mitigation projects are effectively operated and maintained.

The CDBG–MIT Notice acknowledges the governance and financial management challenges of the Commonwealth of Puerto Rico. For all CDBG–MIT grantees, the CDBG–MIT Notice references the Department's expectation that grantees will take steps to set in place substantial governmental policies and organizational structure to enhance the impact of HUD-funded investments. For the Commonwealth of Puerto Rico, this goal may be achieved through reforms in land ownership records and addressing the occurrence of informal housing, while enhancing the safety of the Commonwealth's residents. The CDBG–MIT Notice also notes that it is imperative that all CDBG–MIT grantees collect and supply sufficient revenues for future operation and maintenance costs of programs and projects funded with this CDBG–MIT grant. Additionally, prior to 2017, the Department of Housing of Puerto Rico (PRDOH), who has been designated as the entity responsible for administering the CDBG–DR allocations in response to Hurricanes Irma and Maria, had not previously administered CDBG–DR funds. Because PRDOH does not have previous experience managing CDBG–DR funds, HUD has reviewed the Commonwealth's Staffing Analysis Worksheet and determined that PRDOH must continue to secure staff and contractors to build its capacity and knowledge of federal requirements, including civil rights related program requirements. These considerations emerge as particular unmitigated risks for the Commonwealth of Puerto Rico, in light of the substantial amount of CDBG–MIT funding allocated under this notice and the general fiscal condition of the Commonwealth.

Accordingly, to further reduce the specific potential risks associated with the above challenges, this notice builds upon the requirements of the CDBG–MIT Notice and establishes additional grant conditions to reduce risk and support the successful implementation of this CDBG–MIT allocation by the Commonwealth of Puerto Rico. These measures are designed to augment and support HUD's continual technical assistance and monitoring efforts, undertaken in partnership with the grantee.

This notice allocates $8.285 billion in CDBG–MIT funds to the Commonwealth of Puerto Rico for mitigation activities in accordance with the Appropriations Act and the CDBG–MIT Notice. The grantee receiving an allocation of funds under this notice is subject to the requirements of the CDBG–MIT Notice, including waivers and alternative requirements, and any additional requirements imposed by this or future **Federal Register** notices.

TABLE 1—ALLOCATION FOR MITIGATION ACTIVITIES

Disaster No.	Grantee	CDBG–MIT allocation	Minimum amount to be expended in the HUD-identified "most impacted and distressed" areas listed herein	HUD-identified "most impacted and distressed" areas
4336, 4339	Commonwealth of Puerto Rico	$8,285,284,000	$8,285,284,000	All components of the Commonwealth of Puerto Rico.

In accordance with the Appropriations Act, the CDBG–MIT allocation is based on the grantee's proportional share of total CDBG–DR funds allocated for all eligible disasters in 2015, 2016, and 2017.

I.B. Use of Funds

The Appropriations Act requires that prior to the obligation of CDBG–MIT funds by the Secretary, a grantee shall submit a plan to HUD for approval detailing the proposed use of all funds. The plan must include the criteria for eligibility, and how the use of these funds will address risks identified through a mitigation needs assessment of the most impacted and distressed areas. The definition of mitigation activities and the requirements for the submission of an action plan are identified in section II of the CDBG–MIT Notice.

I.C. Grant Process

The Commonwealth of Puerto Rico must submit the financial certification documentation required by section V.A.1.a of the CDBG–MIT Notice, as amended herein, and the implementation plan and capacity assessment required by section V.A.1.b. of the CDBG–MIT Notice. All deadlines for the submissions necessary for the Secretary's certification of financial controls, procurement processes and adequate procedures, and the implementation plan and capacity assessment referenced in the CDBG–MIT Notice, are determined by the applicability date of this notice.

The grantee must submit an action plan per the requirements of section V.A.2 of the CDBG–MIT Notice no later than September 4, 2020, unless the grantee requests, and HUD approves, an extension of the submission deadline as provided for in the CDBG–MIT Notice.

To begin expending CDBG–MIT funds, the grantee must follow the grant process in the CDBG–MIT Notice in section IV, with all timelines for grantee submissions to commence on the applicability date of this notice.

II. Applicable Rules, Statutes, Waivers, Alternative Requirements, and Grant Conditions

CDBG–MIT grants are subject to the requirements of the CDBG–MIT Notice, which include requirements of the Appropriations Act and waivers and alternative requirements. The waivers and alternative requirements provide additional flexibility in program design and implementation to eligible mitigation activities to lessen the impact of future disasters, while also ensuring that statutory requirements are met. All references to states and State grantees in the CDBG–MIT Notice and this notice shall include the Commonwealth of Puerto Rico. The Commonwealth may request additional waivers and alternative requirements from the Department as needed to address specific needs related to its mitigation activities. Waivers and alternative requirements are effective five days after they are published in the **Federal Register**.

This section of the notice establishes additional rules, waivers and alternative requirements, and grant conditions specific to the allocation of CDBG–MIT funds for the Commonwealth of Puerto Rico.

II.A. Limitation on Use of CDBG–MIT Funds for Electrical Power System Enhancements

In addition to the appropriation of CDBG–MIT funds, the Appropriations Act requires HUD to allocate $2 billion of CDBG–DR funds to provide enhanced or improved electrical power systems in response to Hurricane Maria. HUD announced the allocation of these funds to the U.S. Virgin Islands and the Commonwealth of Puerto Rico and provided that the electrical power system allocation shall be governed by a subsequent notice. To enhance the use of the $2 billion allocated to enhance or improve electrical power systems, the grantee may wish to use CDBG–MIT funds to lessen the risks of disaster-related damage to electric power systems. However, successful efforts to restore, enhance, and improve electrical power systems, and guard this infrastructure against future disasters, will require coordination across multiple sources of Federal financial assistance provided for this purpose.

Therefore, the grantee is prohibited from using CDBG–MIT funds for mitigation activities to reduce the risk of disaster related damage to electric power systems until after HUD publishes the **Federal Register** notice governing the use of the $2 billion for enhanced or improved electrical power systems. This limitation includes a prohibition on the use of CDBG–MIT funds for mitigation activities carried out to meet the matching requirement, share, or contribution for any Federally-funded project that is providing funds for electrical power systems improvements until HUD publishes the **Federal Register** notice governing the use of CDBG–DR funds to provide enhanced or improved electrical power systems. After publication of HUD's electrical power systems notice, use of CDBG–MIT funds to mitigate risks to electric power systems, including the provision of non-Federal cost share for any Federally-funded activity related to electrical power systems, shall be limited to activities that meet the requirements for CDBG–MIT funds and that are not inconsistent with the requirements of HUD's electrical power systems notice and any additional requirements on the use of CDBG–MIT funds published in that notice.

II.B. Grant Conditions

The *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (2 CFR part 200) direct HUD to assess risks posed by the grantee and authorize HUD to impose special grant conditions that correspond to the assessed degree of risk. As described in the CDBG–MIT Notice, HUD will establish special grant conditions for individual CDBG–MIT grants based upon assessed risks, including risks related to the grantee's capacity to carry out the specific programs and projects proposed in its action plan. These conditions are designed to provide additional assurances that actions are carried out to address grantee-specific risks, such as

the potential for waste, fraud, and abuse, or the potential that failure to effectively operate and maintain infrastructure will interfere with anticipated risk mitigation value of CDBG–MIT activities. At any time, if HUD determines that an identified risk has been mitigated and the grantee has met the required grant terms and conditions, HUD can modify or remove those terms and conditions. To address identified risks, the Department will establish grant conditions for the Commonwealth of Puerto Rico which shall include, but not be limited to, the following requirements:

II.B.1. *Special Condition related to program risk.*

In response to the scale and complexity of the Grantee's mitigation activities and implementation, as a condition to HUD's obligation of CDBG–MIT funds the grantee shall request and submit to HUD any certification, observations, and recommendations by the Financial Oversight and Management Board (FOMB) established by the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), that the action plan and any related program budgets are consistent with any reasonably related provisions of the applicable FOMB-certified budgets and fiscal plans. This condition shall not be interpreted to require a review and certification that is outside of the FOMB's authority.

The Secretary of HUD retains authority to permit the Grantee to access funds notwithstanding the certification requirement upon making a finding that doing so is necessary to effectuate the efficient administration of this grant award at his discretion. In exercising this authority, the Secretary of HUD may require conditions to address FOMB recommendations. The following conditions are imposed on each obligation of grant funds:

- HUD's Federal Financial Monitor shall review any obligation. HUD shall approve the obligation if the grantee satisfactorily resolves all findings of substantial noncompliance related to the use of grant funds and complies with all grant conditions in its grant agreement.
- The Grantee may not draw down funds for an activity in its action plan for mitigation until the Grantee submits to *disaster_recovery@hud.gov* final policies and procedures for implementation of the activity.
- The Grantee shall enter into a Memorandum of Agreement with HUD for technical assistance to support compliant program launch within 90 days.

II.B.2. *Additional requirements for financial management.*

II.B.2.a. *Enhanced DRGR voucher review.* Based on the risk posed by the Grantee's limited financial management staff capacity and to ensure compliant implementation of the Grantee's internal control framework, the Grantee must maintain and adhere to the policies and procedures for its established Financial Management System and internal control framework, or submit to HUD a new plan with a schedule for otherwise obtaining and maintaining the necessary financial management capacity. In order for HUD to monitor the grantee's financial management capacity, the Commonwealth of Puerto Rico shall provide, via upload in DRGR, support documentation for each voucher drawdown request made in DRGR for its CDBG–MIT grant. The Commonwealth shall continue to upload support documentation for its voucher drawdown requests in DRGR until completion of HUD's first two on-site monitoring reviews and the grantee's resolution of any significant findings that result from those reviews.

II.B.2.b. *Drawdown milestones.* To reduce risk, HUD will establish a grant condition that will require the grantee to take certain steps prior to drawing over a certain percentage of available funds, such as:

i. Update its DRGR administration module to include a list of all grant-related internal audit issues (*i.e.,* findings or concerns) and recommendations along with the resolution or planned resolution of these issues;

ii. Update its DRGR administration module to include a summary of each open Single Audit recommendation for (1) the Grantee and/or (2) subrecipient along with the resolution or planned resolution of the audit recommendation;

iii. Update its DRGR administration module to include a summary of each open HUD OIG recommendation related to this grant together with its resolution or planned resolution;

iv. Update DRGR administration module to include a summary of each HUD monitoring recommendation related to this grant along with the resolution or planned resolution of the OIG recommendation; and,

v. Review its management and capacity plan and inform HUD of all updates, including an explanation for each missed milestone, if any.

HUD will review the information submitted by the grantee to determine whether the Grantee demonstrates capacity to make timely and effective corrective actions on identified deficiencies and compliance issues. If HUD determines the Grantee does not demonstrate such capacity, HUD may take additional corrective actions, such as restricting access to grant funds pending resolution of identified issues. If the Grantee fails to comply with this condition, HUD will block access to all or a portion of the grant funds, pending HUD on-site review of the Grantee's management controls.

II.B.3. *Special condition related to detection and prevention of fraud, waste, and abuse.*

Section V.A.1.a of the CDBG–MIT Notice establishes the submission requirements that are required for HUD's certification of the proficiency of a CDBG–MIT grantees' financial controls and procurement processes, and adequate procedures for grants management. Among the required submissions are grantee procedures to detect and prevent fraud, waste, and abuse, including a requirement that each grantee indicate how it will ''verify the accuracy of information provided by (CDBG–MIT) applicants.'' To address the risk of fraudulent application information and reflect a connection to on-going efforts of the Commonwealth to update its 911 database, property tax records, and GIS maps to include all housing units and to help housing rehabilitation applicants clear title issues that have arisen in the course of federal disaster assistance efforts following Hurricane Maria, the Department is adding to the requirement in section V.A.1.a.(6)(v) of the CDBG–MIT Notice. Accordingly, the grantee's procedures to detect and prevent fraud, waste, and abuse must include how the grantee will verify the accuracy of information provided by applicants. The polices must address how the Commonwealth's CDBG–DR-funded planning activity to develop a uniform parcel registry and GIS database that contains ownership and parcel registry data is to be used to assist HUD, other third parties, and the public to verify the legal and physical address associated with CDBG–MIT activities.

Additionally, so that the uniform parcel registry and GIS database are available to support the detection and prevention of waste, fraud, and abuse in its CDBG–MIT grant, the grantee must adhere to its quarterly performance projections for the use of CDBG–DR funds related to the uniform parcel registry and GIS database activity, beginning with the quarter funds are available to the grantee and continuing each quarter until all funds are expended, unless HUD approves an amendment to the projections via the Quarterly Performance Report (QPR). If the grantee does not complete the

uniform parcel registry project, HUD may impose an additional condition to mitigate the risk of fraud within the Grantee's programs.

II.B.4. *Special conditions related to operation and maintenance of mitigation projects.* Section V.A.2.a of the CDBG–MIT Notice establishes the requirements for a grantee's CDBG–MIT action plan and section V.A.2.a (10) of that notice requires the grantee to describe how it will fund long-term operation and maintenance of certain CDBG–MIT projects. In addition to the requirement of the CDBG–MIT Notice, this notice requires the grantee to include additional information in its action plan in recognition of the fiscal and financial management challenges of the Commonwealth of Puerto Rico, and the impact of these challenges on the ability of the Commonwealth to ensure continued operation and maintenance of CDBG–MIT projects to achieve the intended risk reduction.

In its action plan, the grantee must describe all resources, including user fees or Commonwealth or local resources, that have been identified for the operation and maintenance costs of projects assisted with CDBG–MIT funds. The action plan shall indicate that, within one year of approval of the action plan and annually thereafter, the Commonwealth shall submit an operation and maintenance plan to HUD which shall identify the source(s) and amount(s) of revenue that will be sufficient to operate and maintain infrastructure and public facility projects funded with CDBG–MIT funds and which shall identify the entity or entities responsible for the operation and maintenance of those projects.

II.B.5. *Special Condition Related to Covered Projects.* As described in the CDBG–MIT Notice, for grantees that are considered by HUD to have ''unmitigated high risks'' that impact their ability to implement large scale projects, HUD may impose special grant conditions, including but not limited to a lower dollar threshold for the large-scale infrastructure projects that meet the definition of a Covered Project. Covered Projects are subject to the additional action plan requirements described in section V.A.2.h. of the CDBG–MIT notice. As the Commonwealth of Puerto Rico has been determined by HUD to have unmitigated high risks with regard to its capacity, a Covered Project for the grantee will alternatively be defined as an infrastructure project having a total project cost of $50 million or more, with at least $25 million of CDBG funds (regardless of source (*e.g.,* CDBG–DR, CDBG–MIT, or CDBG)).

II.B.6. *Additional implementation plan capacity assessment requirements.* In addition to the submission requirements established for the implementation plan and capacity assessment provided in section V.A.1.b. of the CDBG–MIT Notice, the Commonwealth of Puerto Rico shall submit evidence that it has secured or is in the process of securing staff and contractors necessary to effectively implement CDBG–MIT funded programs and projects. Staff and contractors must be identified by the grantee in a Staff Analysis Worksheet. The Staff Analysis Worksheet must be submitted within 90 days of the CDBG–MIT grant agreement as a supplement to the Grantee's pre-grant implementation and capacity assessment submission. The Worksheet must show the staff that are in place and all of their responsibilities, including the staff that have responsibilities for program-related civil rights compliance and staff and contracted support for implementation of the funds and programs associated with the obligation. The Grantee also shall identify staff responsible for fraud prevention and their specific responsibilities. After receiving the Staff Analysis Worksheet, HUD may establish a special condition requiring the Grantee to hire specific staff positions that HUD determines are critical to the Grantee's implementation of CDBG–MIT funded programs and projects. Any specific position required by HUD must be advertised within 90 days of HUD's inclusion of a specific position in a grant condition and filled within 90 days following advertisement. To reduce the risk of noncompliance within a particular program or project due to lack of staff capacity, when HUD requires the Grantee to hire a specific position, a portion of CDBG–MIT funds the Grantee designated at risk of noncompliance shall remain in a restricted balance in the Disaster Recovery and Grants Reporting (DRGR) system until HUD receives evidence that the Grantee has advertised and filled the required staff positions. The amount of the restricted balance will be identified in the grant condition, and will be based on HUD's determination of the amount that will allow the Grantee to undertake initial work to support the launch of the at-risk activity, but will reduce the risk by adding staff capacity before incurring significant activity implementation costs.

II.B.7. *Enhanced subrecipient monitoring and oversight.* Sections V.A.1.a.(6)(i) and (ii) of the CDBG–MIT Notice require grantees, as part of the implementation plan and capacity assessment, to submit criteria to be used to evaluate the capacity of potential subrecipients and certain details about subrecipient monitoring. In addition to these requirements, the Commonwealth of Puerto Rico shall submit a monitoring plan for its subrecipients to HUD within 90 days of the approval of the CDBG–MIT action plan.

II.B.8. *Financial Management Related to Indirect Cost Risk.* Based on applicable requirements and risks related to charges to grants for indirect costs, the Grantee must: (1) Prepare an indirect cost proposal prior to charging indirect costs to the Grant. The indirect cost proposal and related documentation to support the costs must be submitted to its cognizant agency for indirect costs if required pursuant to Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost. (2) Require each subrecipient receiving a subaward under the Grant to prepare an indirect cost proposal prior to charging indirect costs to the subaward. The indirect cost proposal and related documentation to support the costs must be submitted to its cognizant agency for indirect costs if required pursuant to Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations or Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, or if the subrecipient is an Institution of Higher Education (IHE), pursuant to Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for IHEs. If a subrecipient does not have a cognizant agency, the Grantee is responsible for reviewing the indirect cost proposal if submission to a cognizant agency would otherwise be required.

All costs charged to the Grant or a subaward must comply with the cost principles specified at 2 CFR part 200, subpart E—Cost Principles. Neither the Grantee nor any subrecipient may charge a fee to the Grant or a subaward for the purpose of defraying costs of work performed by the Grantee or subrecipient that would otherwise be subject to such cost principles or would include an increment above allowable costs.

II.B.9. *Staff and subrecipient fraud prevention and other federal requirements training.* Section V.A.18 of the CDBG–MIT Notice requires each CDBG–MIT grantee and its subrecipients to attend fraud related training provided by HUD OIG to assist in the proper management of CDBG–MIT grant funds. Additionally, in order to prevent discriminatory practices in

the administration of CDBG–MIT funds and to reduce the risk of having new staff who are not familiar with federal requirements, the Commonwealth's CDBG–MIT staff and CDBG–MIT subrecipients must attend program-related civil rights and fair housing requirements training. Within 90 days of execution of the CDBG–MIT grant agreement, the Commonwealth shall submit documentation to HUD that CDBG–MIT staff and CDBG–MIT subrecipients have completed such training. The Grantee shall maintain documentation that staff hired and subrecipients selected after the CDBG–MIT grant agreement attended required training. The grantee shall also identify staff responsible for fraud prevention and their specific responsibilities.

II.B.10. *Citizen engagement.* In response to the limited experience of the grantee in administering a CDBG–MIT grant, particularly experience in engaging the community after a major disaster, the Commonwealth shall indicate in its implementation plan for CDBG–MIT that it has in place public affairs staff with community engagement experience and that it has updated its citizen participation plan to include specific outreach actions designed to mitigate risks arising from public pressure and a lack of broad community input in the identification of mitigation needs.

II.B.11. *Submission of internal audit reports and posting of reports.* Section V.A.1.a. (6)(iii) of the CDBG–MIT Notice provides that HUD may establish a grant condition to require grantees to submit copies of the reports of its internal auditor directly to HUD. Accordingly, the Commonwealth of Puerto Rico shall submit to HUD and HUD's Office of Inspector General (OIG) a copy of all reports issued by its internal auditor, and if the internal auditor does not issue formal reports then the grantee will instead submit a regular summary of findings and assessments made by the auditor. Additionally, while all CDBG–MIT grantees are required to post certain information on the grantee's website pursuant to section V.A.3.d of the CDBG–MIT Notice, the Commonwealth shall also post final audit reports issued by HUD's OIG on the grantee's website, (including any translations of such reports, as available), along with any other relevant reports that HUD requests that the grantee posts on its website.

II.B.12. *Additional requirements for policies and procedures.* The Commonwealth of Puerto Rico shall develop and maintain policies and procedures and shall describe for each program (or project, as applicable): The eligible activities; the required records management practices; procurement requirements; subrecipient oversight; providing technical assistance; monitoring practices; policies for assigning direct costs to the correct program or project; and timely expenditure of funds. The policies and procedures shall include a plan for training all subrecipients on all federal and state CDBG–MIT requirements (*e.g.* program-related civil rights requirements training). The grantee's policies and procedures shall provide that the grantee shall comply with federal accessibility requirements to the extent that they apply to activities funded with CDBG–MIT funds. The grantee shall submit the policies and procedures to HUD within 30 days of HUD's execution of the grant agreement or before the grantee awards funds to subrecipients, whichever is later.

II.B.13. A*dditional requirements for Cost Allowability.* The Federal government can only share in a cost to the extent it is necessary and reasonable. To reduce risks related to a lack of financial management capacity, the following condition applies:

II.B.13.a. Based upon applicable regulations and guidance related to the construction labor costs resulting from the minimum wage established by Commonwealth of Puerto Rico Executive Order 2018–033, the grantee shall not take into account the minimum wage rate established by Executive Order 2018–033 for construction contracts entered by the Commonwealth when determining whether a wage cost is reasonable under the factors at 2 CFR 200.404. Before charging wage costs to this grant, the Grantee must make an independent determination that wages to be paid with grant funds are reasonable, using factors such as the prevailing wage established by the Department of Labor or other indicators of market wage rates for comparable labor in the geographic area, and the restraints or requirements imposed by such factors as sound business practices and arm's-length bargaining.

II.B.14. *Additional requirements for Grant Method of Distribution Risk.* Based on the risk of using another partner agency/agencies or subrecipients without CDBG–DR or CDBG–MIT grant experience that are budgeted for activities equal to or exceeding $500 million, within 90 days of the execution of the grant agreement:

(1) The Grantee must provide a monitoring plan for overseeing the performance of other agencies, existing subrecipients, and subrecipients that will receive subawards (used here to mean grant funds provided to another agency of the Grantee or to a subrecipient) under the approved action plan for mitigation with dates and areas of review. The monitoring plan shall include:

(a) An evaluation of each agency or subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate agency or subrecipient monitoring. The evaluation must include consideration of the following factors:

i. The agency or subrecipient's prior experience with the same or similar grant;

ii. The results of previous audits including whether the agency or subrecipient receives a Single Audit in accordance with 2 CFR part 200, subpart F—Audit Requirements, and the extent to which the same or similar grant has been audited as a major program;

iii. Whether the agency or subrecipient has new personnel or new or substantially changed systems; and,

iv. The extent and results of HUD monitoring, if the agency or subrecipient also receives Federal awards directly from HUD.

(b) A plan to monitor the activities of the agency or subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved, including:

i. Review of financial and performance reports required by the Grantee;

ii. Review of expenditures to determine that charges to the subaward by another agency or subrecipient conform to the cost principles at 2 CFR part 200, subpart E—Cost Principles, and are net of all applicable credits.

iii. Follow-up and ensuring that the agency or subrecipient takes timely and appropriate action on all deficiencies pertaining to the subaward as detected through audits, on-site reviews, and other means;

iv. Issuance of a management decision for audit findings pertaining to the subaward as required by § 200.521 Management decision; and,

v. A schedule of follow-up actions to be taken to resolve a finding of non-compliance and identify the official responsible for such actions.

(2) The Grantee must provide copies of agency memoranda of agreement and subrecipient agreements for subawards above $200 million or those evaluated by HUD to be the highest risk as well as a certification by the parties to each

agreement that the agreement for CDBG–MIT funds is legally-binding.

(3) The Grantee must impose specific subaward conditions upon an agency or subrecipient as described in § 200.207 Specific conditions.

(4) The Grantee, based on the evaluation of risk posed by the agency or subrecipient, must ensure proper accountability and compliance with program requirements and achievement of performance goals by:

(a) Providing agencies or subrecipients with training and technical assistance on program-related matters;

(b) Performing on-site reviews of the agency's or subrecipient's program operations; and,

(c) Arranging for agreed-upon-procedures engagements as described in § 200.425 Audit services.

(5) The Grantee must verify that every agency (where not included in the audit of the grantee) or subrecipient is audited as required by Subpart F—Audit Requirements of 2 CFR part 200 when it is expected that the agency or subrecipient's subaward expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501 Audit requirements.

(6) The Grantee must consider whether the results of the agency or subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the Grantee's own records.

(7) The Grantee must take enforcement action against noncompliant agencies or subrecipients as described in § 200.338 Remedies for noncompliance of this part and in program regulations.

II.B.15. *Additional requirements for Fiscal Distress Risk.* Based on the financial risk posed by the Grantee's fiscal distress (as evidenced by ongoing debt restructuring pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), 48 U.S.C. 2101–2241) the Grantee must comply with the requirements of the October 26, 2017 ''ORDER GRANTING URGENT JOINT MOTION OF THE COMMONWEALTH OF PUERTO RICO, PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY, PUERTO RICO ELECTRIC POWER AUTHORITY, AND THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY FOR ORDER CONCERNING RECEIPT AND USE OF ANTICIPATED FEDERAL DISASTER RELIEF FUNDS AND PRESERVING RIGHTS OF PARTIES,'' as may be amended from time to time by the United States District Court for the District of Puerto Rico or other court with jurisdiction (the Order). As required by the Order, grant funds received by the Commonwealth or other Non-Federal entity (as defined by 2 CFR 200.69) shall be deposited solely into a Disaster Relief Account, meaning a new, segregated, non-co-mingled, unencumbered account held in the name of the Commonwealth or of the Non-Federal entity to whom the funds have been provided, and shall be used solely for eligible activities. Evidence of the Disaster Relief Account held by the Commonwealth must be provided to HUD within 60 days of the date of the CDBG–MIT grant agreement with the submission of a completed SF–1199 (direct deposit form) or other similar form specified by HUD. The Grantee must maintain documentation of the Disaster Relief Accounts held by other Non-Federal entities that receive grant funds from the Grantee.

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.218 and 14.228.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for inspection at HUD's Funding Opportunities web page at: *https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/fundingopps.* The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Dated: January 16, 2020.

Benjamin Carson, Sr.,

Secretary.

[FR Doc. 2020–01334 Filed 1–24–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6182–N–01]

Allocations, Common Application, Waivers, and Alternative Requirements for Disaster Community Development Block Grant Disaster Recovery Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice allocates a total of $3,831,428,000 in Community Development Block Grant disaster recovery (CDBG–DR) funds appropriated by the Supplemental Appropriations for Disaster Relief Act, 2018, and the Additional Supplemental Appropriations for Disaster Relief Act, 2019. The combined amount of $3,831,428,000 in CDBG–DR funds is allocated by this notice for the purpose of assisting in long-term recovery from major disasters that occurred in 2017, 2018, and 2019. This notice also contains clarifications on waivers and alternative requirements that were included in the Prior Notices. Unless expressly limited to certain grantees, the amended waivers and alternative requirements apply to all CDBG–DR grants that are subject to the Prior Notices (previous grants for 2017 disasters and grants under this Notice).

DATES: *Applicability Date:* February 3, 2020.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Acting Director, Office of Block Grant Assistance, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Ms. Kome at 202–708–0033. (Except for the''800'' number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

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Appendix A: Allocation Methodology

I. Allocations

Two public laws have been enacted that provide supplemental CDBG–DR appropriations. The Supplemental Appropriations for Disaster Relief Act, 2018 (Pub. L. 115–254, approved October 5, 2018) (2018 Appropriations Act) made available $1,680,000,000 in CDBG–DR funds for major disasters declared in 2018. The Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. 116–20, approved June 6, 2019) (2019 Appropriations Act) made $2,431,000,000 in CDBG–DR funds available for major disasters occurring in 2017, 2018, or 2019, of which $431,000,000 is for grantees that received funds in response to disasters occurring in 2017. Based on the unmet needs allocation methodology outlined in Appendix A, this notice allocates $3,400,428,000 in CDBG–DR funds in accordance with the 2018 Appropriations Act and the 2019 Appropriations Act (the ''2018 and 2019 Appropriations Acts''), to address unmet disaster recovery needs through activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCDA) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the ''most impacted and distressed'' areas resulting from a qualifying major disaster in 2018 and 2019, as well as $431,000,000 for unmet infrastructure needs for 2017 disasters. Qualifying major disasters are those declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) (Stafford Act) and identified in Table 1.

When additional data becomes available for other disasters occurring in 2019, the remaining $272,072,000 from Public Law 116–20 will be allocated for those disasters in a subsequent notice. In **Federal Register** notices published on February 9, 2018 at 83 FR 5844, August 14, 2018 at 83 FR 40314, February 19, 2019 at 84 FR 4836, and June 20, 2019 at 84 FR 28848 (the ''Prior Notices''), HUD described the applicable waivers and alternative requirements, relevant statutory and regulatory requirements, the grant award process, criteria for action plan approval, updates to duplication of benefits requirements, and eligible disaster recovery activities associated with grants for 2017 disasters. This notice imposes the requirements of the Prior Notices, as amended by provisions in this notice, on the grants announced in this notice.

In accordance with the 2018 and 2019 Appropriations Acts, $2,500,000 of the amounts these acts made available will be transferred to the Department's Office of Community Planning and Development (CPD), Program Office Salaries and Expenses, for necessary costs of administering and overseeing CDBG–DR grants under the 2018 and 2019 Appropriations Acts. Additionally, in accordance with the 2019 Appropriations Act, $5,000,000 is to be transferred to CPD to provide necessary capacity building and technical assistance to grantees that receive a CDBG–DR grant under the 2018 and 2019 Appropriations Acts or future acts. As mentioned above, the 2019 Appropriations Act requires HUD to allocate $431,000,000 to address unmet infrastructure needs for grantees that received an allocation for a disaster that occurred in 2017, of which $331,442,114 shall be allocated to those grantees affected by Hurricane Maria.

The 2018 and 2019 Appropriations Acts provide that grants shall be awarded directly to a State, unit of general local government, or Indian tribe at the discretion of the Secretary. Unless noted otherwise, the term ''grantee'' refers to the entity receiving a grant from HUD under this notice. To comply with statutory requirements that funds be used for disaster-related expenses in the most impacted and distressed areas, HUD allocates funds using the best available data that covers all the eligible affected areas.

Grantees receiving an allocation of funds under this notice are subject to the requirements of the Prior Notices, as amended by this notice or by subsequent notices. Pursuant to the Prior Notices, each grantee receiving an allocation for a 2018 or 2019 disaster is required to primarily consider and address its unmet housing recovery needs. These grantees may, however, propose the use of funds for unmet economic revitalization and infrastructure needs unrelated to the grantee's unmet housing needs if the grantee demonstrates in its needs assessment that there is no remaining unmet housing need or that the remaining unmet housing need will be addressed by other sources of funds. Grantees receiving funds under this notice for an additional allocation for unmet infrastructure needs arising from a 2017 disaster must use those funds for unmet infrastructure needs.

Table 1 (below) shows the major disasters that grants under this notice may address and the minimum amount of funds from the combined allocations under the 2018 and 2019 Appropriations Acts that must be expended in the HUD-identified most impacted and distressed areas. The information in this table is based on HUD's review of the impacts from the qualifying disasters and estimates of unmet need.

TABLE 1—ALLOCATIONS UNDER PUBLIC LAWS 115–254 AND 116–20

Disaster year	Disaster No.	Grantee	Unmet needs allocation under Public Law 115–254	Unmet needs allocation under Public Law 116–20	Total allocation for unmet needs (Pub. L. 115–254 and Pub. L. 116–20)	Minimum amount that must be expended for recovery in the HUD-identified ''most impacted and distressed'' areas
2017 Disasters (Additional Unmet Infrastructure Needs).	4344 & 4353	State of California	$0	$38,057,527	$38,057,527	(No less than $30,446,000) Sonoma and Ventura counties: 93108, 94558, 95422, 95470, and 95901 Zip Codes.
	4337 & 4341	State of Florida	0	38,637,745	38,637,745	(No less than $30,910,000) Brevard, Broward, Clay, Collier, Duval, Hillsborough, Lee, Miami-Dade, Monroe, Orange, Osceola, Palm Beach, Polk, St. Lucie, and Volusia counties; 32084, 32091, 32136, 32145, 33440, 33523, 33825, 33870, 33935, and 34266 Zip Codes.
	4294, 4297, & 4338	State of Georgia	0	13,015,596	13,015,596	(No less than $10,412,000) 31520, 31548, and 31705 Zip Codes.
	4317	State of Missouri	0	9,847,018	9,847,018	(No less than $7,878,000) 63935, 63965, 64850, 65616, and 65775 Zip Codes.
	4336 & 4339	Commonwealth of Puerto Rico.	0	277,853,230	277,853,230	($277,853,230) All Components of the Commonwealth of Puerto Rico.
	4335	U.S. Virgin Islands	0	53,588,884	53,588,884	($53,588,884) All components of the U.S. Virgin Islands.
2018 Disasters	4413	State of Alaska	0	35,856,000	35,856,000	(No less than $28,685,000) Anchorage Borough.

TABLE 1—ALLOCATIONS UNDER PUBLIC LAWS 115–254 AND 116–20—Continued

Disaster year	Disaster No.	Grantee	Unmet needs allocation under Public Law 115–254	Unmet needs allocation under Public Law 116–20	Total allocation for unmet needs (Pub. L. 115–254 and Pub. L. 116–20)	Minimum amount that must be expended for recovery in the HUD-identified ''most impacted and distressed'' areas
	4357	American Samoa	16,539,000	6,500,000	23,039,000	($23,039,000) All components of American Samoa.
	4407 & 4382	State of California	491,816,000	525,583,000	1,017,399,000	(No less than $813,919,000) Butte Lake, Los Angeles, and Shasta Counties.
	4399	State of Florida	448,023,000	287,530,000	735,553,000	(No less than $588,442,000) Bay, Calhoun, Gulf and Jackson Counties; 32321 (Liberty), 32327 (Wakulla), 32328 (Franklin), 32346 (Wakulla and Franklin), 32351 (Gadsden), and 32428 (Washington) Zip Codes.
	4400	State of Georgia	34,884,000	6,953,000	41,837,000	(No less than $33,470,000) 39845 (Seminole) Zip Code.
	4366	Hawaii County, HI	66,890,000	16,951,000	83,841,000	($83,841,000) Hawaii County.
	4365	Kauai County, HI	0	9,176,000	9,176,000	(No less than $7,341,000) 96714 (Kauai) Zip Code.
	4393	State of North Carolina	336,521,000	206,123,000	542,644,000	(No less than $434,115,000) Brunswick, Carteret, Columbus, Craven, Duplin, Jones, New Hanover, Onslow, Pender, and Robeson Counties; 28352 (Scotland), 28390 (Cumberland), 28433 (Bladen), and 28571 (Pamlico) Zip Codes.
	4396 & 4404	The Commonwealth of the Northern Mariana Islands.	188,652,000	55,294,000	243,946,000	(No less than $195,157,000) Saipan and Tinian Municipalities.
	4394	State of South Carolina	47,775,000	24,300,000	72,075,000	(No less than $57,660,000) Horry and Marion counties; 29536 (Dillon) Zip Code.
	4377	State of Texas	46,400,000	26,513,000	72,913,000	(No less than $58,330,000) Hidalgo County.
	4402	State of Wisconsin	0	14,355,000	13,355,000	(No less than $12,284,000) 53560 (Dane) Zip Code.
2019 Disasters	4441	State of Arkansas	0	8,940,000	8,940,000	(No less than $7152,000) 71602 (Jefferson) and 72016 (Perry) Zip Codes.
	4421	State of Iowa	0	96,741,000	96,741,000	(No less tan $77,393,000) Mills County; 51640 (Fremont) Zip Code.
	4451	State of Missouri	0	30,776,000	30,776,000	(No less than $24,621,000) St. Charles County; 64437 (Holt) and 65101 (Cole) Zip Codes.
	4420	State of Nebraska	0	108,938,000	108,938,000	(No less than $87,150,000) Sarpy County; 68025 (Dodge), 68064 (Douglas) and 68069 (Douglas) Zip Codes.
	4447	State of Ohio	0	12,305,000	12,305,000	(No less than $9,844,000) 45426 (Montgomery) Zip Code.
	4438	State of Oklahoma	0	36,353,000	36,353,000	(No less than $29,082,000) Muskogee and Tulsa Counties; 74946 (Sequoyah) Zip Code.
	4454 & 4466	State of Texas	0	212,741,000	212,741,000	(No less than $170,193,000) Cameron, Chambers, Harris, Jefferson, Liberty, Montgomery, and Orange Counties; 78570 (Hildalgo) Zip Code.
Total			1,677,500,000	2,153,928,000	3,831,428,000	

Pursuant to the 2018 and 2019 Appropriations Acts, HUD has identified the most impacted and distressed areas based on the best available data for all eligible affected areas. A detailed explanation of HUD's allocation methodology is provided in Appendix A of this notice.

In some instances, HUD identified the entire jurisdiction of a grantee as the most impacted and distressed area. For all other grantees, at least 80 percent of the total funds provided to a grantee under this notice must address unmet disaster needs within the HUD-identified most impacted and distressed areas, as identified in the last column in Table 1. Note that if HUD designates a ZIP Code for 2018 and 2019 disasters as a most impacted and distressed area for purposes of allocating funds, the grantee may expand program operations to the whole county (county is indicated in parentheses next to the ZIP Code as a most impacted and distressed area. The grantee should indicate the decision to expand eligibility to the whole county in its action plan.

A grantee may determine where to use the remaining 20 percent of the allocation, but that portion of the allocation may only be used to address unmet disaster needs in those areas that the grantee determines are ''most impacted and distressed'' and received a presidential major disaster declaration pursuant to the disaster numbers listed in Table 1. A grantee may use up to 5 percent of the total grant award for grant administration and no more than 15 percent of the total grant award for planning activities. Therefore, HUD will include 80 percent of a grantee's expenditures for grant administration in its determination that 80 percent of the total award has been expended in the most impacted and distressed areas identified in Table 1. Additionally, expenditures for planning activities may be counted towards a grantee's 80 percent expenditure requirement, provided that the grantee describes in its action plan how those planning activities benefit the HUD-identified most impacted and distressed areas.

II. Use of Funds

Funds allocated under this notice are subject to the requirements of the Prior Notices, as amended by this notice or subsequent notices. This notice outlines additional requirements imposed by the 2018 and 2019 Appropriations Acts that apply to funds allocated under this notice.

The 2018 and 2019 Appropriations Acts require that prior to the obligation of CDBG–DR funds a grantee shall submit a plan detailing the proposed use of all funds. The plan must include criteria for eligibility, and how the use of these funds will address long-term recovery and restoration of infrastructure and housing, economic revitalization, and mitigation in the most impacted and distressed areas. Therefore, the action plan submitted in response to this notice must describe

uses and activities that: (1) Are authorized under title I of the HCDA or allowed by a waiver or alternative requirement; and (2) respond to a disaster-related impact to infrastructure, housing, or economic revitalization in the most impacted and distressed areas, and if the grantee chooses to do so, how mitigation will be incorporated into recovery activities. To inform the plan, each grantee must conduct an assessment of community impacts and unmet needs and guide the development and prioritization of planned recovery activities, pursuant to section VI.A.2.a. of the February 9, 2018 notice (83 FR 5849).

While CDBG–DR funding is a valuable resource for long-term recovery and mitigation in the wake of major disasters, HUD expects that grantees will take steps to set in place substantial State and local governmental policies to enhance the impact of HUD-funded investments and limit damage from future disasters. The **Federal Register** notice published February 9, 2018 (83 FR 5850), requires all grantees to describe how they plan to promote sound, sustainable long-term planning. HUD is encouraging wildfire-impacted grantees in particular to consider land-use plans that address density and quantity of development, as well as emergency access, landscaping, and water supply considerations. Grantees are reminded that they may use CDBG–DR funds for planning activities, including, but not limited to, developing a Community Wildfire Protection Plan (CWPP). Grantees are encouraged to review U.S. Forest Service's resources on wildland fire (*https://www.fs.fed.us/managing-land/fire*) and work with Federal and State forestry and fire agencies that carry out activities related to fire risk reduction, including upgrading mapping, data, and other capabilities to better manage wildland fire risk areas. To maximize the impact of all available funds, all grantees are encouraged to coordinate and align these funds with other projects funded with CDBG–DR and CDBG-Mitigation funds, as well as other disaster recovery activities funded by the Federal Emergency Management Agency (FEMA), the U.S. Army Corps of Engineers (USACE), the U.S. Forest Service, and other agencies as appropriate.

Grantees should note that a subsequent notice published on August 14, 2018 (83 FR 40314), which clarifies and/or modifies requirements in the February 9, 2018 notice, applies to grantees receiving funds under this notice. Specifically, grantees should note the following clarifications and modifications in the August 14, 2018 notice governing the use of these funds: Allowing for unmet economic revitalization and infrastructure needs (83 FR 40314), which are addressed in section I in this notice; the use of terminology around an evaluation of the cost or price of a product or service (83 FR 40317); additional requirements for the comprehensive disaster recovery website (83 FR 40317); clarification of working capital to aid in recovery (83 FR 40317); underwriting requirements (83 FR 40317); limitation of use of funds for eminent domain (83 FR 40317); increased public comment period (83 FR 40318); cost verification (83 FR 40318); additional criteria and specific conditions to mitigate risk (83 FR 40318–40319); the waiver of Section 414 of the Stafford Act as amended (83 FR 40319) and addressed in section IV.C.2. in this notice; modification of affordability periods for rental properties (83 FR 40320); clarification of the environmental review requirements (83 FR 40319); CDBG–DR housing assistance and FEMA's permanent and semi-permanent housing programs (83 FR 40320); rehabilitation and reconstruction cost-effectiveness (83 FR 40321); infrastructure planning and design (83 FR 40321); discipline and accountability in the environmental review and permitting of infrastructure projects (83 FR 40321); and CDBG–DR funds as match for FEMA 428 Public Assistance projects (83 FR 40321).

Additionally, HUD published a notice on June 20, 2019 entitled, ''Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees'' (84 FR 28836) (2019 DOB Notice) and a second notice that implemented the 2019 DOB Notice by making corresponding amendments to the Prior Notices (Applicability of Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees, published at 84 FR 28848) (the ''Implementation Notice''). Those changes are explained in section IV.B.6. of this notice and in detail in the 2019 DOB Notice (84 FR 28836).

Finally, the February 9, 2018 notice was also amended by the February 19, 2019 notice (84 FR 4836) with a clarification on green building standards (84 FR 4844).

III. Overview of Grant Process

Each grantee must submit an action plan for disaster recovery pursuant the requirements of section VI.A.2 of the February 9, 2018 notice (83 FR 5849), as modified by the requirements of the August 14, 2018 notice (83 FR 40314), not later than 120 days after the applicability date of this notice. All requirements of the Prior Notices related to the action plan submission shall apply, including the public comment period which was extended to not less than 30 calendar days under the August 14, 2018 notice (83 FR 40318), and the manner of publication which must include prominent posting on the grantee's official website (83 FR 40317). Each grantee must publish the action plan in a manner that affords citizens, affected local governments, and other interested parties a reasonable opportunity to examine the contents and provide feedback. Each grantee must also submit the Financial Management and Grant Compliance submission and Pre-Award Implementation Plan pursuant to section VI.A.I of the February 9, 2018 notice. All deadlines for these submissions are determined by the applicability date of this notice.

In the Prior Notices, the Department included its intention to establish special grant conditions for individual CDBG–DR grants based upon the risks posed by the grantee, including risks related to the grantee's capacity to carry out the specific programs and projects proposed in its action plan. As described in the Prior Notices, these conditions will be designed to provide additional assurances that programs are implemented in a manner to prevent waste, fraud, and abuse and the Department has established specific criteria and conditions for each grant award as provided for at 2 CFR 200.205 and 200.207(a), respectively, to mitigate the risks of the grant.

To begin expending CDBG–DR funds, the grantee must follow the process outlined in the February 9, 2018 notice (83 FR 5846), unless otherwise amended below:

- Within 60 days of the applicability date of this notice (or when the grantee submits its action plan, whichever is earlier), submit documentation for the certification of financial controls and procurement processes and adequate procedures for grant management, as amended in section IV.B.1 of this notice. A grantee that received a certification of its financial controls and procurement processes pursuant to a 2016 or 2017 disaster may request that HUD rely on that certification for purposes of this allocation, provided, however, that grantees shall be required to provide updates to reflect any material changes in the submissions.
- Within 60 days of the applicability date of this notice (or when the grantee

submits its action plan, whichever is earlier), submit documentation for the implementation plan and capacity assessment.

• Additionally, all funds must be expended within 6 years of the date of obligation as described in section V of this notice.

III.A. Funds for Unmet Infrastructure Needs for Grantees That Received Allocations for 2017 Disasters

Each grantee that received an allocation pursuant to Public Law 115–56 or Public Law 115–123 for 2017 disasters and an additional allocation in this notice for unmet infrastructure needs is required to submit a substantial amendment to its current action plan required by the Prior Notices. The substantial amendment must be submitted no later than 90 days after the applicability date of this notice. The substantial amendment must include the additional allocation of funds and address the requirements of the Prior Notices, as amended by this notice. Each grantee must follow the applicable substantial amendment process pursuant to section III.B of the August 14, 2018 notice (83 FR 40316). Based on the 2019 Appropriations Act, HUD will condition the availability of these funds for grantees that have entered into alternative procedures under section 428 of the Stafford Act as of the date of enactment of the 2019 Appropriations Act until such grantees have reached a final agreement on all fixed cost estimates within the timeline provided by FEMA.

IV. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the notice describes rules, statutes, waivers, and alternative requirements that apply to each grantee receiving an allocation under this notice. The Secretary has determined that good cause exists to apply each waiver and alternative requirement established in the Prior Notices to grantees receiving funds under this notice and that such waivers and alternative requirements are not inconsistent with the overall purpose of title I of the HCDA. The Secretary's determination of good cause extends to each waiver or alternative requirement as amended by this notice. Grantees are reminded that all fair housing and nondiscrimination requirements, as well as environmental and labor requirements, continue to apply. The following requirements apply only to the CDBG–DR funds appropriated under the 2018 and 2019 Appropriations Acts (unless otherwise noted) and not to funds provided under the annual formula State or Entitlement CDBG programs, the Indian Community Development Block Grant program, or those provided under any other component of the CDBG program, such as the Section 108 Loan Guarantee Program, or any previous CDBG–DR appropriations, unless otherwise noted.

A grantee may request additional waivers and alternative requirements from the Department as needed to address specific needs related to its recovery activities, accompanied by data to support the request. Grantees should work with the assigned Community Planning and Development representatives to request any additional waivers or alternative requirements from HUD. Except where noted, the waivers and alternative requirements described below apply to all grantees under this notice. Pursuant to the requirements of the 2018 and 2019 Appropriations Acts, waivers and alternative requirements are effective 5 days after they are published in the **Federal Register**.

Except as described in this notice or the Prior Notices, statutory and regulatory provisions governing the State CDBG program shall apply to State grantees receiving a CDBG–DR grant. Except as described in this notice or the Prior Notices, statutory and regulatory provisions governing the entitlement CDBG program shall apply to any local government receiving a CDBG–DR grant. Based on the Prior Notices' treatment of grantees in the CDBG Insular areas program, all references to states and State grantees shall include the Commonwealth of the Northern Mariana Islands and the American Samoa. State and Entitlement CDBG regulations can be found at 24 CFR part 570. References to the action plan in these regulations shall refer to the action plan for disaster recovery required by section VI.A.2 of the February 9, 2018 notice. All references in this notice pertaining to timelines and/or deadlines are in terms of calendar days unless otherwise noted. The date of this notice shall mean the applicability date of this notice unless otherwise noted.

IV.A. Incorporation of Waivers and Alternative Requirements for Local Governments

This notice extends the waivers and alternative requirements in the Prior Notices to states and local governments receiving grants under the 2018 and 2019 Appropriations Acts. Because the Prior Notices only govern grants to states, this notice amends the Prior Notices by adding regulations that apply to units of general local government the waivers previously granted by the Secretary (except in cases such as the timely distribution of funds, the consolidated plan waiver, or reimbursement where the Prior Notices already waive entitlement CDBG program regulations). Where requirements are different for units of general local government than the requirements applicable to states, this notice amends the Prior Notices to add the local government requirement.

IV.A.1. The Secretary amends the following sections of the February 9, 2018 notice to expand waivers to include waivers of the regulations that apply to local government grantees: In Section VI.A.2., *Action Plan for Disaster Recovery waiver and alternative requirement,* the Secretary waives 24 CFR 91.220; in section VI.A.4., *Citizen participation waiver and alternative requirement,* the Secretary waives 24 CFR 91.105(b) and (c); and in section VI.A.12, *Use of the urgent need national objective,* the Secretary waives 24 CFR 570.208(c). Grantees are responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities and limited English proficiency (LEP). This waiver does not affect the statutory and regulatory obligations of CDBG–DR grantees to affirmatively further fair housing. As part of the CDBG–DR action plan, all grantees must certify that they will affirmatively further fair housing. For CDBG–DR grantees, this means conducting an Analysis of Impediments to Fair Housing Choice (AI), taking appropriate actions to overcome the effects of any impediments identified through that analysis, and keeping records of these actions.

IV.A.2. *Procurement.* This notice amends the sections of the February 9, 2018 notice to add additional requirements or to clarify procurement requirements that apply to local governments:

Paragraph V.A.1.a.(2) is modified after the sentence that begins ''A State grantee (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) has proficient procurement policies and processes if . . . '' to add the following sentence: ''A local government grantee has proficient procurement policies and processes if it follows procurement requirements in the Uniform Administrative Requirements at 2 CFR 200.318 through 200.326, and imposes these requirements on its subrecipients.''

Paragraph VI.A.26 of the February 9, 2018 notice is modified by adding after the first paragraph, ''Any local government receiving a CDBG–DR grant is subject to procurement requirements

in the Uniform Administrative Requirements at 2 CFR 200.318 through 200.326.''

IV.B. Grant Administration

IV.B.1. *Certification of financial controls and procurement processes, and adequate procedures for proper grant management.* The 2018 and 2019 Appropriations Acts require that the Secretary certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5155, to ensure timely expenditure of funds, maintain a comprehensive website regarding all activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. To enable the Secretary to make this certification, each grantee must submit to HUD the Financial Management and Grant Compliance certification submission pursuant to section VI.A.1.a of the February 9, 2018 notice (83 FR 5847), as amended in this section.

A grantee that received a certification of its financial controls and procurement processes pursuant to a 2016 or 2017 disaster may request that HUD rely on that certification for purposes of this grant, provided, however, that grantees shall be required to provide updates to reflect any material changes in the submissions. This information must be submitted within 60 days of the applicability date of this notice. The grant agreement will not be executed until HUD has approved the grantee's certifications. The grantee must implement the CDBG–DR grant consistent with the controls, processes, and procedures as certified by HUD. HUD is requiring each grantee to submit (or update and resubmit, as applicable) all policies and procedures pertaining to its duplication of benefits procedures as outlined below:

(1) Duplication of benefits procedures. A grantee has adequate procedures to prevent the duplication of benefits if the grantee submits uniform processes that reflect the requirements of the February 9, 2018 notice (83 FR 5860) and the 2019 DOB Notice (84 FR 28836), including: (a) Verifying all sources of assistance received by the grantee or applicant, as applicable, prior to the award of CDBG–DR funds; (b) determining a grantee's or an applicant's remaining funding need(s) for CDBG–DR assistance before committing funds or awarding assistance; and (c) requiring beneficiaries to enter into a signed agreement to repay any duplicative assistance if they later receive additional assistance for the same purpose for which the CDBG–DR award was provided. The grantee must identify a method to monitor compliance with the agreement for a reasonable period and must articulate this method in its written administrative procedures, including the basis for the period in which the grantee will monitor compliance. This agreement must also include the following language: ''*Warning:* Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.''

Policies and procedures of the grantee submitted to support the certification must provide that prior to the award of assistance, the grantee will use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and any other sources of local, State and Federal sources of funding to prevent the duplication of benefits. In developing these policies and procedures, grantees are directed to the 2019 DOB Notice (84 FR 28836). To be adequate, a grantee's policies and procedures must reflect the treatment of loans that is consistent with the requirements of the Declined Loans Provision and the section 1210 of the Disaster Recovery Reform Act of 2018 (DRRA) (division D of Pub. L. 115–254), as explained in section IV.B.6 of this notice and in the 2019 DOB Notice.

IV.B.2. *Procurement.* Grantees must comply with procurement requirements for states or for local governments, as applicable, in the Prior Notices (as amended).

IV.B.3. *Use of administrative funds across multiple grants.* The 2019 Appropriations Act authorizes special treatment of grant administrative funds for grantees that received awards under certain CDBG–DR grants. Grantees that received awards under Public Laws 114–113, 114–223, 114–254, 115–31, 115–56, 115–123, and 115–254, or any future act may use eligible administrative funds (up to 5 percent of each grant award plus up to 5 percent of program income generated by the grant) appropriated by these acts for the cost of administering any of these grants without regard to the particular disaster appropriation from which such funds originated. If the grantee chooses to exercise this authority, the grantee must ensure that it has appropriate financial controls to ensure that the amount of grant administration expenditures for each of the aforementioned grants will not exceed 5 percent of the total grant award for each grant (plus 5 percent of program income), review and modify its financial management policies and procedures regarding the tracking and accounting of administration costs, as necessary, and address the adoption of this treatment of administrative costs in the applicable portions of its Financial Management and Grant Compliance submissions as referenced in section VI.A.1 of the February 9, 2018 notice (83 FR 5847–5848). Grantees are reminded that all costs incurred for administration must still qualify as an eligible administration expense.

IV.B.4. *Use of funds in response to Hurricane Matthew and Hurricane Florence (State of North Carolina and South Carolina only*). The 2019 Appropriations Act provides that grantees that received CDBG–DR grants under Public Laws 114–223, 114–254, and 115–31 in response to Hurricane Matthew, may use those funds interchangeably for the same activities that can be funded by CDBG–DR grants in the most impacted and distressed areas related to Hurricane Florence. Specifically, these CDBG–DR grants in response to Hurricane Matthew may be used interchangeably and without limitation for the same activities that can be funded by CDBG–DR grants in the most impacted and distressed areas related to Hurricane Florence. Additionally, all CDBG–DR grants under the 2018 and 2019 Appropriations Acts in response to Hurricane Florence may be used interchangeably and without limitation for the same activities in the most impacted and distressed areas related to Hurricane Matthew.

Grantees are reminded that expanding the eligible beneficiaries of their Hurricane Matthew activities or programs to include those impacted by Hurricane Florence requires the submission of a substantial action plan amendment in accordance with section VI.A.2.g of the November 21, 2016 notice (81 FR 83254). Additionally, all waivers and alternative requirements associated with a CDBG–DR grant apply to the use of the funds provided by that grant, regardless of which disaster (Matthew or Florence) the funded activity will address.

IV.B.5. *One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements.* Grantees that received a CDBG–DR grant for 2018 or 2019 disasters under Public Laws 115–254 or 116–20 (''current requirements'') are currently subject to different requirements with respect to One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements, than grantees that received a CDBG–DR grant for previous

disasters pursuant to Public Laws 114–113, 114–223, 114–254, and 115–31 (''previous requirements''). To avoid the administrative burden of implementing two different Uniform Relocation Assistance and Real Property Acquisition Act (URA) waivers and alternative requirements, HUD is authorizing grantees with CDBG–DR grants subject to the previous requirements to carry out its programs under the same (URA) requirements as is required for its grant(s) under the current requirements.

HUD is authorizing grantees under Public Laws 114–113, 114–223, 114–254, and 115–31 that also received a CDBG–DR grant under Public Law 115–254 or 116–20 to either: (a) continue to follow One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements as provided in section VI.A.19. of the November 21, 2016 notice (81 FR 83266) for its Public Laws 114–113, 114–223, 114–254, and 115–31 CDBG–DR grants; or (b) follow the requirements of section VI.A.23.a. through e. of the February 9, 2018 notice (83 FR 5858) for its Public Laws 114–113, 114–223, 114–254, and 115–31 CDBG–DR grants. The grantee's programs under the most recent Public Laws (Pub. L. 115–254 or 116–20) are already required to follow the waiver and alternative requirement defined in the February 9, 2018 notice (83 FR 5858). If a grantee chooses to follow option (b) above, then it must identify this approach in its policies and procedures related to that particular activity and consistently apply that option for all displaced persons affected by that activity.

IV.B.6. *Duplication of benefits.* The Prior Notices described duplication of benefits (DOB) requirements in Section 312 of the Stafford Act and subjected grantees to the requirements of a notice published in the **Federal Register** on November 16, 2011, at 76 FR 71060 (the ''2011 DOB Notice'').

HUD subsequently published the 2019 DOB Notice, which revised the DOB requirements that apply to CDBG–DR grants for disasters declared between January 1, 2015, and December 31, 2021. HUD also published a separate notice that implemented the 2019 DOB Notice (84 FR 28848) (the ''Implementation Notice'') by making corresponding amendments to the February 9, 2018 and August 14, 2018 notices. The amendments in the Implementation Notice provide that the 2019 DOB Notice shall supersede the 2011 DOB Notice for any new programs or activities submitted in an action plan or action plan amendment on or after June 25, 2019.

Accordingly, grantees must comply with the requirements of the Prior Notices, including amendments in the Implementation Notice. Because the applicability date of this notice is after June 25, 2019, provisions of the Implementation Notice that apply only to grants made before June 25, 2019 do not apply to grants under the 2018 and 2019 Appropriations Acts.

IV.B.7. The waiver and alternative requirement in section VI.A.6. of the February 9, 2018 notice is replaced with the following language to include 2018 and 2019 disaster grantees: ''HUD is temporarily waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5) and 91.225(a)(5)), because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived. Grantees are encouraged to incorporate disaster-recovery needs into their consolidated plan updates as soon as practicable, but any unmet disaster-related needs and associated priorities must be incorporated into the grantee's next consolidated plan update no later than its Fiscal Year 2020 update for 2017 disasters and Fiscal Year 2022 for 2018 and 2019 disasters.''

IV.C. Clarifications and Amendments for Grants Under Public Law 115–56, 115–123, 115–254, and 116–20

IV.C.1. *Clarification on Affordability Periods and Amended Alternative Requirement.* The **Federal Register** notice published on August 14, 2018 (83 FR 40320) imposed a 5-year affordability period on all newly constructed single-family housing units constructed with CDBG–DR funds. HUD intended to impose the affordability period only on single-family units constructed and sold by the grantee or its subrecipient through an affordable homeownership program. It was not intended to impose affordability restrictions where the beneficiary owned and occupied a home that was damaged by the disaster and the grantee then provides the owner-occupant with a newly constructed or reconstructed housing unit rather than rehabilitate the damaged home. HUD's intent was to impose affordability restrictions when CDBG–DR funds are used to expand housing stock, not to replace damaged units owned and occupied by a beneficiary. Therefore, HUD is amending paragraph IV.B.10 of the August 14, 2018 notice by replacing it in its entirety with the following:

''10. *Affordability Period for CDBG–DR funded Homeownership Programs.* Grantees receiving funds under this notice are required to implement a minimum 5-year affordability period on all newly constructed single-family housing made available for low- and moderate-income homeownership through a CDBG–DR funded homeownership program. This notice requires any grantee implementing a CDBG–DR funded homeownership program to develop and impose affordability (*i.e.,* resale or recapture) restrictions and to enforce those restrictions through recorded deed restrictions, covenants, or other similar mechanisms, for a period not less than 5 years. Grantees shall establish resale or recapture requirements for housing funded pursuant to this paragraph and shall describe those requirements in the action plan or substantial amendment in which the activity is proposed. The resale or recapture provisions must clearly describe the terms of the resale or recapture, the specific circumstances under which these provisions will be used, and how the provisions will be enforced. This affordability period does not apply to housing units newly constructed or reconstructed for an owner-occupant to replace an owner-occupied home that was damaged by the disaster.''

IV.C.2. *Clarification and Amendment on Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).* The **Federal Register** notice published on February 19, 2019 (84 FR 4842) provided a waiver and alternative requirement of Section 414 for all grantees receiving a grant for a major disaster occurring in 2015, 2016, and 2017. This waiver and alternative requirements allowed grantees that received a grant(s) under Public Laws 114–113, 114–223, 114–254, and 115–31 to carry out its programs under the same Section 414 requirements as its grant(s) under Public Laws 115–56 or 115–123. To clarify this provision and extend the Section 414 waiver and alternative requirement to include grantees under those older Public Laws that are now receiving a grant under the 2018 and 2019 Appropriations Acts for a major disaster in 2018 or 2019, HUD is amending paragraph IV.2 of the February 19, 2019 notice by replacing it in its entirety with the following:

''*2. Waiver of Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).* Section 414 of the Stafford Act (42 U.S.C. 5181) provides that

''Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) [42 U.S.C. 4601 *et seq.*] [''URA''] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA].'' Accordingly, homeowner occupants and tenants displaced from their homes as a result of the identified disaster and who would have otherwise been displaced, as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally funded program or project, may become eligible for a replacement housing payment, notwithstanding their inability to meet occupancy requirements prescribed in the URA.

Grantees that received a CDBG–DR grant for a major disaster in 2015, 2016, or 2017 under Public Laws 114–113, 114–223, 114–254, or 115–31, and a CDBG–DR grant for a 2017, 2018, or 2019 major disaster under Public Laws 115–56, 115–123, 115–254, or 116–20 are subject to different alternative requirements with respect to protections afforded to tenants and homeowners under Section 414 of the Stafford Act.

To avoid the administrative burden of implementing two different URA alternative requirements, HUD is authorizing grantees under Public Laws 114–113, 114–223, 114–254, and 115–31 that also received a CDBG–DR grant under Public Law 115–56, 115–123, 115–254, or 116–20 to either: (a) Continue to follow Section 414 of the Stafford Act (or any grantee-specific alternative requirement previously authorized by HUD) for its Public Laws 114–113, 114–223, 114–254, and 115–31 CDBG–DR grants; or (b) follow the waiver and alternative requirement described in the following paragraph for its Public Laws 114–113, 114–223, 114–254, and 115–31 CDBG–DR grants. The grantee's programs under the most recent Public Laws (Pub. L. 115–56, 115–123, 115–254, or 116–20) are already required to follow the waiver and alternative requirement defined below. If a grantee chooses to follow option (b) above then it must identify this approach in its policies and procedures related to that particular activity, and consistently apply that option for all displaced persons affected by that activity.

The waiver and alternative requirement is as follows: Section 414 of the Stafford Act (including its implementing regulation at 49 CFR 24.403(d)(1)), is waived to the extent that it would apply to real property acquisition, rehabilitation, or demolition of real property for a CDBG–DR funded project, undertaken by the grantee or subrecipient, commencing more than one (1) year after the Presidentially declared disaster, provided that the project was not planned, approved, or otherwise underway prior to the disaster. For purposes of this paragraph, a CDBG–DR funded project shall be determined to have commenced on the earliest of: (1) The date of an approved Release for Request of Funds (RROF) and certification, or (2) the date of completion of the site-specific review when a program utilizes tiered environmental reviews, or (3) the date of sign-off by the approving official when a project converts to exempt under 24 CFR 58.34(a)(12). The Secretary has the authority to waive provisions of the Stafford Act and its implementing regulations that the Secretary administers in connection with the obligation of CDBG–DR funds covered under this waiver and alternative requirement, or the grantees' use of these funds. The Department has determined that good cause exists for a waiver and that such waiver is not inconsistent with the overall purposes of title I of the HCDA. The waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with the implementation of Stafford Act Section 414 requirements for projects commencing more than one (1) year after the date of the Presidentially declared disaster, considering the majority of such persons displaced by the disaster will have returned to their dwellings or found another place of permanent residence. This waiver does not apply with respect to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver.''

IV.C.3 *Clarification on Procurement and Use of Subrecipients for State grantees only.* The **Federal Register** notice published on February 9, 2018 (83 FR 5856) included a provision on the use of subrecipients that was applicable to State grantees only. In section VI.A.14. of that notice, HUD made 24 CFR 570.502, 570.503, and 570.500(c) applicable to states exercising their authority under the waiver to carry out activities directly. To eliminate any confusion regarding procurement requirements that are applicable to the State's subrecipients, HUD is clarifying that 24 CFR 570.502, 570.503, and 570.500(c) apply to states carrying out activities directly, except for procurement requirements as provided for in the February 9, 2018 notice. Specifically, when HUD allows a State grantee the flexibility in section VI.A.1.a.(2) of the February 9, 2018 notice to choose one of three options when developing its procurement policies and procedures, and in paragraph VI.A.26., which requires State grantees to establish procurement requirements for local governments and subrecipients, those provisions continue to apply and will determine those procurement provisions of 2 CFR part 200 that are applicable to a State's subrecipients.

IV.C.4. *Clarification on Acquisition of real property, flood, and other buyouts to include Wildfire-Impacted Grantees.* The **Federal Register** notice published February 9, 2018 (83 FR 5863) describes how grantees may carry out property acquisitions for a variety of purposes and that they may carry out a buyout program in a Disaster Risk Reduction Area. HUD is clarifying this provision so that grantees understand that wildland fire risk areas may also be identified by the grantee as Disaster Risk Reduction areas. Accordingly, HUD is amending paragraph IV.B.37.a. of the February 9, 2018 notice by adding the following language to the end of that section:

''37. *Clarification of ''Buyout'' and ''Real Property Acquisition''* activities.'' Wildland fire risk areas may also be identified by the grantee as Disaster Risk Reduction areas eligible for a buyout to reduce risk from future wildfires. Grantees are encouraged to carry out property acquisitions as a means of acquiring contiguous parcels of land for uses compatible with wildland-urban interface management practices. Grantees are also encouraged to take actions to promote an increase in hazard insurance coverage in the wildland fire risk areas.''

V. Duration of Funding

The 2018 and 2019 Appropriations Acts make the funds available for obligation by HUD until expended. This notice requires each grantee to expend 100 percent of its CDBG–DR grant on eligible activities within 6 years of HUD's obligation of funds under Public Laws 115–254 and 116–20 pursuant to an executed grant agreement. Furthermore, consistent with 31 U.S.C. 1555 and OMB Circular A–11, if the Secretary or the President determines

that the purposes for which the appropriation has been made have been carried out and no disbursements have been made against the appropriation for two consecutive fiscal years, any remaining balance will be made unavailable for obligation or expenditure. In such case, the funds shall not be available for obligation or expenditure for any purpose after the account is closed.

VI. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.228 for State CDBG grantees and 14.218 for Entitlement CDBG Grantees.

VII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Dated: January 16, 2020.

Benjamin S. Carson, Sr.,

Secretary.

Appendix A—Detailed Methodology

Allocation of CDBG–DR Funds to Most Impacted and Distressed Areas Due to 2018 and 2019 Federally Declared Disasters

Background

The FAA Reauthorization Act of 2018 (Pub. L. 115–254) enacted on October 5, 2018, appropriated $1,680,000,000 through the Community Development Block Grant disaster recovery (CDBG–DR) program. The statutory text related to the allocation is as follows:

''For an additional amount for ''Community Development Fund'', $1,680,000,000, to remain available until expended, for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared in 2018 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*): *Provided,* That funds shall be awarded directly to the State or unit of general local government at the discretion of the Secretary[.]''

Public Law 116–20 appropriated $2,431,000,000 through the Community Development Block Grant disaster recovery (CDBG–DR) program. The statutory text related to the allocation is as follows:

''For an additional amount for ''Community Development Fund,'' $2,431,000,000, to remain available until expended, for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the most impacted and distressed areas resulting from a major disaster that occurred in 2018 or 2019 (except as otherwise provided under this heading) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*): *Provided,* That funds shall be awarded directly to the State, unit of general local government, or Indian tribe (as such term is defined in section 102 of the Housing and Community Development Act of 1974) at the discretion of the Secretary. . . *Provided further,* That of the amounts made available under this heading $431,000,000 shall be allocated to meet unmet infrastructure needs for grantees that received allocations for disasters that occurred in 2017 under this heading of division B of Public Law 115–56 and title XI of subdivision 1 of division B of Public Law 115–123, of which $331,442,114 shall be allocated to those grantees affected by Hurricane Maria:

''*Provided further,* That of the amounts made available under this heading, up to $5,000,000 shall be made available for capacity building and technical assistance . . . *Provided further,* That of the amounts made available under this heading and under the same heading in Public Law 115–254, up to $2,500,000 shall be transferred, in aggregate, to ''Department of Housing and Urban Development— Program Office Salaries and Expenses—Community Planning and Development'' for necessary costs, including information technology costs, of administering and overseeing the obligation and expenditure of amounts under this heading[.]''

Most Impacted and Distressed Areas

As with prior CDBG–DR appropriations, HUD is not obligated to allocate funds for all major disasters occurring in the statutory timeframes. HUD is directed to use the funds ''in the most impacted and distressed areas.'' HUD has implemented this directive by limiting CDBG–DR formula allocations to grantees with major disasters that meet three standards:

(1) Individual Assistance/Individual and Households Program (IHP) designation. HUD has limited allocations to those disasters where FEMA had determined the damage was sufficient to declare the disaster as eligible to receive IHP funding.

(2) Concentrated damage. HUD has limited its estimate of serious unmet housing needs to counties and ZIP Codes with high levels of damage, collectively referred to as ''most impacted areas.'' For this allocation, HUD is defining most impacted areas as either most impacted counties—counties exceeding $10 million in serious unmet housing needs—and most impacted Zip Codes—ZIP Codes with $2 million or more of serious unmet housing needs. The calculation of serious unmet housing needs is described below.

(3) Disasters meeting the most impacted threshold. Only 2018 and 2019 disasters that meet this requirement for most impacted damage are funded if one or more county or ZIP Code meets the thresholds above. Note that this allocation only includes disasters declared as of October 4, 2019. Other 2019 disasters will be addressed in a future notice.

For disasters that meet the most impacted threshold described above, the unmet need allocations are based on the following factors summed together:

(1) Repair estimates for seriously damaged owner-occupied units without insurance (with some exceptions) in most impacted areas after FEMA and SBA repair grants or loans; an estimate for homeowners served by FEMA's Permanent Housing Construction program is also deducted from the homeowner unmet need estimate;

(2) Repair estimates for seriously damaged rental units occupied by very low-income renters in most impacted areas;

(3) Repair and content loss estimates for small businesses with serious damage denied by SBA; and

(4) The estimated local cost share for Public Assistance Category C to G projects.

Methods for Estimating Serious Unmet Needs for Housing

The data HUD uses to calculate unmet needs for 2018 qualifying disasters come from the FEMA Individual Assistance program data on housing-unit damage as of July 17, 2019. The data for 2019 qualifying disasters is as of November 13, 2019.

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage are based on home inspection data for FEMA's Individual Assistance program and SBA's disaster loan program. HUD calculates ''unmet housing needs'' as the number of housing units with unmet needs times the estimated cost to repair those units less repair funds already provided by FEMA and SBA.

Each of the FEMA inspected owner units are categorized by HUD into one of five categories:

- *Minor-Low:* Less than $3,000 of FEMA inspected real property damage.
- *Minor-High:* $3,000 to $7,999 of FEMA inspected real property damage.
- *Major-Low:* $8,000 to $14,999 of FEMA inspected real property damage and/or 1 to 3.9 feet of flooding on the first floor;
- *Major-High:* $15,000 to $28,800 of FEMA inspected real property damage and/or 4 to 5.9 feet of flooding on the first floor.

• *Severe:* Greater than $28,800 of FEMA inspected real property damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

When owner-occupied properties also have a personal property inspection or only have a personal property inspection, HUD reviews the personal property damage amounts such that if the personal property damage places the home into a higher need category over the real property assessment, the personal property amount is used as follows::

• *Minor-Low:* Less than $2,500 of FEMA inspected personal property damage.

• *Minor-High:* $2,500 to $3,499 of FEMA inspected personal property damage.

• *Major-Low:* $3,500 to $4,999 of FEMA inspected personal property damage or 1 to 3.9 feet of flooding on the first floor.

• *Major-High:* $5,000 to $9,000 of FEMA inspected personal property damage or 4 to 5.9 feet of flooding on the first floor.

• *Severe:* Greater than $9,000 of FEMA inspected personal property damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

To meet the statutory requirement of ''most impacted'' in this legislative language, homes are determined to have a high level of damage if they have damage of ''major-low'' or higher. That is, they have a FEMA inspected real property damage of $8,000 or above, personal property damage $3,500 or above, or flooding 1 foot or above on the first floor.

Furthermore, a homeowner with flooding outside the 1 percent risk flood hazard area is determined to have unmet needs if they reported damage and no flood insurance to cover that damage. For homeowners inside the 1 percent risk flood hazard area, homeowners without flood insurance with flood damage below the greater of national median or 120 percent of Area Median Income are determined to have unmet needs. For non-flood damage, homeowners without hazard insurance with incomes below the greater of national median or 120 percent of Area Median Income are included as having unmet needs.

FEMA does not inspect rental units for real property damage so personal property damage is used as a proxy for unit damage. Each of the FEMA-inspected renter units are categorized by HUD into one of five categories:

• *Minor-Low:* Less than $1,000 of FEMA inspected personal property damage.

• *Minor-High:* $1,000 to $1,999 of FEMA inspected personal property damage.

• *Major-Low:* $2,000 to $3,499 of FEMA inspected personal property damage or 1 to 3.9 feet of flooding on the first floor.

• *Major-High:* $3,500 to $7,500 of FEMA inspected personal property damage or 4 to 5.9 feet of flooding on the first floor.

• *Severe:* Greater than $7,500 of FEMA inspected personal property damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

To meet the statutory requirement of ''most impacted'' for rental properties, homes are determined to have a high level of damage if they have damage of ''major-low'' or higher. That is, they have a FEMA personal property damage assessment of $2,000 or greater or flooding 1 foot or above on the first floor.

Furthermore, landlords are presumed to have adequate insurance coverage unless the unit is occupied by a renter with income less than the greater of the Federal poverty level or 50 percent of median income. Units occupied by a tenant with income less than the greater of the poverty level or 50 percent of median income are used to calculate likely unmet needs for affordable rental housing.

The average cost to fully repair a home for a specific disaster to code within each of the damage categories noted above is calculated using the median real property damage repair costs determined by the SBA for its disaster loan program for the subset of homes inspected by both SBA and FEMA for each eligible disaster.

Minimum multipliers are not less than the 1st quarter median for all Individual Assistance (IA) eligible disasters combined in each disaster year at the time of the allocation calculation, and maximum multipliers are not more than the 4th quarter median for all IA eligible disasters combined in each disaster year with data available as of the allocation. Because SBA is inspecting for full repair costs, their estimate is presumed to reflect the full cost to repair the home, which is generally more than the FEMA estimates on the cost to make the home habitable. If there is a match of fewer than 20 SBA inspections to FEMA inspections for any damage category, the minimum multiplier is used.

For each household determined to have unmet housing needs (as described above), their estimated average unmet housing need is equal to the average cost to fully repair a home to code less assistance from FEMA and SBA provided for repair to the home, based on their damage category (noted above).

Methods for Estimating Serious Unmet Economic Revitalization Needs

Based on SBA disaster loans to businesses using data for 2018 disasters from as of date July 17, 2019 and for 2019 disasters from as of the date November 14, 2019, HUD calculates the median real estate and content loss by the following damage categories for each state:

• *Category 1:* Real estate + content loss = below $12,000

• *Category 2:* Real estate + content loss = $12,000–$29,999

• *Category 3:* Real estate + content loss = $30,000–$64,999

• *Category 4:* Real estate + content loss = $65,000–$149,999

• *Category 5:* Real estate + content loss = $150,000 and above

For properties with real estate and content loss of $30,000 or more, HUD calculates the estimated amount of unmet needs for small businesses by multiplying the median damage estimates for the categories above by the number of small businesses denied an SBA loan, including those denied a loan prior to inspection due to inadequate credit or income (or a decision had not been made), under the assumption that damage among those denied at pre-inspection have the same distribution of damage as those denied after inspection.

Methods for Estimating Unmet Infrastructure Needs

To calculate 2018 and 2019 unmet needs for infrastructure projects, HUD obtained FEMA cost estimates (as of July 17, 2019 for the 2018 disasters and November 13, 2019 for 2019 disasters) of the expected local cost share to repair the permanent public infrastructure (Categories C to G) to their pre-storm condition.

To calculate additional infrastructure unmet needs for 2017 disasters, HUD compares the change in FEMA Category C to G local match cost estimates between March 2018 (when funds had been allocated under Pub. L. 115–23) and November 2019. For grantees impacted by Hurricane Maria—Puerto Rico and the Virgin Islands—the statutorily required allocation of $331,442,114 is allocated proportional based on their relative share of growth in Category C to G local match cost estimates. For other 2017 grantees where the November 2019 estimate exceeds the March 2018 estimate, each grantee is first increased dollar-for-dollar to their local match requirements. For any of the remaining funds of the required $431 million for 2017 disasters, they are allocated to the non-Maria disasters that have been funded at 100 percent or less of infrastructure match needs proportional to their share of eligible grantees' November 2019 estimated infrastructure match needs.

Allocation Calculation

Once eligible entities are identified using the above criteria, the allocation to individual grantees represents their proportional share of the estimated unmet needs. For the formula allocation, HUD calculates total unmet recovery needs for eligible 2018 and 2019 disasters as the aggregate of:

• Serious unmet housing needs in most impacted counties;

• Serious unmet business needs; and

• Unmet infrastructure need.

Two jurisdictions have their unmet needs calculations adjusted due to unusual circumstances not covered in the standard methodology. First, Hawaii County in Hawaii has 76 homes that were not damaged but are completely surrounded by lava fields. HUD assumes that those homes will never be habitable and categorizes them as destroyed with no insurance for the serious unmet need calculation. Second, FEMA is administering its Permanent Housing Construction program in the Northern Marianas and expects to serve 455 homeowners with seriously damaged homes. As such, HUD subtracts the unmet needs of 455 homeowners from the base estimate.

[FR Doc. 2020–01204 Filed 1–24–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2020–N009; FXES11130300000–201–FF03E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before February 26, 2020.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TEXXXXXX):

- *Email: permitsR3ES@fws.gov.* Please refer to the respective application number (*e.g.,* Application No. TEXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT: Nathan Rathbun, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies, Tribes, and the public to comment on the following applications.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE62369D	Environmental Consulting & Technology, Inc., Ann Arbor, MI.	Snuffbox mussel (*Epioblasma triquetra*).	MI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts, relocate.	Capture, handle, temporary hold, relocate, release.	New.
TE62001D	Diane Narem, Minneapolis, MN.	Dakota skipper (*Hesperia dacotae*), Poweshiek skipperling (*Oarisma poweshiek*).	MI, MN, ND, SD, WI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, release	New.
TE62046D	Pallavi Sirajuddin, Harrisburg, PA.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*).	AL, AR, CT, DC, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VT, VA, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts, research.	Capture; handle; mist-net; harp trap; band; radio-tag; collect hair, fecal, swab and wing biopsy samples; enter hibernacula and maternity roost caves; release.	New.
TE63118D	Clarissa Starbuck, Terre Haute, IN.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*).	AL, AR, CT, DC, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VT, VA, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts, research.	Capture; handle; mist-net; harp trap; band; radio-tag; collect hair, fecal, blood, swab and wing biopsy samples; enter hibernacula and maternity roost caves; release.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services.

[FR Doc. 2020–01335 Filed 1–24–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2019–N134; FXES11130800000–190–FF08E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of 66 Species in California and Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews of 66 species in California and Nevada under the Endangered Species Act. A 5-year review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on these species that has become available since the last review.

DATES: To ensure consideration in our reviews, we are requesting submission of new information no later than March 27, 2020. However, we will continue to accept new information about any species at any time.

ADDRESSES: For how and where to submit information or questions, see Request for New Information.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact Peter Erickson, 916–414–6741. For whom to contact with species-specific information or questions, see Request for New Information.

Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Why do we conduct 5-year reviews?

Under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), we maintain lists of endangered and threatened wildlife and plant species (referred to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. For additional information about 5-year reviews, refer to our factsheet at *http://www.fws.gov/endangered/what-we-do/recovery-overview.html.*

What information do we consider in our review?

A 5-year review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status review, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented to benefit the species;

(D) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the Act); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year review and will also be useful in evaluating the ongoing recovery programs for the species.

Which species are under review?

This notice announces our active review of the species listed in the table below.

Common name	Scientific name	Status	Locations where the species is known to occur	Final listing rule (**Federal Register** citation and publication date)	Lead Fish and Wildlife office
			Animals		
Beetle, Casey's June	*Dinacoma caseyi*	E	CA	76 FR 58954; 10/24/2011	Carlsbad Fish and Wildlife Office.
Butterfly, El Segundo blue	*Euphilotes battoides allyni*	E	CA	41 FR 22041; 6/1/1976	Carlsbad Fish and Wildlife Office.
Butterfly, Palos Verdes blue	*Glaucopsyche lygdamus palosverdesensis.*	E	CA	45 FR 44939; 7/2/1980	Carlsbad Fish and Wildlife Office.
Fairy shrimp, Riverside	*Streptocephalus wootton*i	E	CA, Mexico	58 FR 41384; 8/3/1993	Carlsbad Fish and Wildlife Office.
Fairy shrimp, San Diego	*Branchinecta sandiegonensis*	E	CA, Mexico	62 FR 4925; 2/3/1997	Carlsbad Fish and Wildlife Office.
Fly, Delhi Sands flower-loving	*Rhaphiomidas terminatus abdominalis.*	E	CA	58 FR 49881; 9/23/1993	Carlsbad Fish and Wildlife Office.
Gnatcatcher, coastal California	*Polioptila californica californica*	T	CA, Mexico	58 FR 16742; 3/30/1993	Carlsbad Fish and Wildlife Office.
Salamander, desert slender	*Batrachoseps aridus*	E	CA	38 FR 14678; 6/4/1973	Carlsbad Fish and Wildlife Office.
Sheep, Peninsular bighorn	*Ovis canadensis nelsoni*	E	CA, Mexico	63 FR 13134; 3/18/1998	Carlsbad Fish and Wildlife Office.
Shrike, San Clemente loggerhead.	*Lanius ludovicianus mearnsi*	E	CA	42 FR 40682; 8/11/1977	Carlsbad Fish and Wildlife Office.
Sparrow, San Clemente sage	*Amphispiza belli clementeae*	T	CA	42 FR 40682; 8/11/1977	Carlsbad Fish and Wildlife Office.
Springfish, Railroad Valley	*Crenichthys nevadae*	T	NV	51 FR 10857; 3/31/1986	Reno Fish and Wildlife Office.
Beetle, delta green ground	*Elaphrus viridis*	T	CA	45 FR 52807; 8/8/1980	Sacramento Fish and Wildlife Office.
Beetle, valley elderberry longhorn.	*Desmocerus californicus dimorphus.*	T	CA	45 FR 52803; 8/8/1980	Sacramento Fish and Wildlife Office.

Common name	Scientific name	Status	Locations where the species is known to occur	Final listing rule (**Federal Register** citation and publication date)	Lead Fish and Wildlife office
Butterfly, bay checkerspot	*Euphydryas editha bayensis*	T	CA	52 FR 35366; 9/18/1987	Sacramento Fish and Wildlife Office.
Butterfly, callippe silverspot	*Speyeria callippe callippe*	E	CA	62 FR 64306; 12/5/1997	Sacramento Fish and Wildlife Office.
Butterfly, mission blue	*Icaricia icarioides missionensis*	E	CA	41 FR 22041; 6/1/1976	Sacramento Fish and Wildlife Office.
Butterfly, Myrtle's silverspot	*Speyeria zerene myrtleae*	E	CA	57 FR 27848; 6/22/1992	Sacramento Fish and Wildlife Office.
Butterfly, San Bruno elfin	*Callophrys mossii bayensis*	E	CA	41 FR 22041; 6/1/1976	Sacramento Fish and Wildlife Office.
Frog, mountain yellow-legged	*Rana muscosa*	E	CA	67 FR 44382; 4/29/2014	Sacramento Fish and Wildlife Office.
Frog, Sierra Nevada yellow-legged.	*Rana sierrae*	E	CA, NV	79 FR 24255; 4/29/2014	Sacramento Fish and Wildlife Office.
Salamander, California tiger	*Ambystoma californiense*	E	CA	79 FR 24255; 7/22/2002	Sacramento Fish and Wildlife Office.
Salamander, California tiger	*Ambystoma californiense*	T	CA	69 FR 47212; 8/4/2004	Sacramento Fish and Wildlife Office.
Toad, Yosemite	*Anaxyrus canorus*	T	CA	79 FR 24255; 4/29/2014	Sacramento Fish and Wildlife Office.
Spinedace, Big Spring	*Lepidomeda mollispinis pratensis.*	T	NV	50 FR 12298; 3/28/1985	Southern Nevada Fish and Wildlife Office.
Spinedace, White River	*Lepidomeda albivallis*	E	NV	50 FR 37194; 9/12/1985	Southern Nevada Fish and Wildlife Office.
Beetle, Mount Hermon June	*Polyphylla barbata*	E	CA	62 FR 3616; 1/24/1997	Ventura Fish and Wildlife Office.
Grasshopper, Zayante band-winged.	*Trimerotropis infantilis*	E	CA	62 FR 3616; 1/24/1997	Ventura Fish and Wildlife Office.
Kangaroo rat, Morro Bay	*Dipodomys heermanni morroensis.*	E	CA	35 FR 16047; 10/13/1970	Ventura Fish and Wildlife Office.
Stickleback, unarmored threespine.	*Gasterosteus aculeatus williamsoni.*	E	CA	35 FR 16047; 10/13/1970	Ventura Fish and Wildlife Office.
			Plants		
Ambrosia, San Diego	*Ambrosia pumila*	E	CA, Mexico	67 FR 44372; 7/2/2002	Carlsbad Fish and Wildlife Office.
Baccharis, Encinitas	*Baccharis vanessae*	T	CA	61 FR 52370; 10/7/1996	Carlsbad Fish and Wildlife Office.
Barberry, Nevin's	*Berberis nevinii*	E	CA	63 FR 54956; 10/13/1998	Carlsbad Fish and Wildlife Office.
Ceanothus, Vail Lake	*Ceanothus ophiochilus*	T	CA	63 FR 54956; 10/13/1998	Carlsbad Fish and Wildlife Office.
Checker-mallow, pedate	*Sidalcea pedata*	E	CA	49 FR 34497; 8/31/1984	Carlsbad Fish and Wildlife Office.
Crownscale, San Jacinto Valley.	*Atriplex coronata* var. *notatior*	E	CA	63 FR 54975; 10/13/1998	Carlsbad Fish and Wildlife Office.
Liveforever, Laguna Beach	*Dudleya stolonifera*	T	CA	63 FR 54938; 10/13/1998	Carlsbad Fish and Wildlife Office.
Mountain-mahogany, Catalina Island.	*Cercocarpus traskiae*	E	CA	62 FR 42692; 8/8/1997	Carlsbad Fish and Wildlife Office.
Mustard, slender-petaled	*Thelypodium stenopetalum*	E	CA	49 FR 34497; 8/31/1984	Carlsbad Fish and Wildlife Office.
Paintbrush, ash-grey	*Castilleja cinerea*	T	CA	63 FR 49006; 9/14/1998	Carlsbad Fish and Wildlife Office.
Sandwort, Bear Valley	*Arenaria ursina*	T	CA	63 FR 49006; 9/14/1998	Carlsbad Fish and Wildlife Office.
Spineflower, Orcutt's	*Chorizanthe orcuttiana*	E	CA	61 FR 52370; 10/7/1996	Carlsbad Fish and Wildlife Office.
Taraxacum, California	*Taraxacum californicum*	E	CA	63 FR 49006; 9/14/1998	Carlsbad Fish and Wildlife Office.
Ceanothus, coyote	*Ceanothus ferrisae*	E	CA	60 FR 6671; 2/3/1995	Sacramento Fish and Wildlife Office.
Dudleya, Santa Clara Valley	*Dudleya setchellii*	E	CA	60 FR 6671; 2/3/1995	Sacramento Fish and Wildlife Office.
Dwarf-flax, Marin	*Hesperolinon congestum*	T	CA	60 FR 6671; 2/3/1995	Sacramento Fish and Wildlife Office.
Fiddleneck, large-flowered	*Amsinckia grandiflora*	E	CA	50 FR 19374; 5/8/1985	Sacramento Fish and Wildlife Office.
Jewelflower, Metcalf Canyon	*Streptanthus albidus* ssp. *albidus.*	E	CA	60 FR 6671; 2/3/1995	Sacramento Fish and Wildlife Office.
Jewelflower, Tiburon	*Streptanthus niger*	E	CA	60 FR 6671; 2/3/1995	Sacramento Fish and Wildlife Office.
Mariposa lily, Tiburon	*Calochortus tiburonensis*	T	CA	60 FR 6671; 2/3/1995	Sacramento Fish and Wildlife Office.
Paintbrush, Tiburon	*Castilleja affinis* ssp. *neglecta*	E	CA	60 FR 6671; 2/3/1995	Sacramento Fish and Wildlife Office.
Pentachaeta, white-rayed	*Pentachaeta bellidiflora*	E	CA	60 FR 6671; 2/3/1995	Sacramento Fish and Wildlife Office.
Sunflower, San Mateo woolly	*Eriophyllum latilobum*	E	CA	60 FR 6671; 2/3/1995	Sacramento Fish and Wildlife Office.

Common name	Scientific name	Status	Locations where the species is known to occur	Final listing rule (**Federal Register** citation and publication date)	Lead Fish and Wildlife office
Thistle, fountain	*Cirsium fontinale* var. *fontinale*	E	CA	60 FR 6671; 2/3/1995	Sacramento Fish and Wildlife Office.
Thornmint, San Mateo	*Acanthomintha obovata* ssp. *duttonii.*	E	CA	50 FR 37858; 9/18/1985	Sacramento Fish and Wildlife Office.
Evening-primrose, Antioch Dunes.	*Oenothera deltoides* ssp. *howellii.*	E	CA	43 FR 17910; 4/26/1978	San Francisco Bay-Delta Fish and Wildlife.
Wallflower, Contra Costa	*Erysimum capitatum* var. *angustatum.*	E	CA	43 FR 17910; 4/26/1978	San Francisco Bay-Delta Fish and Wildlife.
Bush-mallow, Santa Cruz Island.	*Malacothamnus fasciculatus* var. *nesioticus.*	E	CA	62 FR 40954; 7/31/1997	Ventura Fish and Wildlife Office.
Cypress, Gowen	*Cupressus goveniana* ssp. *goveniana.*	T	CA	63 FR 43100; 8/12/1998	Ventura Fish and Wildlife Office.
Dudleya, Santa Monica Mountains.	*Dudleya cymosa* ssp. *ovatifolia*	T	CA	62 FR 4172; 1/29/1997	Ventura Fish and Wildlife Office.
Liveforever, Santa Barbara Island.	*Dudleya traskiae*	E	CA	43 FR 17910; 4/26/1978	Ventura Fish and Wildlife Office.
Manzanita, Santa Rosa Island	*Arctostaphylos confertiflora*	E	CA	62 FR 40954; 7/31/1997	Ventura Fish and Wildlife Office.
Monkeyflower, Vandenberg	*Diplacus vandenbergensis*	E	CA	79 FR 50844; 8/26/2014	Ventura Fish and Wildlife Office.
Phacelia, island	*Phacelia insularis* ssp. *insularis.*	E	CA	62 FR 40954; 7/31/1997	Ventura Fish and Wildlife Office.
Piperia, Yadon's	*Piperia yadonii*	E	CA	63 FR 43100; 8/12/1998	Ventura Fish and Wildlife Office.
Yerba santa, Lompoc	*Eriodictyon capitatum*	E	CA	65 FR 14888; 3/20/2000	Ventura Fish and Wildlife Office.

Request for New Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See What Information Do We Consider in Our Review? for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

To get more information on a species, submit information on a species, or review information we receive, please use the contact information for the Lead Fish and Wildlife Office for the species specified in the table above.

Carlsbad Fish and Wildlife Office: Bradd Baskerville-Bridges, 760–431–9440 (phone); *fw8cfwocomments@fws.gov* (email); or 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008 (U.S. mail, hand-delivery, or in-person review of documents).

Reno Fish and Wildlife Office: Shawna Theisen, 775–861–6378 (phone); *shawna_theisen@fws.gov* (email); or 1340 Financial Boulevard, Suite 234, Reno, NV 89502 (U.S. mail, hand-delivery, or in-person review of documents).

Sacramento Fish and Wildlife Office: Josh Hull, 916–414–6742 (phone); *fw8sfwocomments@fws.gov* (email); or 2800 Cottage Way, Suite W2605, Sacramento, CA 95825 (U.S. mail, hand-delivery, or in-person review of documents).

San Francisco Bay-Delta Fish and Wildlife Office: Steven Detwiler, 916–930–2640 (phone); *steven_detwiler@fws.gov* (email); or 650 Capitol Mall, Sacramento, CA 95814 (U.S. mail, hand-delivery, or in-person review of documents).

Southern Nevada Fish and Wildlife Office: Glen Knowles, 702–515–5244 (phone); *glen_knowles@fws.gov* (email); or 4701 N Torrey Pines Dr., Las Vegas, NV 89130 (U.S. mail, hand-delivery, or in-person review of documents).

Ventura Fish and Wildlife Office: Cat Darst, 805–677–3318 (phone); *cat_darst@fws.gov* (email); or 2493 Portola Road, Suite B, Ventura CA 93003 (U.S. mail, hand-delivery, or in-person review of documents).

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices to which the comments are submitted.

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Michael Fris,

Acting Deputy Regional Director, Pacific Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2020–01323 Filed 1–24–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2019–N130; FXES11140800000–201–FF08EVEN00]

Habitat Conservation Plans for the Mount Hermon June Beetle, Zayante Band-Winged Grasshopper, and Ben Lomond Spineflower; Categorical Exclusion for the Renovation of the Santa Cruz County Juvenile Hall and the Verizon Wireless Expansion Project; Santa Cruz County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received two applications for an incidental take permit (ITP), one for the federally endangered Mount Hermon June beetle and one for the federally endangered Mount Hermon June beetle and Zayante band-winged grasshopper, under the Endangered Species Act of 1973, as amended. The County of Santa Cruz submitted a permit application that, if issued, would authorize take of the

Mount Hermon June beetle incidental to otherwise lawful activities described in the draft habitat conservation plan for renovation of the County of Santa Cruz Juvenile Hall. Verizon Wireless submitted a permit application that, if issued, would authorize take of the Mount Hermon June beetle and Zayante band-winged grasshopper incidental to otherwise lawful activities described in the Verizon Wireless telecommunications facility expansion project draft habitat conservation plan. We invite public comment on these documents.

DATES: Written comments should be received on or before February 26, 2020.

ADDRESSES:

To obtain documents: You may download a copy of the draft habitat conservation plan and categorical exclusion screening form, which includes the environmental action statement, at *http://www.fws.gov/ventura/,* or you may request copies of the documents by U.S. mail (below) or by phone (see **FOR FURTHER INFORMATION CONTACT**).

To submit written comments: Please send us your written comments using one of the following methods:

- *U.S. mail:* Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.
- *Facsimile:* 805–644–3958.
- *Electronic mail: chad_mitcham@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Chad Mitcham, Fish and Wildlife Biologist, 805–677–3328 (by phone), or at the Ventura Fish and Wildlife office (by mail; see **ADDRESSES**).

SUPPLEMENTARY INFORMATION: We have received two applications for ITPs under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). In support of their applications for ITPs, the applicants have developed draft habitat conservation plans (HCPs) for their respective projects that include measures to mitigate and avoid/minimize impacts to the federally endangered Mount Hermon June beetle (*Polyphylla barbata*), Zayante band-winged grasshopper (*Trimerotropis infantilis*), and Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*). The ITPs would authorize take of the Mount Hermon June beetle and Zayante band-winged grasshopper incidental to otherwise lawful activities. These ITPs would authorize incidental take associated with the two respective projects: The draft Low-Effect HCP for the Renovation of the County of Santa Cruz Juvenile Hall and the draft Low-Effect HCP for the Verizon Wireless Telecommunications Facility Expansion Project. We invite public comment on the draft HCPs and categorical screening forms, which include the environmental action statements.

Background

The Service listed the Mount Hermon June beetle and Zayante band-winged grasshopper as endangered on January 24, 1997 (62 FR 3616). Section 9 of the ESA (16 U.S.C. 1538) prohibits the ''take'' of fish or wildlife species listed as endangered. ''Take'' is defined under the ESA to include the following activities: ''[T]o harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), we may issue permits to authorize incidental take of listed wildlife species. Incidental take is take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing ITPs for endangered wildlife are in the Code of Federal Regulations (CFR) at 50 CFR 17.22.

Take of listed plants is not prohibited under the ESA unless the action would violate State law. As such, take of plants cannot be authorized under an ITP. Plant species may be included on a permit in recognition of the conservation benefits provided them under an HCP. All species, including plants, covered by the ITP receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5)). Issuance of an ITP also must not jeopardize the existence of federally listed fish, wildlife, or plant species.

Proposed Project Activities

Santa Cruz County has applied for a permit for incidental take of the Mount Hermon June beetle. The take would occur in association with renovation and upgrades of facilities and infrastructure at the County of Santa Cruz Juvenile Hall. Project activities would occur within a 0.427-acre (ac) area, within which 0.270 ac is suitable habitat for the Mount Hermon June beetle. The HCP includes avoidance and minimization measures for the Mount Hermon June beetle and mitigation for unavoidable loss of suitable habitat through the restoration of suitable habitat adjacent to the project site or the purchase of conservation credits at a Service-approved conservation bank.

Verizon Wireless has applied for a permit for incidental take of the Mount Hermon June beetle and Zayante band-winged grasshopper. The take would occur in association with the expansion of an existing wireless telecommunications facility. The site includes approximately 0.020 ac of suitable habitat for the Mount Hermon June beetle and Zayante band-winged grasshopper. The Service has designated the entire project site as critical habitat for the Zayante band-winged grasshopper. The HCP includes avoidance and minimization measures for the covered species and mitigation for unavoidable loss of suitable habitat through the purchase of conservation credits at a Service-approved conservation bank.

Preliminary Determinations

The Service has made preliminary determinations that issuance of these incidental take permits is neither a major Federal action that will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), nor will they individually or cumulatively have more than a negligible effect on the species covered in the HCPs. The Service considers the impacts of the renovation of the Santa Cruz County Juvenile Hall on the Mount Hermon June beetle to be minor, as the affected area is small (approximately 0.270 ac) and the project includes the restoration of suitable habitat or purchase of high-quality habitat at a Service-approved conservation bank. The Service considers the impacts of the Verizon Wireless Expansion Project on the Mount Hermon June beetle and Zayante band-winged grasshopper to be minor, as the affected area is small (approximately 0.020 ac) and the project includes the purchase of high-quality habitat at a Service-approved conservation bank. Therefore, based on this preliminary determination, both permits qualify for a categorical exclusion under NEPA.

Public Comments

If you wish to comment on the draft HCPs and categorical screening forms, you may submit comments by one of the methods in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we

cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2020–01288 Filed 1–24–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2019–N045; FF08EVEN00–FXES111608MSSO0]

Marine Mammal Protection Act; Stock Assessment Report for the Southern Sea Otter in California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended, we, the U.S. Fish and Wildlife Service, have developed a draft revised marine mammal stock assessment report for the southern sea otter stock in the State of California. We now make the draft stock assessment report available for public review and comment.

DATES: We will consider comments that are received or postmarked on or before April 27, 2020.

ADDRESSES: *Document availability:* If you wish to review the draft revised stock assessment report for southern sea otter, you may obtain a copy from our website at *http://www.fws.gov/ventura*. Alternatively, you may contact the Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone: 805–644–1766).

Comment submission: If you wish to comment on the draft stock assessment report, you may submit your comments in writing by any one of the following methods:

- *U.S. mail:* Field Supervisor, at the above address;
- *Hand delivery:* Ventura Fish and Wildlife Office at the above address;
- *Fax:* 805–644–3958; or
- *Email: fw8ssostock@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Lilian Carswell, at the above street address, by telephone (805–677–3325), or by email (*Lilian_Carswell@fws.gov*). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We announce the availability for review and comment of a draft revised marine mammal stock assessment report (SAR) for the southern sea otter (*Enhydra lutris nereis*) stock in the State of California.

Background

Under the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 18, the U.S. Fish and Wildlife Service (Service) regulates the taking; import; and, under certain conditions, possession; transportation; purchasing; selling; and offering for sale, purchase, or export, of marine mammals. One of the MMPA's goals is to ensure that stocks of marine mammals occurring in waters under U.S. jurisdiction do not experience a level of human-caused mortality and serious injury that is likely to cause the stock to be reduced below its *optimum sustainable population level* (OSP). OSP is defined under the MMPA as ''the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element'' (16 U.S.C. 1362(9)).

To help accomplish the goal of maintaining marine mammal stocks at their OSPs, section 117 of the MMPA requires the Service and the National Marine Fisheries Service (NMFS) to prepare a SAR for each marine mammal stock that occurs in waters under U.S. jurisdiction. A SAR must be based on the best scientific information available; therefore, we prepare it in consultation with regional scientific review groups established under section 117(d) of the MMPA. Each SAR must include:

1. A description of the stock and its geographic range;
2. A minimum population estimate, current and maximum net productivity rate, and current population trend;
3. An estimate of the annual human-caused mortality and serious injury by source and, for a strategic stock, other factors that may be causing a decline or impeding recovery;
4. A description of commercial fishery interactions;
5. A categorization of the status of the stock; and
6. An estimate of the *potential biological removal* (PBR) level.

The MMPA defines the PBR 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 OSP'' (16 U.S.C. 1362(20)). The PBR is the product of the minimum population estimate of the stock (N_{min}); one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size (R_{max}); and a recovery factor (F_r) of between 0.1 and 1.0, which is intended to compensate for uncertainty and unknown estimation errors. This can be written as:

$$PBR = (N_{min})(\tfrac{1}{2} \text{ of the } R_{max})(F_r)$$

Section 117 of the MMPA also requires the Service and NMFS to review the SARs (a) at least annually for stocks that are specified as strategic stocks, (b) at least annually for stocks for which significant new information is available, and (c) at least once every 3 years for all other stocks. If our review of the status of a stock indicates that it has changed or may be more accurately determined, then the SAR must be revised accordingly.

A *strategic stock* is defined in the MMPA as a marine mammal stock ''(a) for which the level of direct human-caused mortality exceeds the PBR level; (b) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) [the ''ESA''], within the foreseeable future; or (c) which is listed as a threatened or endangered species under the ESA, or is designated as depleted under [the MMPA].'' 16 U.S.C. 1362(19).

Stock Assessment Report History for the Southern Sea Otter in California

The southern sea otter SAR was last revised in 2017. Because the southern sea otter is listed as a threatened species under the ESA, the stock is considered strategic. Therefore, the Service reviews the stock assessment annually. In 2018, Service review concluded that revision was not warranted because the status of the stock had not changed, nor could it be more accurately determined. However, upon review in 2019, the Service determined that revision was warranted because the status of the stock may be subject to change. The range-wide population index (*i.e.,* population level over a consecutive 3-year period) reached the ESA threshold (*i.e.,* exceeding 3,090 animals) for delisting consideration identified in the Southern Sea Otter Recovery Plan (U.S. Fish and Wildlife Service 2003). As a result, the Service will initiate an ESA status review to determine whether delisting of the southern sea otter is appropriate, which could result in a

change to the status of the stock under the MMPA.

Summary of Draft Revised Stock Assessment Report for the Southern Sea Otter in California

The following table summarizes some of the information contained in the draft revised southern sea otter SAR, which includes the stock's N_{min}, R_{max}, F_r, PBR, annual estimated human-caused mortality and serious injury, and status. After consideration of any public comments we receive, the Service will revise and finalize the SAR, as appropriate. We will publish a notice of availability and summary of the final SAR, including responses to submitted comments.

SUMMARY—DRAFT REVISED STOCK ASSESSMENT REPORT, SOUTHERN SEA OTTER IN CALIFORNIA

Southern sea otter stock	N_{MIN}	R_{MAX}	F_R	PBR	Annual estimated human-caused mortality and serious injury	Stock status
Mainland	2,986	0.06	0.1	9.24	Figures by specific source, where known, are provided in the SAR.	Strategic.
San Nicolas Island	95	0.13	0.1	0.62		
Summary	3,081			9		

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

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In accordance with the MMPA, we include in this notice a list of the information sources and public reports upon which we based the SAR:

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Authority

The authority for this action is the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et al.)

Dated: January 8, 2020.

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–01326 Filed 1–24–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB07000.L17110000.AL0000. LXSSH1060000.20X.HAG 20–0028]

Notice of Subcommittee Meeting for the Steens Mountain Advisory Council, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Steens Mountain Advisory Council (SMAC) Recreation and Visitor Use Subcommittee will meet as indicated below.

DATES: The Recreation and Visitor Use Subcommittee of the SMAC will hold a public meeting on Thursday, February 13, 2020, from 1:00 to 4:30 p.m. and on Friday, February 14, 2020, from 8:30 a.m. to 12:30 p.m. at the Hilton Garden Inn in Bend, Oregon.

ADDRESSES: The Hilton Garden Inn is located at 425 SW Bluff Drive, Bend, Oregon 97702.

FOR FURTHER INFORMATION CONTACT: Tara Thissell, Public Affairs Specialist, 28910 Highway 20 West, Hines, Oregon 97738; telephone: 541–573–4519; email: *tthissell@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Thissell during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The SMAC was established on August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Steens Act) (Pub. L. 106–399). The SMAC provides representative advice to the BLM regarding new and unique approaches to management of the land within the bounds of the Steens Mountain Cooperative Management and Protection Area (CMPA), recommends cooperative programs and incentives for landscape management that meet human needs, and advises the BLM on maintenance and improvement of the ecological and economic integrity of the area.

The SMAC's Recreation and Visitor Use Subcommittee was established in 2019 and serves to research, discuss, and evaluate any recreation and visitor use issue in the Steens Mountain CMPA. Issues could relate to parking, hiking, motorized or non-motorized use, signage, interpretation, private to public land access by way of an easement or other agreement, or purchase or exchange of public and private land for improved recreation opportunities and contiguous landscape. The Subcommittee reviews all aspects of any recreation or visitor use issue, formulates suggestions for remedy, and proposes those solutions to the entire SMAC for further discussion and possible recommendation to the BLM.

The February 13 agenda includes an update from the Designated Federal Official, review of 2019 recreation statistics for the Steens Mountain area, discussion on the SMAC's definition of ''reasonable access'' and constituent feedback, and a discussion on recreation and visitor access at Home Creek Canyon.

The February 14 agenda includes a presentation on Redband trout populations and recreational fishing in the Steens Mountain area, information sharing regarding designated Wilderness and Wilderness Study Areas, review of sections of the Steens Mountain Cooperative Management and Protection Act of 2000 referencing economics, and an opportunity for subcommittee members to share information from their constituents and present research members have done between meetings. Any other matters that may reasonably come before the subcommittee may also be included.

Public comment periods are available on Thursday, February 13, at 3:30 p.m., and on Friday, February 14, at 11:15 a.m. Unless otherwise approved by the subcommittee chair, the public comment period will last no longer than 30 minutes. Each speaker may address the subcommittee for a maximum of 5 minutes. Sessions may end early if all business items are accomplished ahead of schedule or maybe extended if discussions warrant more time. All meetings are open to the public in their entirety.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 1784.4–2.

Jeff Rose,

District Manager.

[FR Doc. 2020–01291 Filed 1–24–20; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 20X]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the official filing of the survey plat listed below. The survey, which was executed at the request of the U.S. Forest Service, is necessary for the management of these lands. The plat is available for viewing in the BLM Colorado State Office.

DATES: The plat described in this notice was filed on January 15, 2020.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856; *rbloom@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The supplemental plat in Township 15 South, Range 67 West, Sixth Principal Meridian, Colorado, was accepted on January 8, 2020, and filed on January 15, 2020.

A person or party who wishes to protest the above survey must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Randy A. Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2020–01332 Filed 1–24–20; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000.L10200000.XZ0000. LXSSH1050000.20X.HAG 20–0025]

Notice of Public Meetings for the John Day-Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM), John Day-Snake Resource Advisory Council (RAC) will meet as indicated below:

DATES: The John Day-Snake RAC will meet Thursday and Friday, Feb. 20 and 21, 2020, at 1:00 p.m. Thursday and 8:00 a.m. Friday; and Thursday and Friday, Jun. 18 and 19, 2020, at 1:00 p.m. Thursday and 8:00 a.m. Friday. A public comment period will be offered at 8:05 a.m. on the second day of each meeting (Feb. 21 and Jun. 19).

ADDRESSES: The Feb. 20 and 21 meetings will be held at the Vale BLM Baker Field Office, 3100 H St., Baker City, Oregon; and the Jun. 18 and19 meetings will be held at the BLM Prineville District Office, 3050 NE 3rd St., Prineville, Oregon.

FOR FURTHER INFORMATION CONTACT: Larisa Bogardus, Public Affairs Officer, 3100 H St., Baker City, Oregon 97814; 541–219–6863; *lbogardus@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1(800) 877–8339 to contact the above individual during regular business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during regular business hours.

SUPPLEMENTARY INFORMATION: The 15-member John Day-Snake RAC was chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to the BLM, and as needed, the U.S. Forest Service, resource managers regarding management plans and proposed resource actions on public land in central and eastern Oregon. All meetings are open to the public in their entirety. Information to be distributed to the RAC is requested before the start of each meeting.

Standing agenda items include management of energy and minerals, timber, rangeland and grazing, commercial and dispersed recreation, wildland fire and fuels, and wild horses and burros; review and/or recommendations regarding proposed actions by Vale or Prineville BLM Districts and the Wallowa-Whitman, Umatilla, Malheur, Ochoco and Deschutes National Forests; and any other business that may reasonably come before the RAC.

The Designated Federal Officer will attend the call, take minutes, and publish these minutes on the RAC web page.

All meetings are open to the public in their entirety. The public may send written comments to the RAC for consideration. Comments can be mailed to BLM Vale District; Attn. Don Gonzalez; 100 Oregon St.; Vale, Oregon 97918.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

Authority: 43 CFR 1784.4–2.

Don Gonzalez,

Vale District Manager.

[FR Doc. 2020–01289 Filed 1–24–20; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0029371; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Sam Noble Oklahoma Museum of Natural History, Norman, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Sam Noble Oklahoma Museum of Natural History at the University of Oklahoma has completed

an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organization, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Sam Noble Oklahoma Museum of Natural History. If no additional requesters come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Sam Noble Oklahoma Museum of Natural History at the address in this notice by February 26, 2020.

ADDRESSES: Dr. Marc Levine, Associate Curator of Archaeology, Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua Avenue, Norman, OK 73072–7029, telephone (405) 325–1994, email *mlevine@ou.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Sam Noble Oklahoma Museum of Natural History, Norman, OK. The human remains and associated funerary objects were removed from McIntosh County, OK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Sam Noble Oklahoma Museum of Natural History professional staff in consultation with representatives of the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In 1940, human remains representing, at minimum, 137 individuals were removed from the Eufaula Mound site (34Mi45), also known as the Groseclose site, in McIntosh County, OK. The site lies at the confluence of the North Canadian and Canadian Rivers, approximately 80 kilometers west of Spiro Mounds. Following extensive damage to the site from agricultural activities and looting, excavations were carried out by the Works Progress Administration during May–August 1940. The project was funded by the Creek Indian Memorial Association, and fieldwork was supervised by Kenneth Orr. Materials recovered during the excavation were split between the Creek Memorial Museum (later known as the Creek Council House Museum) and the Sam Noble Museum. Additional associated funerary objects described in the excavation report were never delivered to the Museum. Instead, the most valuable items were sent to the Creek Memorial Museum and allegedly stolen during the early 1980s. In 1958, the Creek Indian Museum of Okmulgee donated one of these associated funerary objects from the 1940 excavation to the Museum. The site was later flooded following the construction of the Eufaula Dam in 1964.

The human remains from 34Mi45 include partial skeletons of one child, 3–12 years old; two adults greater than 20 years old of indeterminate sex; one young adult of indeterminate sex, 20–35 years old; one middle adult of indeterminate sex, 35–50 years old; one young adult female, 20–35 years old; one female greater than 50 years old; one adult male greater than 20 years old; two young adult males, 20–35 years old; and one middle adult male, 35–50 years old. Fragmentary skeletons include eighteen children, 3–12 years old; six adolescents, 12–20 yrs; nineteen young adults, 20–35 years old of indeterminate sex; one adult female greater than 20 years old; two middle adult females, 35–50 years old; two adult males greater than 20 years old; two middle adult males, 35–50 years old; six middle adults of indeterminate sex, 35–50 years old; three older adults greater than 50 years old of indeterminate sex; and sixty-seven adults of indeterminate sex, all greater than 20 years old. No known individuals were identified. The 177 associated funerary objects include 13 faunal bone fragments, one stone chert nodule, one sample of unmodified stone pebbles, one unmodified rock, four samples of small unmodified pebbles that may have been associated with rattles, three limestone pipes, one stone flake, seven projectile points, two stone earspools, one galena fragment, five red ochre pigment samples, 10 copper fragments, 121 ceramic sherds, one ceramic bead, two shell beads, one copper covered wooden blade, two wood mask fragments with the remains of a copper veneer, and one soil sample from a pipe bowl.

All of the human remains in this notice are determined to be Native American based on their archeological context and collection history. Furthermore, all of the human remains and associated funerary offerings were most likely interred during the local Harlan through early Norman phases (A.D. 1100–1300) of the Mississippian Period. Archaeological data, together with ethnohistoric data, ethnographic data, and tribal oral histories support the determination that the human remains and associated funerary offerings can be culturally affiliated with both the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

Determinations Made by the Sam Noble Oklahoma Museum of Natural History

Officials of the Sam Noble Oklahoma Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 137 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 177 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requesters and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Marc Levine, Associate Curator of Archaeology, Sam

Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua Avenue, Norman, OK 73072–7029, telephone (405) 325–1994, email *mlevine@ou.edu,* by February 26, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Sam Noble Oklahoma Museum of Natural History is responsible for notifying The Tribes that this notice has been published.

Dated: November 22, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–01337 Filed 1–24–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]

Grant Notification for Fiscal Year 2020

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) Title IV Abandoned Mine Land (AML) Reclamation Program and Title V Regulatory Program. We will award these grants during fiscal year 2020.

DATES: Single points of contact or other interested State, Tribal, or local entities may submit written comments regarding AML Reclamation Program and Regulatory Program funding until February 26, 2020.

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

- *Electronic mail:* Send your comments to *yrichardson@osmre.gov*.
- *Mail, hand-delivery, or courier:* Send your comments to Office of Surface Mining Reclamation and Enforcement, Attn: Grants Notice, Room 4551, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Yetunde Richardson, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, MS 4551, Washington, DC 20240; Telephone (202) 208–2766.

SUPPLEMENTARY INFORMATION:

Grant Notification

We are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under SMCRA's Title IV AML Reclamation Program. Additionally, we are notifying the public that we intend to grant funds to eligible applicants under SMCRA's Title V Regulatory Program for regulating coal mining within their jurisdictional borders. We will award these grants during fiscal year 2020. Eligible applicants are those States and Tribes with an AML reclamation program and/or a regulatory program that we approved under SMCRA, as amended, 30 U.S.C. 1201 *et seq.,* as well as States and Tribes that are seeking to develop a regulatory program as provided in 30 U.S.C. 1295. Consistent with Executive Order (E.O.) 12372, we are providing State and Tribal officials the opportunity to review and comment on these proposed Federal financial assistance activities. Of the eligible applicants, nineteen States or Tribes do not have single points of contact; therefore, we are publishing this notice as an alternate means of notification.

Description of the AML Reclamation Program

SMCRA established the Abandoned Mine Reclamation Fund to receive the AML fees that, along with funds from other sources, are used to finance reclamation of AML coal mine sites. Title IV of SMCRA authorizes OSMRE to provide grants to eligible States and Tribes that are funded from permanent (mandatory) appropriations. Recipients use these funds: to reclaim the highest priority AML coal mine sites that were left abandoned prior to the enactment of SMCRA in 1977; to reclaim eligible non-coal sites; for projects that address the impacts of mineral development; and for non-reclamation projects.

Description of the Regulatory Program

Title V of SMCRA authorizes OSMRE to provide grants to States and Tribes to develop, administer, and enforce State and Tribal regulatory programs that address, among other things, the disturbances from coal mining operations. Additionally, upon our approval of a State or Tribal regulatory program, Title V authorizes a State to assume regulatory primacy and act as the regulatory authority within the State or Tribe, and to administer and enforce its approved SMCRA regulatory program. Our regulations at Title 30 of the Code of Federal Regulations, Chapter VII, implement these provisions of SMCRA.

Dated: November 13, 2019.

Lanny E. Erdos,

Principal Deputy Director, Exercising the Authority of the Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 2020–01325 Filed 1–24–20; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0104]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change of a Currently Approved Collection Application for Alternate Means of Identification of Firearm(s) (Marking Variance)—ATF Form 3311.4

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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 27, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding 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: Pamela Eisert, Industry Liaison Analyst, Firearm & Ammunition Technology Division either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Marking_Variance@atf.gov,* or by telephone at 304–616–4300.

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 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 (check justification or form 83):* Extension without change of a currently approved collection.
2. *The Title of the Form/Collection:* Application for Alternate Means of Identification of Firearm(s) (Marking Variance).
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*
Form number (if applicable): ATF Form 3311.4.
Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:*
Primary: Business or other for-profit.
Other (if applicable): Federal Government.
Abstract: The Application for Alternate Means of Identification of Firearm(s) (Marking Variance)—ATF Form 3311.4 provides a uniform mean for industry members with a valid Federal importer or manufacturer license, to request firearms marking variance.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,064 respondents will utilize the form annually, and it will take each respondent approximately 30 minutes to complete their responses.
6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 1,032 hours, which is equal to 2,064 (# of respondents) * 1 (# of responses per respondent) * .5 (30 minutes).
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 21, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–01212 Filed 1–24–20; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; Initial Suitability Request—ATF 3252.4

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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 27, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding 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: Renee Reid, FO/ESB—Mailstop (7.E–401) either by mail at 99 New York Ave. NE, Washington, DC 20226, by email at *Renee.Reid@atf.gov,* or by telephone at 202–648–9255.

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 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 (check justification or form 83):* New collection.
2. *The Title of the Form/Collection:* Initial Suitability Request.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*
Form number (if applicable): ATF Form 3252.4.
Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:*
Primary: Individuals or households.
Other (if applicable): None.
Abstract: The Initial Suitability Request—ATF Form 3252.4 will be used by ATF's confidential informant (CI) handlers to collect personally identifiable information (PII), criminal history and other background information, in order to determine an individual's suitability to serve as an ATF CI.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 300 respondents will utilize the form annually, and it will take each respondent approximately 120 minutes to complete their responses.
6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 600 hours, which is equal to 300 (# of respondents annually) * 1 (# of responses per respondent) * 2 hours (120 minutes).
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 21, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–01214 Filed 1–24–20; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0105]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension With Change of a Currently Approved Collection; Request for ATF Background Investigation Information—ATF Form 8620.65

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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 27, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding 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: Matthew Varisco, Chief, Personnel Security Division, either by mail at 99 New York Avenue NE, Washington, DC 20226, by email at *Matthew.Varisco@atf.gov,* or by telephone at 202–648–9260.

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 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 (check justification or form 83):* Extension with change of a currently approved collection.

2. *The Title of the Form/Collection:* Request for ATF Background Investigation Information.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 8620.65.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Government.

Other (if applicable): Federal Government.

Abstract: Other Federal, state and local agency representatives requesting ATF background investigation information, must complete the Request for ATF Background Investigation Information—ATF Form 8620.65, as an official request for the information. ATF will make an authorized disclosure determination based on the type of agency requesting the information and the reason for the request. ATF will maintain the completed form as an official record of the request for information from the other agency.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 300 respondents will utilize the form once annually, and it will take each respondent approximately 5 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 25 hours, which is equal to 300 (# of respondents) * 1 (# of responses per respondent) * .083333 (5 minutes).

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 21, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–01213 Filed 1–24–20; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that on January 9, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Telefonia por Cable S.A. de C.V., Guadalajara, MEXICO, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on August 12, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

Act on September 4, 2019 (84 FR 46567).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–01234 Filed 1–24–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on December 30, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Viavi Solutions, LLC, Wichita, KS; and LadyBug Technologies, LLC, Santa Rosa, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on February 8, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 28, 2019 (84 FR 6821).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–01230 Filed 1–24–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on December 30, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. (''PXI Systems'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Data Device Corporation, Bohemia, NY; Instrumental Systems Corporation, Moscow, RUSSIA; LinkedHope Technology Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; and Test Evolution, Hopkinton, MA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on October 10, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 30, 2019 (84 FR 58173).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–01231 Filed 1–24–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on December 26, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CDA, Inc., Charlotte, NC; Fermata a.s., Celakovice, CZECH REPUBLIC; On Demand Publishing LLC, Wilmington, DE; STMicroelectronics, Inc., Carrollton, TX; Samsung Electronics, Gyeonggi-do, REPUBLIC OF KOREA; A&R Cambridge Limited, Cambridge, UNITED KINGDOM; and Dongguan Digital AV Technology Corp. Ltd., Guangdong, PEOPLE'S REPUBLIC OF CHINA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on May 15, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 17, 2019 (84 FR 28074).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit Antitrust Division.

[FR Doc. 2020–01226 Filed 1–24–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—UHD Alliance, Inc.

Notice is hereby given that on January 2, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 301 *et seq.* (''the Act''), UHD Alliance, Inc. (''UHD Alliance'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were

filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Shenzhen Chuangwei-RGB Electronics Co., Ltd. (Skyworth), Shenzhen, PEOPLE'S REPUBLIC OF CHINA, has become added as a party to this venture.

In addition, Chroma ATE Inc., Guishan Taoyuan, TAIWAN; and Mstar Semiconductor, Inc., Hsinchu Hsein, TAIWAN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on October 15, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 29, 2019 (84 FR 57884).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–01232 Filed 1–24–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Battery Innovation

Notice is hereby given that, on December 23, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consortium for Battery Innovation (''CBI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ceylon Graphene Technologies (PVT) Ltd, Rajagiriya, SRI LANKA; Digatron Power Electronics GmbH, Aachen, GERMANY; Global Lead Technologies, Forest Hill, AUSTRALIA; W.L. Gore Associates, Elkton, MD; H. Folke Sandelin AB, Motala, SWEDEN; and Monks Battery Consultants, Apex, NC have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CBI intends to file additional written notifications disclosing all changes in membership.

On May 24, 2019, CBI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 21, 2019 (84 FR 29241).

The last notification was filed with the Department on September 13, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 17, 2019 (84 FR 55585).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–01227 Filed 1–24–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0076]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection

AGENCY: Federal Bureau of Investigation, Department of Justice

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Training Division 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 March 27, 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 Kevin R. Furtick, Chief, Evaluation and Assessment Unit, 1234 Range Road, Quantico, VA, *krfurtick@fbi.gov,* 703–632–3222.

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 Department of Justice, Federal Bureau of Investigation, Training Division, 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:* New Collection.

2. *The Title of the Form/Collection:* FBI Training Generic Clearance.

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 Federal Bureau of Investigation, Training Division, Evaluation and Assessment Unit.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents of this collection include members of the State, Local or Tribal Government Law Enforcement community and Federal Government Law Enforcement partners. This collection will gather feedback from FBI training programs to ensure the training delivered is realistic and relevant to today's law enforcement partners.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Respondents are estimated to be 10,000 annually with an estimated time to complete each survey to be less than 10 minutes each per respondent per collection.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total estimated time for respondents to complete these evaluations is approximately 8,750 hours.

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 21, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–01216 Filed 1–24–20; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0094]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: Annual Survey of Jails

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day Notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, 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 27, 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 Zhen Zeng, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Zhen.Zeng@usdoj.gov;* telephone: 202–305–2711).

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:* Reinstatement, with change, of a previously approved collection for which approval has expired.

2. *Title of the Form/Collection:* Annual Survey of Jails (ASJ).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The ASJ contains one form—CJ–5: 2020 Annual Survey of Jails. The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Approximately 950 jails, representing approximately 2,920 local jails (city, county, regional, and private), will be requested to provide information for the following categories:

(a) At midyear (last weekday in the month of June), the total number of inmates confined in jail facilities and the total number of persons under jail supervision, but not confined;

(b) At midyear, inmate counts by sex, juvenile status, race/Hispanic origin, probation and parole status, conviction status, severity of charge (felony or misdemeanor), and U.S. citizenship status;

(c) At midyear, the numbers of inmates held for federal authorities, state prison authorities, American Indian or Alaska Native tribal governments, and other local jails;

(d) On the weekend prior to midyear, whether the jail had a weekend program that allows offenders to serve their sentences of confinement only on weekends, and the number of program participants;

(e) Rated capacity at midyear;

(f) The date and count for the greatest number of confined inmates during the 30-day period in June;

(g) The average daily population by sex during the 12-month period from July 1 of last year to June 30 of current year;

(h) The number of new admissions into jail, and final discharges from jail, by sex during the 12-month period from July 1 of last year to June 30 of current year;

(i) At midyear, the number of staff members employed by the facility by sex and occupation (*i.e.,* correctional officers or other staff).

The ASJ is the only national collection that tracks annual changes in the local jail population in the United States. The ASJ is fielded every year except in the years when BJS conducts the Census of Jails (OMB Control No. 1121–0100). BJS requests clearance for the 2020–22 ASJ under OMB Control No. 1121–0094. The ASJ was last approved under OMB Control No. 1121–0094 (exp. date 01/31/2019), where it was bundled with the Mortality in Correctional Institutions-Jails (MCI, formerly the Deaths in Custody Reporting Program, OMB Control No. 1121–0249) and Survey of Jails in Indian Country (OMB Control No. 1121–0329). In 2017, the ASJ was separated from the MCI-Jails and became a stand-alone collection again.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* During data collection in 2020, 950 respondents will each take an average of 75 minutes to complete the CJ–5 form (see table 1). Data quality follow-up is needed for an estimated 70% of the respondents (665) and the validation will run an average of 10 minutes for each respondent. In addition, about 60 jails will be contacted to verify facility operational status and point-of-contact information, which takes 5 minutes each on average. These estimates are based on previous estimates of item burden and input received from participants in the 2018 jail collection cognitive test (generic OMB clearance, Control No. 1121–0249). Data collection in 2021 and 2022 will involve the same number of respondents and require the same level of burden. In total, there is an estimated 3,912 total burden hours associated with this collection for the three years of data collection, or approximately 1,304 hours for each year.

TABLE 1—REPORTING MODE AND ESTIMATED BURDEN

Primary reporting mode	Purpose of contact	Number of data providers (RUs)	Number of responses	Average reporting time (min)	Estimated total burden hours (hrs)
Web	Data collection	950	950	75	1,188
Email and telephone	Data quality follow-up validation	665	665	10	111
Email and telephone	Verify facility operational status and point-of-contact.	60	60	5	5
Total					1,304

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 21, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–01215 Filed 1–24–20; 8:45 a.m.]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On January 21, 2020, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Colorado in the lawsuit entitled *United States of America and the State of Colorado* v. *K.P. Kauffman Company, Inc.,* Civil Action No. 1:18–cv–02559–RBJ.

The lawsuit seeks injunctive relief and civil penalties for violations of the Clean Air Act, the Colorado Air Pollution Prevention and Control Act (''Colorado Act''), Colorado's federally approved State Implementation Plan (''Colorado SIP''), and Colorado Air Quality Control Commission Regulation Number 7 (''Regulation No. 7'') at condensate tank systems (referred to in the consent decree as ''tank systems'') owned and operated by K.P. Kauffman Company, Inc. (''KPK'') in the Denver-Julesburg Basin in Colorado, an area designated as non-attainment for the National Ambient Air Quality Standards for ground-level ozone. The violations relate to alleged failures to adequately design, operate, and maintain vapor control systems at the tank systems, resulting in emissions of volatile organic compounds (''VOC'') and other pollutants to the atmosphere.

The proposed consent decree requires KPK to implement injunctive relief at 67 condensate tank systems to ensure that its vapor control systems adequately capture and control potential VOC emissions. The consent decree design, inspection, and preventative maintenance measures are intended to result in substantial reductions in VOC emissions from KPK tank systems throughout Colorado's Denver-Julesburg Basin. In addition to injunctive relief, the proposed Consent Decree requires KPK to pay a $1 million civil penalty, split evenly between the United States and the State of Colorado, and to undertake projects to mitigate environmental harm. Entering into and fully complying with the proposed consent decree will release KPK from past civil liability at the tank systems and associated vapor control systems for violations of the Colorado SIP and Regulation No. 7 relating to VOC emissions from condensate storage tanks.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *K.P. Kauffman Company, Inc.,* D.J. Ref. No. 90–5–2–1–11478. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $31.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–01275 Filed 1–24–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0124]

Proposed Extension of Information Collection; Health Standards for Diesel Particulate Matter Exposure (Underground Coal Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Health Standards for Diesel Particulate Matter Exposure (Underground Coal Mines).

DATES: All comments must be received on or before March 27, 2020.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Electronic Submissions: Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for docket number MSHA–2019–0049. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket, with no changes. Because your comment will be made public, you are responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as your or anyone else's Social Security number or confidential business information.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

Written/Paper Submissions: Submit written/paper submissions in the following way:

• *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.

• MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

MSHA establishes standards and regulations for diesel-powered equipment in underground coal mines that provide additional important protection for coal miners who work on and around diesel-powered equipment. The standards are designed to reduce the risks to underground coal miners of serious health hazards that are associated with exposure to high concentrations of diesel particulate matter. The standards in sections 72.510(a) & (b), and 72.520(a) & (b) contain information collection requirements for underground coal mine operators.

Section 72.510(a) requires underground coal mine operators to provide annual training to all miners who may be exposed to diesel emissions. The training must include: Health risks associated with exposure to diesel particulate matter; methods used in the mine to control diesel particulate concentrations; identification of the personnel responsible for maintaining those controls; and actions miners must take to ensure that controls operate as intended. Under Section 72.510(b) underground coal mine operators are required to keep a record of the training for one year.

Section 72.520(a) and (b) requires underground coal mine operators to maintain an inventory of diesel powered equipment units together with a list of information about any unit's emission control or filtration system. The list must be updated within 7 calendar days of any change.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Health Standards for Diesel Particulate Matter Exposure (Underground Coal Mines). MSHA is particularly interested in comments that:

• Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;

• Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to 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.

Background documents related to this information collection request are available at *https://regulations.gov* and in DOL–MSHA located at 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice from the previous collection of information.

III. Current Actions

This information collection request concerns provisions for Health Standards for Diesel Particulate Matter Exposure (Underground Coal Mines). MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0124.

Affected Public: Business or other for-profit.

Number of Respondents: 164.

Frequency: On occasion.

Number of Responses: 55,980.

Annual Burden Hours: 710 hours.

Annual Respondent or Recordkeeper Cost: $24.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Sheila McConnell,

Certifying Officer.

[FR Doc. 2020–01340 Filed 1–24–20; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before February 26, 2020.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Email: zzMSHA-comments@dol.gov* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect a copy of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *McConnell.Sheila.A@dol.gov* (email), or 202–693–9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor (Secretary) determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2019–058–C.
Petitioner: Peabody Midwest Mining, LLC, 7100 Eagle Crest Blvd., Evansville, IN 47715.
Mine: Francisco Underground Pit, MSHA I.D. No. 12–02295, located in Gibson County, IN.
Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).
Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.500(d), as it relates to the use of an alternative method of respirable dust protection at the Francisco Underground Pit mine. The operator is petitioning to use a battery powered respirable protection unit called a *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* in or inby the last open crosscut.

The petitioner states that:

(a) Peabody currently uses the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection with long-term health benefits.

(b) 3M is discontinuing the Airstream helmet by June 1, 2020 due to disruption in their component supply but it will offer the *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR).* February 2020 will be the last opportunity to order the Airstream components.

(c) There are currently no replacement 3M PAPRs that meet the MSHA standard for permissibility.

(d) The Versaflo™ TR–800 Intrinsically Safe PAPR qualifies as intrinsically safe in the US, Canada, and countries that accept the International Electrotechnical Commissions System for Certification to Standards Relating to Equipment for Use in Explosive Atmosphere (IECEx). It is not MSHA-approved and 3M is not currently pursuing approval.

The petitioner proposes the following alternative method:

(1) The operator is petitioning to use the *Versaflo™ TR–800 Intrinsically Safe PAPR* in or inby the last open crosscut.

(2) The equipment must be examined at least weekly by a qualified person according to 30 CFR 75.512–2 and examination results must be recorded weekly and may be expunged after one year.

(3) The operator will comply with 30 CFR 75.323.

(4) A qualified person under 30 CFR 75.151 will monitor for methane as is required in the mine.

(5) Qualified miners will receive training regarding the information in the Decision and Order before using equipment in the relevant part of the mine. A record of the training will be kept and available upon request.

(6) Within 60 days of the Decision and Order becoming finalized, the operator will submit proposed revisions to 30 CFR 75.370, mine ventilation, to be approved under the 30 CFR part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions will specify initial and refresher training and when the revisions are conducted, the MSHA Certificate of Training (Form 5000–23) will be completed. Comments will be made on the certificate to note non-permissible testing equipment training.

(7) The operator is responsible for all people, including contractors, using the above equipment. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M–2019–059–C.
Petitioner: Peabody Midwest Mining, LLC, 7100 Eagle Crest Blvd., Evansville, IN 47715.
Mine: Francisco Underground Pit, MSHA I.D. No. 12–02295, located in Gibson County, IN.
Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).
Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.507–1(a), as it relates to the use of an alternative method of respirable dust protection at the Francisco Underground Pit mine. The operator is petitioning to use a battery powered respirable protection unit called a *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* in return airways.

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The petitioner proposes the following alternative method:

(1) The operator is petitioning to use the *Versaflo™ TR–800 Intrinsically Safe PAPR* in return airways.

(2) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512–2 and examination results will be recorded weekly and may be expunged after one year.

(3) The operator will comply with 30 CFR 75.323.

(4) A qualified person under 30 CFR 75.151 will monitor for methane as is required in the mine.

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(7) The operator is responsible for all people, including contractors, using the above equipment. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M–2019–060–C.

Petitioner: Peabody Midwest Mining, LLC, 7100 Eagle Crest Blvd., Evansville, IN 47715.

Mine: Francisco Underground Pit, MSHA I.D. No. 12–02295, located in Gibson County, IN.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1002(a), as it relates to the use of an alternative method of respirable dust protection at the Francisco Underground Pit mine. The operator is petitioning to use a battery powered respirable protection unit called a *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* within 150 feet of pillar workings and longwall faces.

The petitioner states that:

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(c) There are currently no replacement 3M PAPRs that meet the MSHA standard for permissibility.

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(7) The operator is responsible for all people, including contractors, using the above equipment. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M–2019–061–C.

Petitioner: Peabody Gateway North Mining, LLC, 7100 Eagle Crest Boulevard, Suite 100, Evansville, IN 47715–8152.

Mine: Gateway North Mine, MSHA I.D. No. 11–03235, located in Randolph County, IL.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.500(d), as it relates to the use of an alternative method of respirable dust protection at the Francisco Underground Pit mine. The operator is petitioning to use a battery powered respirable protection unit called a *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* in or inby the last open crosscut.

The petitioner states that:

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(c) There are currently no replacement 3M PAPRs that meet the MSHA standard for permissibility.

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(7) The operator is responsible for all people, including contractors, using the above equipment. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M–2019–062–C.

Petitioner: Peabody Gateway North Mining, LLC, 7100 Eagle Crest Boulevard, Suite 100, Evansville, IN 47715–8152.

Mine: Gateway North Mine, MSHA I.D. No. 11–03235, located in Randolph County, IL.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.507–1(a), as it relates to the use of an alternative method of respirable dust protection at the Francisco Underground Pit mine. The operator is petitioning to use a battery powered respirable protection unit called a *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* in return airways.

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Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1002(a), as it relates to the use of an alternative method of respirable dust protection at the Francisco Underground Pit mine. The operator is petitioning to use a battery powered respirable protection unit called a *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* within 150 feet of pillar workings and longwall faces.

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(7) The operator is responsible for all people, including contractors, using the

above equipment. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M–2019–064–C.

Petitioner: Peabody Southeast Mining, LLC, 654 Camp Creek Portal Rd., Oakman, AL 35579.

Mine: Shoal Creek Mine, MSHA I.D. No. 01–02901, located in Walker County, AL.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.500(d), as it relates to the use of an alternative method of respirable dust protection at the Francisco Underground Pit mine. The operator is petitioning to use a battery powered respirable protection unit called a *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* in or inby the last open crosscut.

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(7) The operator is responsible for all people, including contractors, using the above equipment. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M–2019–065–C.

Petitioner: Peabody Southeast Mining, LLC, 654 Camp Creek Portal Rd., Oakman, AL 35579.

Mine: Shoal Creek Mine, MSHA I.D. No. 01–02901, located in Walker County, AL.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.507–1(a), as it relates to the use of an alternative method of respirable dust protection at the Francisco Underground Pit mine. The operator is petitioning to use a battery powered respirable protection unit called a *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* in return airways.

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(7) The operator is responsible for all people, including contractors, using the above equipment. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M–2019–066–C.

Petitioner: Peabody Southeast Mining, LLC, 654 Camp Creek Portal Rd., Oakman, AL 35579.

Mine: Shoal Creek Mine, MSHA I.D. No. 01–02901, located in Walker County, AL.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1002(a), as it relates to the use of an alternative method of respirable dust protection at the Francisco Underground Pit mine. The

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(7) The operator is responsible for all people, including contractors, using the above equipment. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M–2019–067–C.

Petitioner: Peabody Twentymile Mining, LLC, 29515 Route County Road #27, Oak Creek, CO 80467.

Mine: Foidel Creek Mine, MSHA I.D. No. 05–03836, located in Routt County, CO.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.500(d), as it relates to the use of an alternative method of respirable dust protection at the Francisco Underground Pit mine. The operator is petitioning to use a battery powered respirable protection unit called a *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* in or inby the last open crosscut.

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The petitioner proposes the following alternative method:

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(4) A qualified person under 30 CFR 75.151 will monitor for methane as is required in the mine.

(5) Qualified miners will receive training regarding the information in the Decision and Order before using equipment in the relevant part of the mine. A record of the training will be kept and available upon request.

(6) Within 60 days of the Decision and Order becoming finalized, the operator will submit proposed revisions to 30 CFR 75.370, mine ventilation, to be approved under the 30 CFR part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions will specify initial and refresher training and when the revisions are conducted, the MSHA Certificate of Training (Form 5000–23) will be completed. Comments will be made on the certificate to note non-permissible testing equipment training.

(7) The operator is responsible for all people, including contractors, using the above equipment. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M–2019–068–C.

Petitioner: Peabody Twentymile Mining, LLC, 29515 Route County Road #27, Oak Creek, CO 80467.

Mine: Foidel Creek Mine, MSHA I.D. No. 05–03836, located in Routt County, CO.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.507–1(a), as it relates to the use of an alternative method of respirable dust protection at the Francisco Underground Pit mine. The operator is petitioning to use a battery powered respirable protection unit called a *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* in return airways.

The petitioner states that:

(a) Peabody currently uses the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection with long-term health benefits.

(b) 3M is discontinuing the Airstream helmet by June 1, 2020 due to disruption in their component supply but it will offer the *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR).* February 2020 will be the last opportunity to order the Airstream components.

(c) There are currently no replacement 3M PAPRs that meet the MSHA standard for permissibility.

(d) The Versaflo™ TR–800 Intrinsically Safe PAPR qualifies as intrinsically safe in the US, Canada, and countries that accept the International Electrotechnical Commissions System for Certification to Standards Relating to Equipment for Use in Explosive Atmosphere (IECEx). It is not MSHA-approved and 3M is not currently pursuing approval.

The petitioner proposes the following alternative method:

(1) The operator is petitioning to use the *Versaflo™ TR–800 Intrinsically Safe PAPR* in return airways.

(2) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512–2 and examination results will be recorded weekly and may be expunged after one year.

(3) The operator will comply with 30 CFR 75.323.

(4) A qualified person under 30 CFR 75.151 will monitor for methane as is required in the mine.

(5) Qualified miners will receive training regarding the information in the Decision and Order before using equipment in the relevant part of the mine. A record of the training will be kept and available upon request.

(6) Within 60 days of the Decision and Order becoming finalized, the operator will submit proposed revisions to 30 CFR 75.370, mine ventilation, to be approved under the 30 CFR part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions will specify initial and refresher training and when the revisions are conducted, the MSHA Certificate of Training (Form 5000–23) will be completed. Comments will be made on the certificate to note non-permissible testing equipment training.

(7) The operator is responsible for all people, including contractors, using the above equipment. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M–2019–069–C.

Petitioner: Peabody Twentymile Mining, LLC, 29515 Route County Road #27, Oak Creek, CO 80467.

Mine: Foidel Creek Mine, MSHA I.D. No. 05–03836, located in Routt County, CO.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1002(a), as it relates to the use of an alternative method of respirable dust protection at the Francisco Underground Pit mine. The operator is petitioning to use a battery powered respirable protection unit called a *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* within 150 feet of pillar workings and longwall faces.

The petitioner states that:

(a) Peabody currently uses the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection with long-term health benefits.

(b) 3M is discontinuing the Airstream helmet by June 1, 2020 due to disruption in their component supply but it will offer the *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR).* February 2020 will be the last opportunity to order the Airstream components.

(c) There are currently no replacement 3M PAPRs that meet the MSHA standard for permissibility.

(d) The Versaflo™ TR–800 Intrinsically Safe PAPR qualifies as intrinsically safe in the US, Canada, and countries that accept the International Electrotechnical Commissions System for Certification to Standards Relating to Equipment for Use in Explosive Atmosphere (IECEx). It is not MSHA-approved and 3M is not currently pursuing approval.

The petitioner proposes the following alternative method:

(1) The operator is petitioning to use the *Versaflo™ TR–800 Intrinsically Safe PAPR* within 150 feet of pillar workings and longwall faces.

(2) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512–2 and examination results will be recorded weekly and may be expunged after one year.

(3) The operator will comply with 30 CFR 75.323.

(4) A qualified person under 30 CFR 75.151 will monitor for methane as is required in the mine.

(5) Qualified miners will receive training regarding the information in the Decision and Order before using equipment in the relevant part of the mine. A record of the training will be kept and available upon request.

(6) Within 60 days of the Decision and Order becoming finalized, the operator will submit proposed revisions to 30 CFR 75.370, mine ventilation, to be approved under the 30 CFR part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions will specify initial and refresher training and when the revisions are conducted, the MSHA Certificate of Training (Form 5000–23) will be completed. Comments will be made on the certificate to note non-permissible testing equipment training.

(7) The operator is responsible for all people, including contractors, using the above equipment. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Sheila McConnell,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2020–01239 Filed 1–24–20; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities; Comment Request; Information Collection—Housing Occupancy Certificates Under the Migrant and Seasonal Agricultural Worker Protection Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collection: Housing Occupancy Certificate—Migrant and Seasonal Agricultural Worker Protection Act. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before March 27, 2020.

ADDRESSES: You may submit comments identified by OMB Control Number 1235–0006, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Wage and Hour Division (WHD) of the Department of Labor (DOL) administers the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 *et seq.* The MSPA protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, and recordkeeping. The MSPA also requires farm labor contractors and farm labor contractor employees to register with the U.S. Department of Labor and to obtain special authorization before housing, transporting, or driving covered workers. The MSPA requires that any person owning or controlling any facility or real property to be used for housing migrant agricultural workers shall not permit such housing to be occupied by any worker unless copy of a certificate of occupancy from the state, local,or federal agency that conducted the housing safety and health inspection is posted at the site of the facility or real property. The certificate attests that the facility or real property meets applicable safety and health standards. Form WH–520 is an information gathering form and the certificate of occupancy that the Wage and Hour Division issues when it is the federal agency conducting the safety and health inspection.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- 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;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* The DOL seeks an approval for the extension of this information collection that requires any person owning or controlling any facility or real property to be occupied by migrant agricultural workers to obtain a certificate of occupancy.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Housing Occupancy Certificate—Migrant and Seasonal Agricultural Worker Protection Act.

OMB Number: 1235–0006.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms.

Total Respondents: 100.

Total Annual Responses: 100.

Estimated Total Burden Hours: 7.

Estimated Time per Response: 3–4 minutes.

Frequency: Annual.

Total Burden Cost (capital/startup): $0.

Total Burden Costs (operation/maintenance): $0.

Dated: January 16, 2020.

Amy DeBisschop,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2020–01238 Filed 1–24–20; 8:45 am]

BILLING CODE 4510–27–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Board of Directors and its six committees will meet January 30–February 1, 2020. On Thursday, January 30, the first meeting will commence at 1:00 p.m., Central Standard Time (CST), with each meeting thereafter commencing promptly upon adjournment of the immediately preceding meeting. On Friday, January 31, the first meeting will commence at 8:15 a.m. (CST), with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Saturday, February 1, the open session meeting of the Board of Directors will commence at 8:00 a.m. (CST). The closed session meeting of the Board of Directors will commence promptly upon adjournment of the open session of the Board of Directors meeting.

LOCATION: DoubleTree by Hilton Hotel, 424 W Markham Street, Little Rock, Arkansas 72201.

PUBLIC OBSERVATION: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- *Call this toll-free number:* 1–866–451–4981;
- *When prompted, enter the following numeric pass code:* 5907707348.
- Once connected to the call, your telephone line will be *automatically* ''MUTED''.
- To participate in the meeting during public comment press #6 to ''UNMUTE'' your telephone line, once you have concluded your comments please press *6 to ''MUTE'' your line.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

Meeting Schedule

	Time*
Thursday, January 30, 2020: 1. Operations and Regulations Committee. 2. Delivery of Legal Services Committee.	1:00 p.m.

	Time*
Friday, January 31, 2020:	8:15 a.m.
1. Institutional Advancement Committee.	
2. Communications Subcommittee of the Institutional Advancement Committee.	
3. Audit Committee.	
4. Finance Committee.	
5. Governance and Performance Review Committee.	
Saturday, February 1, 2020:	8:00 a.m.
1. OPEN Board Meeting.	
2. CLOSED Board Meeting.	

STATUS OF MEETING: Open, except as noted below.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to hear briefings by management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential and pending litigation involving LSC, and on a list of prospective funders.**

Audit Committee—Open, except that the meeting may be closed to the public to hear a briefing on the Office of Compliance and Enforcement's active enforcement matters.**

Institutional Advancement Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to consider and act on recommendation of new Leaders Council invitees and to receive a briefing on the development activities.**

A verbatim written transcript will be made of the closed session of the Board, Institutional Advancement Committee, and Audit Committee meetings. However, the transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) and (10), will not be available for public inspection.

A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

January 30, 2020

Operations and Regulations Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session on October 20, 2019
3. Discussion of the Committee's 2019 Evaluation and 2020 Goals
4. Discussion of Management's report on implementation of the Strategic Plan 2017–2020
   - Jim Sandman, President
5. Consider and act on commencing rulemaking to update 45 CFR part 1635–Timekeeping
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
   - Stefanie Davis, Assistant General Counsel
6. Consider and act on Further Notice of Proposed Rulemaking to revise 45 CFR parts 1610—Use of Non-LSC Funds and 1630—Cost Standards
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
   - Mark Freedman, Senior Associate General Counsel
7. Public comment
8. Consider and act on other business
9. Consider and act on motion to adjourn the meeting

Delivery of Legal Services Committee Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of October 21, 2019
3. Discussion of the Committee's 2019 Evaluation and 2020 Goals
4. Update on revisions to LSC Performance Criteria
   - Lynn Jennings, Vice President for Grants Management
5. Annual Briefing from the Office of Data Governance and Analysis
   - Carlos Manjarrez, Chief Data Officer, Office of Data Governance and Analysis
6. Grantee Experiences with LSC—Executive Director panel presentation
   - Jon Asher, Colorado Legal Services
   - Marilyn Harp, Kansas Legal Services
   - Kate Marr, Community Legal Aid SoCal
   - Jessie Nicholson, Southern Minnesota Regional Legal Services
   - Maria Thomas-Hones, Legal Aid of Northwest Texas
   - Adrienne Worthy, Legal Aid of West Virginia
   - Moderator: Joyce McGee, Director, Office of Program Performance
7. Public comment
8. Consider and act on other business
9. Consider and act on motion to adjourn the meeting

January 31, 2020

Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Institutional Advancement Committee's Open Session meeting of October 20, 2019
3. Discussion of the Committee's 2019 Evaluation and 2020 Goals
4. Update on Leaders Council and Emerging Leaders Council
   - John G. Levi, Chairman of the Board
5. Development report
   - Nadia Elguindy, Director of Institutional Advancement
   - Jim Sandman, President
6. Consider and act on motion to approve renewal of LSC's National Voluntary Organizations Active in Disaster (NVOAD) membership
7. Public Comment
8. Consider and act on other business
9. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

1. Approval of minutes of the Institutional Advancement Committee's Closed Session meeting of October 20, 2019
2. Development activities report
   - Nadia Elguindy, Director of Institutional Advancement
3. Consider and act on motion to approve Leader's Council and Emerging Leaders Council invitees
4. Consider and act on other business
5. Consider and act on motion to adjourn the meeting

Communications Subcommittee of the Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Subcommittee's Open Session meeting on October 20, 2019
3. Discussion of the Subcommittee's 2019 Evaluation and 2020 Goals
4. Communications and social media update
   - Carl Rauscher, Director of Communications and Media Relations
5. Public Comment
6. Consider and act on other business
7. Consider and act on motion to adjourn the meeting

Audit Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of October 20, 2019

* Please note that all times in this notice are in *Central Standard Time.*

** Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

3. Discussion of the Committee's 2019 Evaluation and 2020 Goals
4. Briefing by Office of Inspector General
   - Jeffrey Schanz, Inspector General
   - Roxanne Caruso, Assistant Inspector General for Audit
5. Pursuant to Section VIII(C)(5) of the Committee Charter, review LSC's and the Office of Inspector General's mechanisms for the submission confidential complaints
   - Dan O'Rourke, Assistant Inspector General for Investigations
   - Lora Rath, Director, Office of Compliance and Enforcement
6. Management update regarding risk management
   - Ron Flagg, Vice President for Legal Affairs
7. Briefing about follow-up by the Office of Compliance and Enforcement on referrals by the Office of Inspector General regarding audit reports and annual independent public audits of grantees
   - Lora Rath, Director, Compliance and Enforcement
   - Roxanne Caruso, Assistant Inspector General for Audits
   - Lora Rath, Director, Office of Compliance and Enforcement
8. Public comment
9. Consider and act on other business
10. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

1. Approval of minutes of the Committee's Closed Session meeting on October 20, 2019
2. Briefing by Office Compliance and Enforcement on active enforcement matter(s) and follow-up on open investigation referrals from the Office of Inspector General
   - Lora Rath, Director, Compliance and Enforcement
3. Consider and act on adjournment of meeting

Finance Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting October 20, 2019
3. Discussion of the Committee's 2019 Evaluation and 2020 Goals
4. Discussion of LSC's FY 2020 appropriation
   - Carol Bergman, Vice President, Government Relations & Public Affairs
5. Presentation of FY 2020 Consolidated Operating Budget
   - Debbie Moore, Treasurer and Chief Financial Officer
6. Consider and act on *Resolution 2020–XXX,* LSC's Consolidated Operating Budget for FY 2020
7. Presentation of LSC's Financial Report for the first three months of FY 2020
   - Debbie Moore, Treasurer and Chief Financial Officer
8. Discussion of LSC's FY 2021 appropriations request
   - Carol Bergman, Vice President, Government Relations & Public Affairs
9. Consider and act on Resolution *2020–XXX,* a revised version of Board of Directors Resolution 2012–003, authorizing the Treasurer to Select LSC Funds Accounts and Depositories
   - Debbie Moore, Treasurer and Chief Financial Officer
10. Report on banking activities
   - Debbie Moore, Treasurer and Chief Financial Officer
11. Public comment
12. Consider and act on other business
13. Consider and act on motion to adjourn the meeting

Governance and Performance Review Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of October 21, 2019
3. Discussion of Board and Committee Evaluations
   - Discussion of the Committee's 2019 Evaluation and 2020 Goals
   - Staff Report on 2019 Board and Committee Evaluations
   - Carol Bergman, Vice President for Government Relations & Public Affairs
4. Discussion of President's Evaluation for 2019
5. Consider and act on resolution to appoint President
6. Consider and act on Resolution 2020–xxx to appoint Corporate Secretary
7. Consider and act on Resolution 2020–xxx to appoint James Sandman President Emeritus
8. Discussion of Inspector General's FY 2019 activities
9. Consider and act on other business
10. Public comment
11. Consider and act on motion to adjourn the meeting

February 1, 2020

Board of Directors

Open Session

1. Pledge of Allegiance
2. Approval of agenda
3. Approval of minutes of the Board's Open Session meeting of October 22, 2019
4. Approval of minutes of the Board's Open Session telephonic meeting of November 22, 2019
5. Consider and act on nominations for the Chair of the Board of Directors
6. Consider and act on nominations for the Vice Chair of the Board of Directors
7. Chairman's Report
8. Members' Reports
9. President's Report
10. Inspector General's Report
11. Consider and act on the report of the Operations and Regulations Committee
12. Consider and act on the report of the Governance and Performance Review Committee
13. Consider and act on the report of the Audit Committee
14. Consider and act on the report of the Finance Committee
15. Consider and act on the report of the Institutional Advancement Committee
16. Consider and act on the report of the Delivery of Legal Services Committee
17. Consider and act on *Resolution 2020–XXX,* Establishing a Veterans Task Force
18. Veterans Task Force Update
   - Ron Flagg, Vice President for Legal Affairs, General Counsel, and Corporate Secretary
19. Opioid Task Force Update
   - Ron Flagg, Vice President for Legal Affairs, General Counsel, and Corporate Secretary
20. Disaster Task Force Update
   - Lynn Jennings, Vice President for Grants Management
21. Public Comment
22. Consider and act on other business
23. Consider and act on whether to authorize a closed session of the Board to address items listed below

Closed Session

1. Approval of minutes of the Board's Closed Session meeting of October 22, 2019
2. Management briefing
3. Inspector General briefing
4. Consider and act on General Counsel's report on potential and pending litigation involving LSC
5. Consider and act on list of prospective Leaders Council and Emerging Leaders Council invitees
6. Consider and act on motion to adjourn the meeting

CONTACT PERSON FOR INFORMATION:

Karly Satkowiak, Special Counsel, at (202) 295–1633. Questions may be sent by electronic mail to *satkowiakk@lsc.gov.*

NON-CONFIDENTIAL MEETING MATERIALS: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session.*

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 2020–01409 Filed 1–23–20; 11:15 am]

BILLING CODE 7050–01–P

OFFICE OF MANAGEMENT AND BUDGET

2019 Statutory Pay-As-You-Go Act Annual Report

AGENCY: Office of Management and Budget (OMB).

ACTION: Notice.

SUMMARY: This report is being published as required by the Statutory Pay-As-You-Go (PAYGO) Act of 2010. The Act requires that OMB issue an annual report and a sequestration order, if necessary.

FOR FURTHER INFORMATION CONTACT: Erin O'Brien. 202–395–3106.

SUPPLEMENTARY INFORMATION: This report can be found at *https://www.whitehouse.gov/omb/paygo/.*

Authority: 2 U.S.C. 934.

Kelly A. Kinneen,

Assistant Director for Budget.

This Report is being published pursuant to section 5 of the Statutory Pay-As-You-Go (PAYGO) Act of 2010, Public Law 111–139, 124 Stat. 8, 2 U.S.C. 934, which requires that OMB issue an annual PAYGO report, including a sequestration order if necessary, no later than 14 working days after the end of a congressional session.

This Report describes the budgetary effects of all PAYGO legislation enacted during the first session of the 116th Congress and presents the 5-year and 10-year PAYGO scorecards maintained by OMB. Because neither the 5-year nor 10-year scorecard shows a debit for the budget year, which for purposes of this Report is fiscal year 2020,[1] a sequestration order under subsection 5(b) of the PAYGO Act, 2 U.S.C. 934(b) is not necessary.

The budget year balance on each of the PAYGO scorecards is zero because two laws, the Bipartisan Budget Act of 2019 (Pub. L. 116–37), and the Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019 (Pub. L. 116–69), directed changes to the balances of the scorecards. Public Law 116–37 removed all balances included on the scorecards at the time of enactment, and Public Law 116–69 shifted the debits on both scorecards from fiscal year 2020 to fiscal year 2021. The changes directed by these laws are discussed in more detail in section IV of this report.

During the first session of the 116th Congress, no laws with PAYGO effects were enacted with emergency requirements under section 4(g) of the PAYGO Act, 2 U.S.C. 933(g). Six laws had estimated budgetary effects on direct spending and/or revenues that were excluded from the calculations of the PAYGO scorecards due to provisions excluding all or part of the law from section 4(d) of the PAYGO Act, 2 U.S.C. 933(d).

I. PAYGO Legislation With Budgetary Effects

PAYGO legislation is authorizing legislation that affects direct spending or revenues, and appropriations legislation that affects direct spending in the years after the budget year or affects revenues in any year.[2] For a more complete description of the Statutory PAYGO Act, see Chapter 11, ''Budget Concepts,'' of the *Analytical Perspectives* volume of the 2020 President's Budget, found on the website of the U.S. Government Printing Office (*https://www.govinfo.gov/content/pkg/BUDGET-2020-PER/pdf/BUDGET-2020-PER.pdf*).

This PAYGO Act's requirement of deficit neutrality is based on two cumulative scorecards that tally the cumulative budgetary effects of PAYGO legislation as averaged over rolling 5- and 10-year periods starting with the budget year. The 5-year and 10-year PAYGO scorecards for each congressional session begin with the balances of costs or savings carried over from previous sessions and then tally the costs or savings of PAYGO laws enacted in the most recent session. The 5-year PAYGO scorecard for the first session of the 116th Congress began with balances of costs of $3,293 million in 2020 and $1,646 million in 2021 through 2023. Added to those balances were the budgetary effects of PAYGO legislation through Public Law 116–36. Section 102 of Public Law 116–37 eliminated those balances, resetting each year of the scorecards to zero. The completed 5-year scorecard for the session shows that PAYGO legislation enacted during the session was estimated to have PAYGO budgetary effects that increased the deficit by an average of $514 million each year from 2020 through 2024.[3] Section 1801 of Public Law 116–69 deducted the costs from the scorecard in 2020 and added those costs to the scorecard in 2021. Therefore, the 2020 column of the scorecard is zero and the 2021 column reflects a debit of $1,028 million.

The 10-year PAYGO scorecard for the first session of the 116th Congress began with balances of costs of $2,064 million in 2020 and $1,032 million in 2021 through 2028. Added to those balances were the budgetary effects of PAYGO legislation through Public Law 116–36. Section 102 of Public Law 116–37 eliminated those balances. The completed 10-year scorecard for the session shows that PAYGO legislation for the session increased the deficit by an average of $657 million each year from 2020 through 2029. Section 1801 of Public Law 116–69 deducted the costs from the scorecard in 2020 and added those costs to the scorecard in 2021. Therefore, the 2020 column of the

[1] References to years on the PAYGO scorecards are to fiscal years.

[2] Provisions in appropriations acts that affect direct spending in the years after the budget year (also known as ''outyears'') or affect revenues in any year are considered to be budgetary effects for the purposes of the PAYGO scorecards except if the provisions produce outlay changes that net to zero over the current year, budget year, and the four subsequent years. As specified in section 3 of the PAYGO Act, off-budget effects are not counted as budgetary effects. Off-budget effects refer to effects on the Social Security trust funds (Old-Age and Survivors Insurance and Disability Insurance) and the Postal Service.

[3] As provided in section 4(d) of the PAYGO Act, 2 U.S.C. 933(d), budgetary effects on the PAYGO scorecards are based on congressional estimates for bills including a reference to a congressional estimate in the Congressional Record, and for which such a reference is indeed present in the Record. Absent such a congressional cost estimate, OMB is required to use its own estimate for the scorecard. Eleven of the bills enacted during this session had such a congressional estimate and therefore OMB was required to provide an estimate for the remaining PAYGO laws enacted during the session.

scorecard is zero and the 2021 column reflects a debit of $1,314 million.

In the first session of the 116th Congress, 33 laws were enacted that were determined to constitute PAYGO legislation. Of the 33 enacted PAYGO laws, 14 laws were estimated to have PAYGO budgetary effects (costs or savings) in excess of $500,000 over one or both of the 5-year or 10-year PAYGO windows. These were:

- Medicaid Extenders Act of 2019, Public Law 116–3;
- Consolidated Appropriations Act, 2019, Public Law 116–6;
- Pesticide Registration Improvement Extension Act of 2018; Public Law 116–8;
- John D. Dingell, Jr. Conservation, Management, and Recreation Act, Public Law 116–9;
- Medicaid Services Investment and Accountability Act of 2019, Public Law 116–16;
- Additional Supplemental Appropriations for Disaster Relief Act, 2019, Public Law 116–20;
- Blue Water Navy Vietnam Veterans Act of 2019, Public Law 116–23;
- Taxpayer First Act, Public Law 116–25;
- To provide for a 2-week extension of the Medicaid community mental health services demonstration program, and for other purposes, Public Law 116–29;
- Sustaining Excellence in Medicaid Act of 2019, Public Law 116–39;
- Fostering Undergraduate Talent by Unlocking Resources for Education Act, Public Law 116–91;
- National Defense Authorization Act for Fiscal Year 2020, Public Law 116–92;
- Consolidated Appropriations Act, 2020, Public Law 116–93; and
- Further Consolidated Appropriations Act, 2020, Public Law 116–94.

In addition to the laws identified above, 19 laws enacted in this session were estimated to have negligible budgetary effects on the PAYGO scorecards—costs or savings of less than $500,000 over both the 5-year and 10-year PAYGO windows.

II. Budgetary Effects Excluded From the Scorecard Balances

Six laws enacted in the first session of the 116th Congress had estimated budgetary effects on direct spending and revenues that were excluded from the calculations for the PAYGO scorecards due to provisions in law excluding all or part of the law from section 4(d) of the PAYGO Act. Two laws were excluded entirely from the scorecards:

- Never Forget the Heroes: James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund Act, Public Law 116–34; and
- Bipartisan Budget Act of 2019, Public Law 116–37.

In addition, budgetary effects in four laws were excluded by provisions excluding certain portions of those laws from the scorecards:

- Consolidated Appropriations Act, 2019, Public Law 116–6;
- Continuing Appropriations Act, 2020, and Health Extenders Act of 2019, Public Law 116–59;
- Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019, Public Law 116–69; and
- Further Consolidated Appropriations Act, 2020, Public Law 116–94.

III. PAYGO Scorecards

STATUTORY PAY-AS-YOU-GO SCORECARDS

[In millions of dollars; negative amounts portray decreases in deficits]

	2020	2021	2022	2023	2024					
First Session of the 116th Congress	408	408	408	408	408					
Balances from Previous Sessions	3,293	1,646	1,646	1,646	0					
Elimination of balances pursuant to Sec. 102 of Public Law 116–37	−3,187	−1,540	−1,540	−1,540	106					
Deduction of the budget year debit pursuant to Sec. 1801 of Public Law 116–69	*−514*	*514*	*0*	*0*	*0*					
5-year PAYGO Scorecard	0	1,028	514	514	514					
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
First Session of the 116th Congress	396	396	396	396	396	396	396	396	396	396
Balances from Previous Sessions	2,064	1,032	1,032	1,032	1,032	1,032	1,032	1,032	1,032	0
Elimination of balances pursuant to Sec. 102 of Public Law 116–37	−1,803	−771	−771	−771	−771	−771	−771	−771	−771	261
Deduction of the budget year debit pursuant to Sec. 1801 of Public Law 116–69	*−657*	*657*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*
10-year PAYGO Scorecard	0	1,314	657	657	657	657	657	657	657	657

IV. Legislative Revisions to the PAYGO Scorecards

Two laws were enacted prior to issuance of this report that required direct adjustments to the totals on the PAYGO scorecards.

A. Elimination of Balances

Section 102 of Public Law 116–37, the Bipartisan Budget Act of 2019 (BBA), includes a provision that states, ''Effective on the date of enactment of this Act, the balances on the PAYGO scorecards established pursuant to paragraphs (4) and (5) of section 4(d) of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 933(d)) shall be zero.'' Accordingly, these scorecards show the removal of the balances on the scorecards from laws enacted prior to the BBA.

B. Deduction of Budget Year Debit From the 5- and 10-Year Scorecards

Section 1801 of Public Law 116–69, Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019, includes a provision that states, ''For the purposes of the annual report issued pursuant to section 5 of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 934) after adjournment of the first session of the 116th Congress, and for determining whether a sequestration order is necessary under such section, the debit for the budget year on the 5-year scorecard, if any, and the 10-year scorecard, if any, shall be deducted from such scorecard in 2020 and added to such scorecard in 2021.'' Accordingly, both the 5- and 10-year scorecards deduct the debit from 2020 and add that debit to 2021.

V. Sequestration Order

As shown on the scorecards, the budgetary effects of PAYGO legislation enacted in the first session of the 116th

Congress, combined with section 102 of Public Law 116–37 and section 1801 of Public Law 116–69, resulted in zero costs on both the 5-year and the 10-year scorecard in the budget year, which is 2020 for the purposes of this Report. Because the costs for the budget year, as shown on the scorecards, were deducted from the budget year and added to the subsequent year, there is no ''debit'' on either scorecard under section 3 of the PAYGO Act, 2 U.S.C. 932, and there is no need for a sequestration order.[4]

The totals shown in 2021 through 2029 will remain on the scorecards that are used to record the budgetary effects of PAYGO legislation enacted in the second session of the 116th Congress, and will be used in determining whether a sequestration order will be necessary in the future. On the 5-year scorecard for the second session of the 116th Congress, 2021 through 2024 will show balances of costs. On the 10-year scorecard, 2021 through 2029 will show balances of costs.

[FR Doc. 2020–01290 Filed 1–24–20; 8:45 am]

BILLING CODE 3110–01–P

[4] Joint Committee reductions for 2020 were calculated and ordered in a separate report and are not affected by this determination. See: *https://www.whitehouse.gov/wp-content/uploads/2019/03/2020_JC_Sequestration_Report_3-18-19.pdf.*

OFFICE OF MANAGEMENT AND BUDGET

OMB Final Sequestration Report to the President and Congress for Fiscal Year 2020

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability of the OMB Final Sequestration Report to the President and Congress for FY 2020.

SUMMARY: OMB is issuing the *OMB Final Sequestration Report to the President and Congress for Fiscal Year 2020* to report on status of 2020 discretionary caps and compliance of enacted 2020 discretionary appropriations legislation with those caps.

DATES: January 21, 2020.

ADDRESSES: The OMB Sequestration Reports to the President and Congress are available on-line on the OMB home page at: *https://www.whitehouse.gov/omb/legislative/sequestration-reports-orders/.*

FOR FURTHER INFORMATION CONTACT: Thomas Tobasko, 6202 New Executive Office Building, Washington, DC 20503, Email address: *ttobasko@omb.eop.gov,* telephone number: (202) 395–5745, FAX number: (202) 395–4768. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

SUPPLEMENTARY INFORMATION: Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 requires the Office of Management and Budget (OMB) to issue a Final Sequestration Report 15 calendar days after the end of a congressional session. This report meets that requirement and finds that, for fiscal year 2020, enacted appropriations are at or below the defense and non-defense caps after accounting for cap adjustments. As a result, a sequestration of discretionary budget authority is not required in 2020.

Russell T. Vought,

Acting Director.

[FR Doc. 2020–01254 Filed 1–24–20; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Comments should be received on or before February 26, 2020 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Suite 6032, Alexandria, VA 22314, or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Dawn Wolfgang at (703) 548–2279, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0181.

Type of Review: Extension of a currently approved collection.

Title: Registration of Mortgage Loan Originators.

Abstract: The Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E. Act), 12 U.S.C. 5101 *et seq.,* as codified by 12 CFR part 1007, requires an employee of a bank, savings association, or credit union or a subsidiary regulated by a Federal banking agency or an employee of an institution regulated by the Farm Credit Administration (FCA), (collectively, Agency-regulated Institutions) who engages in the business of a residential mortgage loan originator (MLO) to register with the Nationwide Mortgage Licensing System and Registry (Registry) and obtain a unique identifier. Agency-regulated institutions must also adopt and follow written policies and procedures to assure compliance with the S.A.F.E. Act. The Registry is intended to aggregate and improve the flow of information to and between regulators; provide increased accountability and tracking of mortgage loan originators; enhance consumer protections; reduce fraud in the residential mortgage loan origination process; and provide consumers with easily accessible information at no charge regarding the employment history of, and the publicly adjudicated disciplinary and enforcement actions against MLOs.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 83,965.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on January 22, 2020.

Dated: January 22, 2020.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2020–01266 Filed 1–24–20; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for the Office of Advanced Cyberinfrastructure—IRIS—HEP

(Princeton University) Site Visit (#1185).

Date and Time:

February 27, 2020; 8:30 a.m.–6:30 p.m.
February 28, 2020; 8:30 a.m.–5:00 p.m.

Place: S212 Institute at IRIS–HEP, 1 Nassau Hall, Princeton University, Princeton, NJ 08544.

Type Of Meeting: Part-open.

Contact Persons: Dr. Vipin Chaudhary, Program Director, Office of Advanced Cyberinfrastructure (OAC) *vipchaud@nsf.gov;* Room E10455; and Bogdan Mihaila, Program Director, MPS/PHY *bmihaila@nsf.gov,* Room W 9241; National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–3316.

Purpose of Meeting: Site visit to provide an evaluation of the progress of the Institute for Research and Innovation in Software in High-Energy Physics (IRIS–HEP) project at the host site for the Office of Advanced Infrastructure and the Division of Physics at the National Science Foundation.

Agenda: To review and evaluate the IRIS–HEP operations during the Design Phase of the project.

Reason for Closing: The project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 22, 2020.

Crystal Robinson,

Committee Management Officer.

2020 NSF Site Visit to the S2I2 Institute at IRIS–HEP

Princeton University, Princeton, NJ 08544

Thursday, February 27, 2020, Jadwin Hall

Coffee and Pastries—8:30 a.m., Open
Executive Session—8:45 a.m., Closed
IRIS–HEP Director Report on IRIS–HEP Program and Activities—9:00 a.m., Open
Science Presentations (SIs [1] or PSIs [2])—10:00 a.m., Open
Lunch (with Fellows/Postdocs/Students)—12:00 p.m., Closed
Science Presentations (SIs or PSIs)—1:00 p.m., Open
Postdoc Presentations—2:00 p.m., Open
Executive Session to formulate queries—4:00 p.m., Closed
Poster Session—5:00 p.m., Open
Panel and NSF Staff Dinner—6:30 p.m., Closed

Friday, February 28, 2020, Fine Hall

Coffee and Pastries—8:30 a.m., Open
Response to Panel queries—9:00 a.m., Closed
Meet with Physics Depart and University Administrators—10:30 a.m., Closed
Executive Session (Lunch)—12:00 Noon, Closed
Closeout. IRIS–HEP Director (PI) & Executive Board (Co-PIs) 2:00 p.m., Closed
Complete Report 2:30 p.m., Closed
Adjourn 5:00 p.m., Closed

[FR Doc. 2020–01317 Filed 1–24–20; 8:45 am]

BILLING CODE 7555–01–P

[1] SI—Senior Investigator.

[2] SI—Participating Senior Investigator.

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Committee on Equal Opportunities in Science and Engineering (CEOSE) (#1173).

Date and Time: February 19, 2020; 1:00 p.m.–5:30 p.m.

February 20, 2020; 8:30 a.m.–3:30 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Conference Room E–2020, Alexandria, VA 22314.

If you are interested in attending this meeting, you are required to attend in person. To help facilitate your entry into the building, please contact Una Alford (*ualford@nsf.gov* or 703–292–7111) on or prior to February 17, 2020.

Type of Meeting: Open.

Contact Person: Dr. Bernice Anderson, Senior Advisor and CEOSE Executive Secretary, Office of Integrative Activities (OIA), National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. Contact Information: 703–292–8040/*banderso@nsf.gov.*

Minutes: Meeting minutes and other information may be obtained from the CEOSE Executive Secretary at the above address or the website at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.*

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

Agenda

- Opening Statement and Report by the CEOSE Chair
- NSF Executive Liaison Report
- NSF INCLUDES Update
- Roundtable: Responding to the 2017–2018 CEOSE Recommendation
- Panel: Investing in Community-based Research
- Discussion: 2019–2020 CEOSE Report
- Discussion of Topics to Share with NSF Leadership
- Panel: Long-Term Impacts of OIA's Investments in Broadening Participation
- Panel: Issues of INVISIBILITY in STEM
- Meeting with NSF Director and Chief Operating Officer
- Discussion: Future Plans, Announcements, and Final Remarks.

Dated: January 22, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–01316 Filed 1–24–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 052–00025 and 052–00026; NRC–2008–0252]

Vogtle Electric Generating Plant, Units 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Combined Licenses (NPF–91 and NPF–92), issued to Southern Nuclear Operating Company, Inc. (SNC), and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (collectively, SNC), for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia.

DATES: Submit comments by February 26, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date. A request for a hearing or petition for leave to

intervene must be filed by March 27, 2020.

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

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Donald Habib, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–000; telephone: 301–415–1035; email: *Donald.Habib@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2008–0252 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–2008–0252.

• *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 request for license amendment, dated December 13, 2019, is available in ADAMS under Accession No. ML19347C046.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2008–0252 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *https://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to facility Operating License Nos. NPF–91 and NPF–92, issued to SNC for operation of the VEGP Units 3 and 4, located in Burke County, Georgia.

The proposed changes would revise the normal thermal loads for the passive containment cooling system tank; revise the accident thermal loads for the exterior walls below grade and basemat in the auxiliary building; and update the critical section tables for the auxiliary building basemat, concrete walls, and floors, the shield building roof, and the spent fuel pool west wall in the Updated Final Safety Analysis Report.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design functions of the nuclear island structures are to provide support, protection, and separation for the seismic Category 1 mechanical and electrical equipment located in the nuclear island. The nuclear island structures are structurally designed to meet seismic Category 1 requirements as defined in Regulatory Guide 1.29.

The proposed changes to revise the normal thermal loads for the [passive containment cooling system (PCS)] tank; revise the accident thermal loads for the exterior walls below grade and basemat in the auxiliary building; and update the critical section tables for the auxiliary building basemat, concrete walls, and floors, the shield building roof, and the [spent fuel pool (SPF)] west wall do not have an adverse impact on the response of the nuclear island structures to safe shutdown earthquake ground motions or loads to anticipated or postulated accident conditions. The proposed changes do not adversely affect the design function of any [structures, systems, and components (SSCs)] contained within the nuclear island. This change does not involve any accident initiating components or events, thus leaving the probabilities of an accident unaltered. The changes do not impact the support, design, or operation of mechanical and fluid systems. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to normal operation or postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor do the proposed changes create any new accident precursors.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to revise the normal thermal loads for the PCS tank; revise the accident thermal loads for the exterior walls below grade and basemat in the auxiliary building; and update the critical section tables for the auxiliary building basemat, concrete walls, and

floors, the shield building roof, and the SPF west wall do not change the design requirements of the nuclear island structures. The proposed changes do not adversely affect the design function of any SSC contained within the nuclear island, or any other SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or non-safety-related equipment. The proposed changes do not change the design, function, support, or operation of mechanical and fluid systems.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to revise the normal thermal loads for the PCS tank; revise the accident thermal loads for the exterior walls below grade and basemat in the auxiliary building; and update the critical section tables for the auxiliary building basemat, concrete walls, and floors, the shield building roof, and the SPF west wall do not alter any safety-related equipment, applicable design codes, code compliance, design function, or safety analysis. These changes maintain conformance to American Institute of Steel Construction (AISC) N690 and American Concrete Institute (ACI) 349–01. The criteria and requirements of AISC N690 and ACI 349–01 provide a margin of safety to structural failure. The design of the nuclear island SSCs conform to criteria and requirements in AISC N690 and ACI 349–01 and therefore, maintains the margin of safety. The change does not alter any design function, design analysis, or safety analysis input or result, and sufficient margin exists to justify departure. Consequently, no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed change, thus the margin of safety is not reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, the Commission will publish a notice of issuance in the **Federal Register**. Should the Commission make a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a petition is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest. The petition must also set forth the specific contentions which the petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions consistent with the NRC's regulations, policies, and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1).

The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by March 27, 2020. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the

provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission, or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated December 13, 2019 (ADAMS Accession No. ML19347C046).

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Victor E. Hall.

Dated at Rockville, Maryland, this 21st day of January 2020.

For the Nuclear Regulatory Commission.

Victor E. Hall,

Chief, Vogtle Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–01267 Filed 1–24–20; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Nanotechnology Initiative Meetings

ACTION: Notice of public meetings.

SUMMARY: The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC), will facilitate stakeholder discussion of targeted nanotechnology topics through workshops, webinars, and Community of Interest meetings between the publication date of this Notice and December 31, 2020.

DATES: The NNCO will hold one or more workshops, webinars, networks, and Community of Interest teleconferences between the publication date of this Notice and December 31, 2020.

ADDRESSES: Attendance information, including addresses, will be posted on *nano.gov.* For information about upcoming workshops and webinars, please visit *https://www.nano.gov/events/meetings-workshops* and *https://www.nano.gov/PublicWebinars.* For more information on the Communities of Interest, please visit *https://www.nano.gov/Communities.*

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact Patrice Pages at *info@nnco.nano.gov* or 202–517–1050.

SUPPLEMENTARY INFORMATION: These public meetings address the charge in the 21st Century Nanotechnology Research and Development Act for NNCO to provide ''for public input and outreach . . . by the convening of regular and ongoing public discussions''. Workshop and webinar topics may include strategic planning; technical subjects; environmental, health, and safety issues related to nanomaterials (nanoEHS); business case studies; or other areas of potential interest to the nanotechnology community. Areas of focus for the Communities of Interest may include research on nanoEHS; nanotechnology education; nanomedicine; nanomanufacturing; or other areas of potential interest to the nanotechnology community. The Communities of Interest are not intended to provide any government agency with advice or recommendations; such action is outside of their purview.

Registration: Due to space limitations, pre-registration for workshops is required. Workshop registration is on a first-come, first-served basis, and will be capped as space limitations dictate. Registration information will be available at *https://www.nano.gov/events/meetings-workshops.* Registration for the webinars will open approximately two weeks prior to each event and will be capped at 500 participants or as space limitations dictate. Individuals planning to attend a webinar can find registration information at *https://www.nano.gov/PublicWebinars.* Written notices of participation for workshops, webinars, or Communities of Interest should be sent by email to *info@nnco.nano.gov.*

Meeting Accommodations: Individuals requiring special accommodation to access any of these public events should contact *info@nnco.nano.gov* at least ten business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 22, 2020.

Sean Bonyun,

Chief of Staff, White House Office of Science and Technology Policy.

[FR Doc. 2020–01302 Filed 1–24–20; 8:45 am]

BILLING CODE 3270–F0–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88008; File No. SR–BatsBZX–2017–34]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28

January 21, 2020.

I. Introduction

The official closing price for a listed security is generally determined each day through a closing auction conducted by that security's primary listing exchange. A closing auction is a point in time event conducted at the end of each trading day pursuant to a process set forth in the primary listing exchange's rules [1] that determines a security's official closing price by executing all orders participating in the auction at a single price. Closing auctions are designed to set closing prices that maximize the number of shares executed and minimize the amount of the imbalance between orders to buy a security and orders to sell a security. Market participants seeking to execute orders at a security's official closing price may do so by submitting a variety of order types to a closing auction, such as:

- Market-on-close (''MOC'') orders, which are orders to either buy or sell a security that are specifically designated to be executed at a security's official closing price;

[1] *See, e.g.,* NYSE Rule 123C; and Nasdaq Rule 4754.

• limit-on-close (''LOC'') orders, which are orders to either buy or sell a security at a specific price or better that are specifically designated to execute in that security's closing auction; and

• imbalance-only orders, which are limit orders (*i.e.,* orders that specify a target execution price) designated to only execute in a closing auction against an imbalance of closing auction eligible trading interest, should there be any. In addition, limit orders that are resting on the primary listing exchange's order book at the time that a closing auction begins may also participate in a closing auction.[2] Furthermore, market participants may seek to execute an order at the official closing price on off-exchange venues, such as alternative trading systems (''ATSs'') and with broker-dealers. While these orders that are executed off-exchange would not be included in the closing auction on the primary listing exchange, they would be executed at the official closing price that is determined by the primary listing exchange.

On May 5, 2017, Bats BZX Exchange, Inc. (now known as Cboe BZX Exchange, Inc.) (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [3] and Rule 19b–4 thereunder,[4] a proposed rule change to adopt a match process for MOC orders in non-BZX listed securities referred to as ''Cboe Market Close.'' [5] Through Cboe Market Close, BZX would seek to match buy and sell MOC orders for non-BZX listed securities and execute at BZX those matched buy and sell MOC orders in such securities at the official closing price published by the relevant primary listing exchange.

On January 17, 2018, the Commission, acting through authority delegated to the Division of Trading and Markets,[6] approved the proposed rule change, as modified by Amendment No. 1 (''Approval Order'').[7] On January 31, 2018, NYSE Group, Inc. (''NYSE'') and The Nasdaq Stock Market LLC (''Nasdaq'') filed petitions for review of the Approval Order (''Petitions for Review''). Pursuant to Commission Rule of Practice 431(e), the Approval Order was stayed by the filing with the Commission of a notice of intention to petition for review.[8] On March 1, 2018, the Commission issued a scheduling order, pursuant to Commission Rule of Practice 431, granting the Petitions for Review of the Approval Order and providing until March 22, 2018, for any party or other person to file a written statement in support of, or in opposition to, the Approval Order.[9] On April 12, 2018, NYSE and Nasdaq submitted written statements in opposition to the Approval Order and BZX submitted a written statement in support of the Approval Order.[10]

On October 4, 2018, BZX filed Amendment No. 2 to the proposed rule change to address a comment made by NYSE and Nasdaq in their statements. The Commission published Amendment No. 2 for comment in the **Federal Register** on December 4, 2018.[11] The Commission received one comment letter on Amendment No. 2.[12]

In response to the NYSE and Nasdaq Petitions, the Commission has conducted a de novo review of BZX's proposal, giving careful consideration to the entire record—including BZX's amended proposal, the Petitions for Review, and all comments and statements submitted—to determine whether the proposal is consistent with the requirements of the Act and the rules and regulations issued thereunder that are applicable to a national securities exchange. Under Section 19(b)(2)(C) of the Act, the Commission must approve the proposed rule change of a self-regulatory organization (''SRO'') if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the applicable rules and regulations thereunder; if it does not make such a finding, the Commission must disapprove the proposed rule change.[13] Additionally, under Rule 700(b)(3) of the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [14] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.[15] Any failure of a self-regulatory organization to provide the information elicited by Form 19b–4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.[16]

The Commission has considered whether the proposal is consistent with the Act, including Section 6(b)(8) of the

[2] Limit orders resting on an exchange's order book are orders to buy or sell a security at specific price or better that are eligible for execution at any point during regular intraday trading or in a closing auction.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] The Commission published notice of the proposed rule change in the **Federal Register** on May 22, 2017. *See* Securities Exchange Act Release No. 80683 (May 16, 2017), 82 FR 23320 (''Notice''). On July 3, 2017, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. *See* Securities Exchange Act Release No. 81072, 82 FR 31792 (Jul. 10, 2017). On August 18, 2017, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act, 15 U.S.C. 78s(b)(2)(B), to determine whether to approve or disapprove the proposed rule change. *See* Securities Exchange Act Release No. 81437, 82 FR 40202 (Aug. 24, 2017) (''OIP''). On November 17, 2017, pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), the Commission designated a longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change. *See* Securities Exchange Act Release No. 82108, 82 FR 55894 (Nov. 24, 2017). On December 1, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, renaming ''Bats Market Close'' as ''Cboe Market Close.'' The only change in Amendment No. 1 was to rename the proposed closing match process as Cboe Market Close. Because Amendment No. 1 was a technical amendment and did not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 was not subject to notice and comment. For purposes of consistency and readability, all references to the proposed match process for MOC orders discussed herein will be to ''Cboe Market Close.''

[6] 17 CFR 200.30–3(a)(12).

[7] Securities Exchange Act Release No. 82522, 83 FR 3205 (Jan. 23, 2018).

[8] 17 CFR 201.431(e). *See* Letter to Christopher Solgan, Assistant General Counsel, Cboe Global Markets, Inc. (Jan. 24, 2018) (providing notice of receipt of notices of intention to petition for review of delegated action and stay of order), *available at https://www.sec.gov/rules/sro/batsbzx/2018/sr-batsbzx-2017-34-letter-from-secretary-to-cboe.pdf.*

[9] *See* Securities Exchange Act Release No. 82794, 83 FR 9561 (Mar. 6, 2018). On March 16, 2018, the Office of the Secretary, acting by delegated authority, issued an order on behalf of the Commission granting a motion for an extension of time to file statements on or before April 12, 2018. *See* Securities Exchange Act Release No. 82896, 83 FR 12633 (Mar. 22, 2018).

[10] *See* Statement of NYSE Group, Inc. in Opposition to the Division's Order Approving a Rule to Introduce Cboe Market Close (''NYSE Statement''); Statement of the Nasdaq Stock Market LLC in Opposition to Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Introduce Cboe Market Close (''Nasdaq Statement''); and Statement of Cboe BZX Exchange, Inc. in Support of Commission Staff's Approval Order (''BZX Statement''). The Nasdaq Statement included two reports, one by Harvey Pitt and Chester Spatt (''Pitt/Spatt Report''), and one by Yakov Amihud and Haim Mendelson (''Amihud/Mendelson Report'').

[11] *See* Securities Exchange Act Release No. 84670 (Nov. 28, 2018), 83 FR 62646 (''Amendment No. 2'').

[12] *See* Letter from Jeffrey S. Davis, Deputy General Counsel, Nasdaq (Dec. 18, 2018) (''Nasdaq Letter 4'').

[13] 15 U.S.C. 78s(b)(2)(C).

[14] 17 CFR 201.700(b)(3).

[15] *Id.*

[16] *Id.*

Act, which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act,[17] as well as Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.[18]

For the reasons discussed further herein, BZX has met its burden to show that the proposed rule change is consistent with the Act, and this order sets aside the Approval Order and approves BZX's proposed rule change, as amended. In particular, the Commission concludes that the record before the Commission demonstrates that Cboe Market Close should introduce and promote competitive forces among national securities exchanges for the execution of MOC orders. In addition, the record demonstrates that Cboe Market Close should not disrupt the closing auction price discovery process nor should it materially increase the risk of manipulation of official closing prices. Therefore, and as explained further below, the Commission finds the proposal consistent with Sections 6(b)(8) and 6(b)(5) of the Act.

The Commission recognizes that Cboe Market Close, once implemented, would introduce a new match process for non-BZX listed securities, and more generally, could potentially contribute to new dynamics in certain aspects of the public equity markets. The Commission and Commission staff regularly monitor changes in the equity markets, including changes in market quality and investor outcomes (among other things), and will be mindful of potential effects associated with Cboe Market Close. To that end, no later than one year after the date that Cboe Market Close becomes effective, the Commission staff will advise the Commission of its assessment of any post-implementation effects or changes on market quality or investor outcomes. The Commission and Commission staff regularly receive input from the public, including investors, other exchanges and markets, and other market participants on matters related to market quality, investor outcomes and related issues. For convenience, we are providing an email box as a method for members of the public who wish to submit data, analyses or observations concerning any such matters, including in respect of post-implementation effects or changes associated with Cboe Market Close, to communicate with the Commission's staff. That email box is: *Marketstructure@SEC.GOV.*[19]

II. Summary of the Proposal

BZX proposes to introduce Cboe Market Close, a match process for MOC orders[20] in non-BZX listed securities. Through Cboe Market Close, a BZX Member would be able to submit buy and sell MOC orders for non-BZX listed securities to the BZX System.[21] Cboe Market Close would not accept LOC orders or any other order types. Once accepted, the System would seek to match buy and sell MOC orders and execute those matched buy and sell MOC orders at the official closing price for the security that is published by its primary listing exchange.

BZX Members[22] would be able to enter, cancel, or replace MOC orders designated for participation in Cboe Market Close beginning at 6:00 a.m. Eastern Time until 3:35 p.m. Eastern Time (''MOC Cut-Off Time'').[23] Members would not be able to enter, cancel, or replace MOC orders designated for participation in the proposed Cboe Market Close after the MOC Cut-Off Time.

Members would be required to mark as ''short'' or ''short exempt'' all short sale MOC orders. MOC orders marked short would be rejected, while MOC orders marked short exempt would be accepted and processed by the System.[24]

At the MOC Cut-Off Time, the System would match for execution all buy and sell MOC orders entered into the System with execution priority determined based on time-received.[25] Any remaining balance of unmatched shares would be cancelled and returned to the Member(s). The System would disseminate, via the Cboe Auction Feed,[26] the total size of all buy and sell MOC orders matched per security via Cboe Market Close. All matched buy and sell MOC orders would remain on the System until the publication of the official closing price by the primary listing exchange. Upon publication of the official closing price by the primary listing exchange, the System would execute all previously matched buy and sell MOC orders at that official closing price.[27] If there is no initial official closing price published by 8:00 p.m. Eastern Time for any security, BZX

[17] 15 U.S.C. 78f(b)(8).

[18] 15 U.S.C. 78f(b)(8).

[19] Submissions received may be made public; personal identifying information in the submission will not be redacted or edited, so you should submit only information that you wish to make available publicly.

[20] BZX defines the term ''Market-On-Close'' or ''MOC'' to mean a BZX market order that is designated for execution only in the Closing Auction. *See* Exchange Rule 11.23(a)(15). The Exchange proposed to amend the description of Market-On-Close orders to include orders designated to execute in the proposed Cboe Market Close. A BZX market order is defined in BZX Rule 11.9(a)(1) as ''[a]n order to buy or sell a stated amount of a security that is to be executed at the NBBO when the order reaches the Exchange . . . .''

[21] The term ''System'' is defined as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* BZX Rule 1.5(aa). The term ''Board'' is defined as ''the Board of Directors of the Exchange.'' *See* BZX Rule 1.5(f).

[22] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* BZX Rule 1.5(n).

[23] Currently, the NYSE designates the cut-off time for the entry of NYSE Market At-the-Close Orders as 3:50 p.m. Eastern Time. *See* NYSE Rule 123C. Nasdaq, in turn, designates the cut-off time for the entry of Nasdaq Market On Close Orders as 3:55 p.m. Eastern Time. *See* Nasdaq Rule 4702.

[24] *See* Amendment No. 2. In Amendment No. 2, the Exchange added Interpretation and Policies .04 to proposed BZX Rule 11.28 to reflect the handling of MOC orders marked as ''short'' or ''short exempt.'' The Exchange stated that all MOC orders marked short would be rejected to ensure that the Exchange is able to comply with the Exchange's obligations under Rule 201 of Regulation SHO in the event a short sale circuit breaker is triggered and the official closing price determined by the primary listing exchange is not above the national best bid.

[25] As set forth in proposed Interpretation and Policy .02, the Exchange would cancel all MOC orders designated to participate in Cboe Market Close in the event the Exchange becomes impaired prior to the MOC Cut-Off Time and is unable to recover within 5 minutes from the MOC Cut-Off Time. The Exchange states that this would provide Members time to route their orders to the primary listing exchange's closing auction. Should the Exchange become impaired after the MOC Cut-Off Time, proposed Interpretation and Policy .02 states that the Exchange would retain all matched MOC orders and execute those orders at the official closing price once it is operational.

[26] The Cboe Auction Feed disseminates information regarding the current status of price and size information related to auctions conducted by the Exchange and the data is provided at no charge. *See* BZX Rule 11.22(i). The Exchange also proposed to amend BZX Rule 11.22(i) to reflect that the Cboe Auction Feed would also include the total size of all buy and sell orders matched via Cboe Market Close.

[27] The Exchange would report the execution of all previously matched buy and sell orders to the applicable securities information processor and will designate such trades as ''.P'', Prior Reference Price. *See* Notice at 23321. In the case where the primary listing exchange suffers an impairment and is unable to perform its closing auction process, BZX would utilize the official closing price published by the exchange designated by the primary listing exchange. *See* proposed Interpretation and Policy .01. In addition, proposed Interpretation and Policy .03 specifies that up until the closing of the applicable securities information processor at 8:00 p.m. Eastern Time, BZX intends to monitor the initial publication of the official closing price, and any subsequent changes to the published official closing price, and adjust the price of such trades accordingly.

would cancel all matched MOC orders in such security.

BZX states that it is proposing to adopt Cboe Market Close in response to requests from market participants, particularly buy-side firms, for an alternative to the primary listing exchanges' closing auctions that still provides an execution at a security's official closing price.[28] BZX intends to file a separate proposal related to fees for MOC orders executed in the Cboe Market Close. BZX stated that, under this separate proposal, the fees for Cboe Market Close would be set and maintained over time at a rate less than the fee charged by the applicable primary listing exchange for its own respective closing mechanism.[29]

BZX contends that the proposal would not compromise the price discovery function performed by the primary listing exchanges' closing auctions because Cboe Market Close would only accept, match, and execute MOC orders, which are designated to execute at the security's official closing price.[30] In order to avoid an impact on price discovery, BZX states that Cboe Market Close would not accept limit orders, which are orders to buy or sell a security at a specific price or better and are the basis from which price formation occurs in a closing auction.[31]

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[32] The Commission therefore approves the proposed rule change. In particular, as discussed below, the Commission finds that the proposal is consistent with: Section 6(b)(8) of the Act,[33] which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act; and Section 6(b)(5) of the Act,[34] which requires that the rules of a national securities exchange, among other things, be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Further, the Commission believes that the proposal is consistent with the statutory objective of fair and orderly markets under Section 11A of the Act.

The Commission received a number of comment letters addressing the proposed rule change's consistency with these provisions, specifically focusing on its potential effect on: (1) Competition; (2) price discovery and fragmentation; (3) issuers and other market participants; (4) market complexity and operational risk; and (5) manipulation. The Commission addresses each of these issues below.

First, the Commission addresses arguments raised that the proposal is inconsistent with Section 6(b)(8) of the Act because it would burden competition by, among other things, free-riding on the investments of the primary listing exchanges in their closing auctions. We find that, on the contrary, the proposal will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and, in fact, it should promote competition among MOC order execution venues and foster price competition for MOC order execution fees.

Second, the Commission addresses comments regarding the proposal's consistency with Section 6(b)(5) of the Act. These commenters argue that the proposal would fragment the execution of MOC orders and thereby disrupt closing auction price discovery, increase market complexity and operational risk, and increase the risk of manipulation through, among things, information asymmetries. The Commission finds, based on Cboe Market Close's design and the record before us, that the proposal is consistent with Section 6(b)(5) of the Act. As explained below, because Cboe Market Close will only execute MOC orders against other MOC orders, it should not disrupt the closing auction price discovery process. Furthermore, Cboe Market Close should not significantly increase market complexity and operational risk because it will simply constitute an additional optional MOC order execution venue for market participants, and an optional data feed that market participants may choose to monitor for information regarding the total size of matched MOC orders via Cboe Market Close. Lastly, as discussed below, Cboe Market Close should not materially increase the risk of manipulation through information asymmetries because the information that may be discerned by participants of Cboe Market Close is of limited usefulness, and BZX has made detailed commitments regarding its plans to surveil, detect, and prevent against any potential manipulation through the use of Cboe Market Close.

A. Effect on Competition

1. Price Competition and ''Free Riding''

a. Comments on the Proposal

A number of commenters addressed the proposal's effect on competition. Some commenters supporting the proposal stated that it would increase competition among exchanges for executions of orders at the close.[35] These commenters asserted that increased competition could result in reduced fees for market participants.[36] Some of these commenters characterized the primary listing exchanges as maintaining a ''monopoly'' on orders seeking a closing price with no market competition, which they argued has, and would continue to, result in a continual increase in fees for such orders if the proposal were not approved.[37] Commenters also asserted that the primary listing exchanges have taken advantage of increasing volume at the close by charging significantly higher fees for participation in the closing auctions than for intraday

[28] *See* Notice at 23321.

[29] *See id.*

[30] *See* BZX Rule 11.9(a)(2) which defines a ''limit order'' as ''[a]n order to buy or sell a stated amount of a security at a specified price or better.''

[31] *See* Notice at 23321.

[32] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). The Commission addresses comments about economic effects of the proposed rule change on efficiency and competition below in Section III.A. The Commission addresses the effects of the proposed rule change on capital formation below in Sections III.B.1 and III.C.

[33] 15 U.S.C. 78f(b)(8).

[34] 15 U.S.C. 78f(b)(5).

[35] *See* Letters from: Donald K. Ross, Jr., Executive Chairman, PDQ Enterprise, LLC (June 6, 2017) (''PDQ Letter''); Ray Ross, Chief Technology Officer, Clearpool Group (June 12, 2017) (''Clearpool Letter'') at 2; Venu Palaparthi, SVP, Compliance, Regulatory and Government Affairs, Virtu Financial (June 12, 2017) (''Virtu Letter'') at 2; Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA (June 13, 2017) (''SIFMA Letter 1'') at 2; John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (June 23, 2017) (''IEX Letter'') at 1; David M. Weisberger, Head of Equities, ViableMkts (Aug. 3, 2017) (''ViableMkts Letter'') at 1–2; and Donald Bollerman (Aug. 18, 2017) (''Bollerman Letter'') at 2.

[36] *See* PDQ Letter; Clearpool Letter at 2; Virtu Letter at 2; SIFMA Letter 1 at 2; IEX Letter at 1; ViableMkts Letter at 1; Bollerman Letter at 2; and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA (Aug. 18, 2017) (''SIFMA Letter 2'').

[37] *See* IEX Letter at 3; Clearpool Letter at 2; and ViableMkts Letter at 1–2. However, one commenter also stated that it believes the fees charged by NYSE and Nasdaq for participating in their closing auctions are not excessive and there is no need for additional fee competition for executing orders at the official closing price. *See* Letter from Ari M. Rubenstein, Co-Founder and Chief Executive Officer, GTS Securities LLC (June 22, 2017) (''GTS Securities Letter 1'') at 5.

trading.[38] One commenter added that the high costs of closing transactions are exacerbated because primary listing exchanges assess a fee on both sides of the closing auction executions, and imbalance feeds for auctions are only available as part of the exchanges' premium data products.[39] Two commenters who opposed the proposal acknowledged that increasing fees and lack of price competition with respect to closing auctions are of concern, but suggested alternatively that regulatory checks on closing auction pricing, such as fee caps, could be put into place.[40]

One commenter argued that the proposal does not unduly burden competition as exchanges often attempt to compete by adopting functionality or fee schedules developed by competitors.[41] Another commenter also asserted that the proposal is not fully competitive with closing auctions, as it does not accept priced orders or disseminate imbalance information.[42] Rather, the commenter believed that the proposal competes with other un-priced orders in closing auctions which, in its view, is not ''destructive to the mission of the closing auction.'' [43]

In contrast, other commenters argued that the proposal would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, including by ''free-riding'' on the investments the primary listing exchanges have made in their closing auctions.[44] These commenters asserted that the proposal would unfairly burden competition as it would allow BZX to use the closing prices established through the auction of a primary listing exchange, without bearing any of the attendant costs or risks.[45] In particular, NYSE and Nasdaq asserted that the existing exchange fees for closing auctions reflect the investments that have been made in developing and operating the closing auctions, including the rules and procedures governing the auctions, the technology to determine the official closing price of a security, and the surveillance tools necessary to monitor the closing process.[46] In addition, Nasdaq and NYSE highlighted the regulatory costs related to operating a closing auction.[47] Specifically, Nasdaq and NYSE cited compliance costs associated with Regulation Systems Compliance and Integrity (''Regulation SCI'').[48] Nasdaq and NYSE explained that Regulation SCI was adopted by the Commission to enhance the robustness and resiliency of the technological systems of ''SCI entities,'' including exchanges.[49] They stated that closing auctions are ''critical SCI systems'' under Regulation SCI, and as such, are subject to heightened requirements and increased compliance costs, as compared to other ''SCI systems.'' [50] Nasdaq and NYSE asserted that, because Cboe Market Close is not a closing auction and thus not a ''critical SCI system'' under the regulation, BZX would be at a competitive advantage by not having to incur such additional compliance costs when competing to attract MOC orders.[51] Because BZX would not have to bear any of the aforementioned expenses of developing and conducting a closing auction, NYSE and Nasdaq concluded that BZX would be able to charge fees to execute MOC orders at the official closing price at a price with which the primary listing exchanges could not realistically compete.[52] Nasdaq further argued that because the closing fees of NYSE and Nasdaq would always be undercut by BZX, it would diminish incentives for the primary listing exchanges to invest in enhancements to their closing auctions.[53] In addition, Nasdaq argued that the proposal would decrease incentives to serve as a listing exchange if it could not offset the cost of its regulatory responsibilities as a listing exchange with the revenue derived from executing MOC orders in Nasdaq-listed securities.[54]

Nasdaq and NYSE further stated that BZX is not proposing to develop its own auction or improve the functionality of the closing auctions in the primary listing exchanges, but rather merely using the price generated by the listing exchanges through their proprietary processes.[55] Nasdaq added that in order

[38] *See, e.g.,* Clearpool Letter at 2; and ViableMkts Letter at 1–2 (estimating that the average ''capture'' for MOC orders executed in the Nasdaq and NYSE closing auctions is likely over 20 mils per share compared to the average capture that ranges from a negative number to 10 mils on Nasdaq and from a negative number to 16 mils on NYSE for intraday executions).

[39] *See* Clearpool Letter at 2.

[40] *See* Letters from: Ari M. Rubenstein, Co-Founder and Chief Executive Officer, GTS Securities LLC (Aug. 17, 2017) (''GTS Securities Letter 2'') at 6 (acknowledging that many market participants were concerned that the primary listing exchanges ''have too much pricing power relative to the closing auction''); and Mehmet Kinak, Head of Global Equity Market Structure & Electronic Trading, et al., T. Rowe Price Associates, Inc. (July 7, 2017) (''T. Rowe Price Letter'') at 3 (stating that closing auction fees ''have been steadily increasing in the absence of competitive alternatives'').

[41] *See* IEX Letter at 3.

[42] *See* ViableMkts Letter at 5.

[43] *See id.* ViableMkts also argued that the effect of this competition will most likely be increased volumes at the closing price because of lower marginal costs and the potential to attract new types of investors to transact at the closing price. *See id.*

[44] *See, e.g.,* Letters from: Elizabeth K. King, General Counsel and Corporate Secretary, NYSE (June 13, 2017) (''NYSE Letter 1'') at 9–10; Elizabeth K. King, General Counsel and Corporate Secretary, NYSE (Nov. 3, 2017) (''NYSE Letter 3'') at 1; Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, Inc. (June 12, 2017) (''Nasdaq Letter 1'') at 5–6 & 9; Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, Inc. (Sept. 18, 2017) (''Nasdaq Letter 2'') at 7–8; Jon Stonehouse, CEO, and Tom Staab, CFO, BioCryst Pharmaceuticals, Inc. (July 31, 2017) (''BioCryst Letter'') at 2; Charles Beck, Chief Financial Officer, Digimarc Corporation (Aug. 3, 2017) (''Digimarc Letter'') at 1–2; Michael J. Chewens, Senior Executive Vice President & Chief Financial Officer, NBT Bancorp Inc. (Aug. 11, 2017) (''NBT Bancorp Letter'') at 2; Patrick L. Donnelly, Executive Vice President & General Counsel, Sirius XMHoldings Inc. (Aug. 17, 2017) (''Sirius Letter'') at 2; and Gabrielle Rabinovitch, VP, Investor Relations, PayPal Holdings, Inc. (Sept. 12, 2017) (''PayPal Letter'') at 1; NYSE Statement at 14–18; Nasdaq Statement at 10–16; and Pitt/Spatt Report at 11–12, 19–20. *See also* Letter from James J. Angel, Associate Professor, McDonough School of Business, Georgetown University (July 30, 2017) (''Angel Letter'') at 3 (calling for a rationalization of intellectual property protection in order to foster productive innovation).

[45] *See, e.g.,* NYSE Letter 1 at 9; NYSE Letter 3 at 5; NYSE Statement at 14–18; Nasdaq Statement at 10–16; Pitt/Spatt Report at 11–12, 19–20; and Letters from: Elizabeth K. King, General Counsel and Corporate Secretary, NYSE (Aug. 9, 2017) (''NYSE Letter 2'') at 1–3; and Elizabeth K. King, General Counsel and Corporate Secretary, NYSE (Jan. 12, 2018) (''NYSE Letter 4'') at 1. In contrast, one commenter argued that BZX would not be ''free-riding'' on the primary listing exchanges' price discovery process because it is ''a regular and accepted practice'' to match orders at reference prices. *See* SIFMA Letter 2 at 2.

[46] *See* NYSE Letter 1 at 9; NYSE Letter 2 at 2; NYSE Letter 3 at 5; NYSE Statement at 14–16; and Nasdaq Statement at 11, 15. Moreover, NYSE stated that it dedicates resources to providing systems to designated market makers (''DMMs'') necessary to facilitate the closing of trading as well as to floor brokers to enter and manage their customers' closing interest. *See* NYSE Letter 2 at 2; and NYSE Statement at 15.

[47] *See* Nasdaq Statement at 11–12; and NYSE Statement at 15–16.

[48] *See* Nasdaq Statement at 11–12; and NYSE Statement at 15–16.

[49] *See* Nasdaq Statement at 11–12; and NYSE Statement at 15–16.

[50] *See* Nasdaq Statement at 11–12; and NYSE Statement at 15–16.

[51] *See* Nasdaq Statement at 11–12; and NYSE Statement at 15–16. Nasdaq and NYSE also argued that Cboe Market Close results in regulatory disparities similar to those that the Commission found in its Benchmark Disapproval Order to unnecessarily and inappropriately burden competition. *See* discussion, *infra* Section III.A.2.

[52] *See* Nasdaq Statement at 11–12; and NYSE Statement at 15–16. NYSE stated that the majority of costs associated with operating a closing auction are fixed costs. If NYSE were to reduce the fees charged for participating in its closing auction, NYSE stated that there likely would be other impacts on the exchange's overall fee structure. *See* NYSE Statement at 15–16.

[53] *See* Nasdaq Statement at 11. *See also* PayPal Letter at 1 (citing concerns about the ''incentive structure'' that the proposal presents).

[54] *See* Nasdaq Statement at 12–13.

[55] *See* Nasdaq Statement at 15 (citing also the Pitt/Spatt Report, which asserted that the Cboe Market Close 'is not . . . a strategically equivalent product to that previously developed by Nasdaq'); and NYSE Statement at 14–15, 19–20. *See also* Pitt/Spatt Report at 11–12 (noting the Cboe Market Close

for BZX to meaningfully enhance competition, it would have to generate its own closing price.[56] NYSE also stated that the proposal differs from the competing auctions currently run by Nasdaq and NYSE Arca in securities not listed on their exchanges because those auctions are independent price-discovery auction events that do not rely on prices established by the primary listing exchange. Therefore, in NYSE's view, those auctions compete on a ''level playing field'' and serve as an alternative method of establishing an official closing price if a primary listing exchange is unable to conduct a closing auction due to a technology issue.[57]

Nasdaq also argued that the proposal undermines intra-market competition, by removing orders from Nasdaq's auction book.[58] Specifically, Nasdaq asserted that, by diverting orders away from NYSE and Nasdaq, the proposal would detract from robust price competition and discovery, which Nasdaq argued is necessary for the exchange to arrive at the most accurate closing price.[59] NYSE also argued that the proposal affects competition for listings, as issuers choose where to list their securities based on how primary listing exchanges are able to centralize liquidity and perform closing auctions.[60] In addition, Nasdaq argued that price competition between exchanges is not as important a form of competition as innovation because price competition elevates fragmentation, sacrifices quote and order interaction, and, in the case of Cboe Market Close, undermines innovation.[61] Further, Nasdaq stated that BZX's comparisons to pegged orders—where the price is based upon reference data that does not originate on that exchange—were misplaced because all exchanges contribute to the prices to which such orders are pegged, whereas BZX does not contribute to the closing price on a primary listing exchange.[62]

Nasdaq and NYSE also disputed the purported benefits of the proposal for market participants.[63] First, Nasdaq and NYSE asserted that the cost savings from Cboe Market Close is unlikely to be passed along to investors because broker-dealers typically pay an exchange's transaction fees.[64] Further, Nasdaq and NYSE asserted that the proposal would not enhance competition with respect to execution quality, but rather may harm execution quality.[65] In this regard, Nasdaq argued that because orders would be irrevocable earlier than on the listing exchange, it would impair the price discovery function on the primary listing exchanges' closing auctions,[66] while NYSE stated that the proposal would reduce the amount of MOC orders in the closing auctions, thereby reducing the quality of the closing price and inhibiting competition.[67]

b. BZX Response to Comments

BZX asserted that the proposal would enhance rather than burden competition by promoting competition in the use of MOC orders.[68] Specifically, BZX stated that the proposal would have a positive effect on competition as it offers a price-competitive alternative that will not affect the price discovery process.[69] BZX stated that it believes that this increased price competition will result in lower fees for market participants seeking an execution of MOC orders at the official closing price.[70] In response to NYSE and Nasdaq assertions that fee reductions would not be passed along to investors, BZX argued that, even if broker-dealers do not directly pass through lower fees to their customers, customers would still receive indirect benefits from lower execution fees such as general fee reductions from broker-dealers or other improvements that broker-dealers may make due to cost savings.[71]

BZX also challenged the assertion that it was ''free-riding'' on the primary listing exchanges' closing auctions.[72] BZX argued that instead it was, on balance, providing a ''a materially better value to the marketplace'' in two ways: by not diverting price-forming limit orders away from the primary listing exchange; and by providing users with the official closing price because any other price would be undesirable to market participants and potentially harmful to price formation.[73] BZX further argued that there is precedent for an exchange to execute orders solely at reference prices while not also displaying priced orders for that security.[74] In addition, BZX stated that no rule or regulation provides the primary listing exchange with control over how other market participants use the official closing price in their matching engines or with regard to the pricing of their own products, such as mutual funds, ETFs, and indices.[75] BZX also stated that improving and mimicking functionality enhances the competitive dynamic among exchanges.[76] Further, BZX stated that the Commission has approved the operation of competing closing auctions, noting in particular the closing auctions on Nasdaq, NYSE Arca, and the American Stock Exchange.[77]

''deliberately lacks any mechanism for determining the price'' at which matched MOCs would be executed and is dependent on the Nasdaq closing cross).

[56] *See* Nasdaq Statement at 13. *See also infra* notes 240–242 (discussing comments on the proposal's effect on price discovery and competing auctions and over-the-counter matching services).

[57] *See* NYSE Letter 1 at 6; NYSE Letter 2 at 3–4; NYSE Letter 3 at 5; and NYSE Statement at 20 n.59. In response, one commenter stated that these competing auctions were not originally proposed to only serve as a back-up to a primary listing exchanges' closing auction. *See* SIFMA Letter 2 at 2. In addition, one commenter stated that such competing auctions are not expressly limited to operating only when another primary listing exchange is experiencing a failure. *See* Bollerman Letter at 3.

[58] *See* Nasdaq Letter 1 at 9; and Nasdaq Statement at 12–14.

[59] *See* Nasdaq Letter 1 at 10; Nasdaq Letter 2 at 7–8; and Nasdaq Statement at 13. *See also infra* Section III.B (discussing comments on the proposal's effect on price discovery).

[60] *See* NYSE Letter 1 at 9.

[61] *See* Nasdaq Letter 2 at 8.

[62] *See id.* at 13.

[63] *See* Nasdaq Statement at 16; and NYSE Statement at 18–19.

[64] *See* Nasdaq Statement at 16; and NYSE Statement at 18–19.

[65] *See* Nasdaq Statement at 16; and NYSE Statement at 20.

[66] *See* Nasdaq Statement at 16.

[67] *See* NYSE Statement at 20.

[68] *See* Letters from: Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc. (Aug. 2, 2017) (''BZX Letter 1'') at 10–11; and Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc. (Oct. 11, 2017) (''BZX Letter 2'') at 6–7. BZX further argued that Nasdaq's assertion that the proposal would undermine competition amongst orders is misplaced. BZX believes that paired-off MOC orders—which are not price-setting orders but rather the beneficiaries of price discovery—do not affect interactions that take place on another exchange because orders compete with each other for executions within each individual exchange based on the parameters a market participant places on its orders. *See* BZX Letter 1 at 11.

[69] *See* BZX Letter 2 at 7.

[70] *See* BZX Statement at 22.

[71] *See* BZX Letter 2 at 7.

[72] *See* BZX Letter 1 at 5; and BZX Letter 2 at 7.

[73] *See* BZX Letter 1 at 5.

[74] *See* BZX Letter 1 at 6; and BZX Letter 2 at 7 (describing NYSE's after hours crossing sessions which execute orders at the NYSE official closing price and the ISE Stock Exchange functionality that only executed orders at the midpoint of the NBBO and did not display orders).

[75] *See* BZX Letter 2 at 8.

[76] *See id.*

[77] *See* BZX Letter 1 at 6. *See also infra* Section III.B.3 (discussing BZX's comments on competing closing auctions with regard to price discovery). In addition, in response to Nasdaq's contention that it is aware of no regulator in any jurisdiction that has sanctioned a diversion of orders from the primary listing exchange closing auction, BZX noted the Ontario Securities Commission's approval of a similar proposal by Chi-X Canada ATS, which it said is currently owned by Nasdaq, to match MOC orders at the closing price established by the Toronto Stock Exchange. *See* Nasdaq Letter 1 at 10; BZX Letter 1 at 7; and BZX Letter 2 at 2 (stating that the Ontario Securities Commission found that the proposal would not threaten the integrity of the price formation process and would pressure the

Continued

BZX also asserted that Cboe Market Close would create benefits for market participants beyond price competition.[78] In particular, BZX argued that it would be unable to attract order flow based solely on lower execution fees, so it would have to build a ''viable alternative venue to which market participants will choose to send their orders,'' including continually improving Cboe Market Close technology.[79] This, in turn, BZX argued, would likely cause the primary listing exchanges to seek to improve quality and performance of their auctions, thereby enhancing competition and benefiting market participants generally.[80]

c. Commission Discussion and Findings

BZX and other commenters have provided evidence that, over the past several years, closing auction fees have steadily increased and are significantly higher than fees for intraday trading.[81] For example, BZX stated that the per share proceeds (*i.e.,* the per share fee charged to the buyer plus the per share fee charged to the seller) for the primary listing exchanges based on the top tier fees they assess for closing auction trades is $0.0012 per share for NYSE and $0.0018 per share for Nasdaq, while the primary listing exchanges' per share proceeds from intraday trading based on the top tier fees and rebates they assess for intraday trades are much lower, specifically $0.00055 for NYSE and −$0.00005 for Nasdaq.[82] Another commenter estimated that, under Nasdaq and NYSE's tiered fee structures, the average proceeds from MOC orders executed in the Nasdaq and NYSE closing auctions is likely over $0.0020 per share compared to the average per share proceeds from intraday executions, which ranges from a negative number to $0.0010 on Nasdaq and from a negative number to $0.0016 on NYSE.[83]

While the development and ongoing costs associated with the primary listing exchanges' closing auctions may play a role in the fees for closing auctions, NYSE and Nasdaq have not provided any data or details to support this assertion.[84] And those costs are unlikely to account for the entirety of the wide disparity between closing auction fees and intraday trading fees demonstrated by BZX and other commenters. While BZX would not be conducting the closing auction that would determine the execution price for orders executed in Cboe Market Close, by providing an additional exchange venue to execute MOC orders, the availability of Cboe Market Close should foster price competition for the execution of MOC orders. Further, as noted above, BZX stated that it intends to file a separate proposal related to fees for MOC orders executed in the Cboe Market Close that would set and maintain such fees over time at a rate less than the fee charged by the applicable primary listing exchange for its own respective closing mechanism.[85] Although some commenters argued that lower fees resulting from the proposal would not generally benefit market participants because such fees are typically not passed through from a broker-dealer to its customers, the Commission believes that the costs of closing auctions can have a negative effect on brokers and the investors that they serve, particularly for smaller and mid-size brokers.[86] The Commission believes that fostering price competition for the execution of MOC orders may facilitate the ability for smaller and mid-size brokers to better compete for investors' MOC order flow, and greater choice among, and participation by, broker-dealers in handling MOC orders should inure to the benefit of end investors.

While the primary listing exchanges and other commenters argue that BZX is ''free riding'' on investments of the primary listing exchanges in the development and maintenance of the closing auction process—and thus impeding competition in a manner inconsistent with the Act—this concern must be evaluated against the enhanced competition that the proposal should provide. In particular, BZX has demonstrated that the proposal will not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it should promote competition among MOC order execution venues and foster price competition for MOC order execution fees, areas which currently appear to be lacking the same competitive forces as intraday trading. In this regard, as discussed above, commenters assert that the primary listing exchanges have taken advantage of the ''monopoly'' they have on orders seeking a closing price to impose high per share fees for orders executed in the closing auctions.[87] Because Cboe Market Close will provide an additional venue to execute MOC orders, the proposal should introduce further competition, which may result in benefits to investors generally. And while some commenters suggested capping closing auction fees to address the lack of competition,[88] Cboe Market Close represents a market-based solution that is designed to foster price competition for MOC orders without impairing the integrity of the primary listing exchanges' closing auctions.

Moreover, in the highly competitive environment of the current national market system with numerous exchanges competing for order flow, it is commonplace for exchanges to attempt to mimic or build upon various functionalities of their competitors.[89] This practice does not, in and of itself, result in a competitive burden that is not necessary or appropriate in furtherance of the purposes of the Act. While BZX is not proposing to generate

Toronto Stock Exchange to competitively price executions during their closing auction).

[78] *See* BZX Statement at 23–24.

[79] *See* BZX Statement at 23–24.

[80] *See* BZX Statement at 23–24.

[81] *See* Notice at 23321 and n.9; and *supra* notes 38–39 and accompanying text. Specifically, BZX states that NYSE's closing auction fees have gone up by 16%, while Nasdaq's fees have increased by 60%. *See* Notice at 23321; and BZX Statement at 3 and n.11.

[82] *See* Notice at 23321; and BZX Statement at 3 and n.11. NYSE and Nasdaq utilize fee structures whereby they pay per share rebates to market participants who provide liquidity on their exchanges. As a result, the per share proceeds figures for intraday trading provided by BZX and other commenters may be reflected as negative amounts because a rebate paid to a liquidity provider may, in some instances, exceed the fee charged to a liquidity taker.

[83] *See* ViableMkts Letter at 1–2. *See also* Clearpool Letter at 2. The Commission notes that a recent academic paper supports this notion. *See* Eric Budish, Robin S. Lee, and John J. Shim, *Will the Market Fix the Market? A Theory of Stock Exchange Competition and Innovation,* (May 6, 2019), *available at https://www.nber.org/papers/w25855.pdf.*

[84] The Commission requested such information in the OIP, asking specifically: What are the current costs associated with a primary listing market developing and operating a closing auction, and to what extent (and if so, how) are these costs passed on to market participants today? How do the fixed costs associated with developing closing auctions compare to the variable costs of conducting closing auctions? How do the revenues collected from closing auctions compare to these costs? *See* OIP at 40211.

[85] *See supra* note 29 and accompanying text.

[86] *See, e.g.,* Clearpool Letter at 1.

[87] *See supra* notes 36–38 and accompanying text.

[88] *See supra* note 40 and accompanying text.

[89] Exchanges regularly file proposed rule changes with the Commission as required under Section 19(b) of the Act and Rule 19b–4 thereunder to adopt, for example, new products, order types, order modifiers, price improvement mechanisms, risk mechanisms, and other functionality that is based upon, and designed to compete with, that of other competing exchanges. Reflecting this commonplace practice, the requirements of Form 19b–4, with which exchanges must comply to file such proposed rule changes, provide that exchanges must, ''[s]tate whether the proposed rule change is based on a rule either of another self-regulatory organization or of the Commission, and if so, identify the rule and explain any differences between the proposed rule change and that rule . . .'' *See* Item 8, Form 19b–4, *available at: https://www.sec.gov/files/form19b-4.pdf.*

its own auction price, it has developed a process that will benefit the market because, based on BZX's representations, it should foster price competition and thereby decrease costs for market participants.[90]

In addition to the proposal's intended effect on price competition, the Commission also believes that the proposal may result in other benefits to market participants generally, including execution quality competition for MOC orders. The Commission believes that implementation of Cboe Market Close could incent other venues, including the primary listing exchanges, as well as ATSs and off-exchange matching venues, to continue to innovate and compete to attract MOC orders to their venues. As noted above, BZX stated that it would be unable to attract MOC order flow solely on the basis of lower execution fees, and asserted that it and the primary listing exchanges would continually need to improve their technology and quality of their MOC order execution offerings in order to compete for such order flow. The proposal would also provide an opportunity for market participants to assess and compare their experience in seeking to execute MOC orders on different national securities exchanges and off-exchange venues, which would foster further competition and may enhance the quality and efficiency of MOC order executions.[91]

The primary listing exchanges argue that the proposal diminishes incentives to invest in enhancements to closing auctions. But, in the Commission's view, the proposal could actually incent these exchanges to innovate and enhance their closing auctions in order to compete for MOC orders despite the additional costs of obtaining a closing execution on the primary listing exchange, to the extent the costs for such executions will indeed be higher than those for Cboe Market Close.[92] Ultimately, the Commission believes that the success of the Cboe Market Close in competing with the primary listing exchanges and off-exchange matching venues for MOC orders will not depend solely on lower fees. Rather, it will depend on a variety of factors, including the quality of the MOC order execution services and the attendant risks and costs associated with such executions.[93]

Among such factors that market participants may consider in determining the venue to which it will send MOC orders are regulatory protections, including Regulation SCI. The requirements of Regulation SCI were designed to strengthen the infrastructure of the U.S. securities markets and improve its resilience when technological issues arise.[94] As NYSE and Nasdaq pointed out, systems used for closing auctions on the primary listing exchanges are ''critical SCI systems'' under Regulation SCI and as such, are held to heightened requirements under the regulation as compared to ''SCI systems.'' The Commission determined that closing auction systems are critical to the continuous and orderly functioning of the securities markets because they, among other things, establish official closing prices, and therefore they should be subject to an increased level of obligation as compared to other SCI systems.[95] Accordingly, systems that directly support closing auctions on the primary listing exchanges are subject to a two-hour resumption goal following a wide-scale disruption and increased information dissemination provisions following a systems issue.[96]

NYSE and Nasdaq stated that there are additional costs due to compliance with the heightened Regulation SCI requirements for their closing auction systems that would put them at a competitive disadvantage. Although Cboe Market Close systems, as proposed, would also be subject to Regulation SCI as ''SCI systems,'' based on the Regulation SCI rule definitions, they would not be ''critical SCI systems,'' and thus would not be subject to the heightened requirements of the regulation. Similarly, off-exchange MOC matching systems of ATSs and broker-dealers would not be ''critical SCI systems'' and further, may not be subject to any of the requirements of Regulation SCI if such entities do not meet the definition of ''SCI entity'' under the regulation.[97] Importantly, Cboe Market Close is not a closing auction, but rather matches and executes MOC orders at a security's official closing price. Accordingly, Cboe Market Close will not serve the same function to the markets as the closing auctions on the primary listing exchanges. Regulation SCI, by design, takes a risk-based approach, and designates as critical SCI systems those systems that the Commission believes should be subject to the highest level of requirements based on their criticality.[98] The fact that systems would be subject to different requirements of Regulation SCI because of differences in their design, utility, and function does not establish a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Additionally, the Commission believes that some market participants could potentially view the lack of these heightened protections for Cboe Market Close as a potential risk that may factor into their determination as to whether to send MOC orders to BZX or to the primary listing exchanges. Commenters, including the listing exchanges, emphasized the importance of the closing auctions to the operation of the markets, and touted such closing auctions' reliability, integrity, stability, and resiliency.[99] As such, the Commission believes that market participants may continue to favor the primary listing exchanges for their MOC order executions, in part, because such critical SCI systems are subject to the heightened protections of Regulation SCI, such that their MOC orders are being handled on trading platforms that are subject to the highest operational resumption standards and are thus designed to be less susceptible to the potential risk of operational outages, instability or other disruptions.

[90] *See* supra note 29 and accompanying text.

[91] *See, e.g.,* ViableMkts Letter at 2 (stating that Cboe Market Close may attract MOC liquidity from market participants that currently may not utilize the primary listing exchanges' closing auctions and that participation by these market participants may also benefit the market more broadly).

[92] While Nasdaq also argued that the proposal decreases incentives to serve as a listing exchange if it cannot offset the cost of regulatory responsibilities of being a listing exchange with fees from the closing auction, the Commission finds such argument to be unpersuasive. The Commission believes that the primary listing exchanges have other means to recoup those costs such as using existing fees such as their ''Trading Rights Fee,'' which they have asserted is used to help defray costs of regulating the market.

[93] *See infra* note 195 and accompanying text.

[94] *See* Securities Exchange Act Release No. 73639 (Nov. 19, 2014), 79 FR 72252 (Dec. 5, 2014) (''SCI Adopting Release'').

[95] *See* SCI Adopting Release at 72277–78. ''Critical SCI systems'' are defined in Rule 1000 of Regulation SCI to include, among other things, any SCI systems of, or operated by, or on behalf of, an SCI entity that directly support functionality relating to openings, reopenings, and closings on the primary listing market. 17 CFR 242.1000.

[96] *See* 17 CFR 242.1001(a)(2)(v) and 1002(c)(3). *See also* SCI Adopting Release at 72277.

[97] Regulation SCI is not applicable to non-ATS broker-dealers. Further, an ATS is only subject to the requirements of Regulation SCI if it meets certain volume thresholds under the definition of ''SCI ATS.'' *See* 17 CFR 242.1000.

[98] In the SCI Adopting Release, the Commission acknowledged that critical SCI systems may be subject to additional costs, but stated that, ''by distinguishing critical systems, Regulation SCI is consistent with a risk-based approach that targets areas that would generate the most benefits.'' SCI Adopting Release at 72411.

[99] *See, e.g.,* Nasdaq Letter 1 at 3 and Nasdaq Statement at 4–5. Comment letters from listed issuers also referenced the reliability, strength, and integrity of the closing auction processes on the primary listing exchanges. *See, e.g.,* NBT Bancorp Letter, at 2.

In addition, the primary listing exchanges advanced several theories as to how the proposal could undermine other types of competition, such as intramarket competition, by diverting orders away from the primary listing exchanges and thereby preventing such orders from interacting and competing on a primary listing exchange. But this result is not unique to Cboe Market Close. In particular, when one exchange innovates, makes enhancements, or modifies exchange fees, it may result in market participants sending more order flow to one exchange and less volume to other exchanges, thereby potentially decreasing intramarket competition among orders on a particular exchange. Thus, enhancing competition between exchanges will, in many cases, have an inverse effect on intramarket competition. The Commission does not believe this to be an inappropriate burden on competition in this case.

2. Differing Regulatory Standards

a. Comments on the Proposal

Several commenters referenced the Commission's order disapproving a Nasdaq proposal to create a Benchmark Order (''Benchmark Disapproval Order'') in arguing that BZX has not satisfied its obligation to demonstrate that the proposal is consistent with the Act.[100] Nasdaq and NYSE characterized the Benchmark Disapproval Order as finding that Nasdaq's proposal would give it an unfair advantage over competing broker-dealers due to regulatory disparities, and the exchanges asserted that similar regulatory disparities exist with BZX's proposal. Specifically, NYSE and Nasdaq argued that the proposal creates a disparate regulatory regime between the primary listing exchanges and BZX because BZX would not be subject to the heightened standards applicable to critical SCI systems under Regulation SCI, nor would BZX be required to make or enforce rules for a closing auction.[101] Nasdaq further argued that the Benchmark Disapproval Order establishes that ''the Commission has been disinclined to approve proposed rule changes in which the exchange cannot clearly articulate how a proposal to offer a service is consistent with the policy goals of the Act with respect to national securities exchanges,'' and BZX has not done so.[102]

Similarly, SIFMA relied on the Benchmark Disapproval Order in asserting that BZX is proposing to offer a function identical to that currently offered by broker-dealers, yet would benefit from regulatory immunity as well as the limits on liability contained in BZX Rule 11.16.[103] SIFMA stated that, while it supports the proposal, it believes that as a condition of approval, BZX and the Commission should clarify in writing that Cboe Market Close would not be entitled to any application of regulatory immunity and that the Exchange should amend its Rule 11.16 to provide that Cboe Market Close would not be subject to the monetary limits on the Exchange's liability.[104]

With respect to regulatory immunity, SIFMA asserted that both courts and the Commission have stated that regulatory immunity applies only in situations where an exchange is exercising its regulatory authority over its member, pursuant to the Act.[105] SIFMA stated that because Cboe Market Close would not be a self-regulatory function whereby the exchange would be regulating its members, BZX should not be entitled to apply regulatory immunity for any losses arising from the functionality.[106] In addition, SIFMA stated that BZX Rule 11.16 currently limits the liability exposure of the Exchange to its members.[107] SIFMA asserted that BZX's limits on liability set forth in Rule 11.16 ''bear no relation to the actual amount of financial loss that could result from an exchange malfunction.'' [108] SIFMA argued that the ''disparity is particularly acute'' with respect to the proposal because broker-dealers currently perform services akin to Cboe Market Close without a limitation on their liability.[109] Accordingly, SIFMA stated that, as a condition of operating Cboe Market Close, BZX should carve it out from the liability limits of Rule 11.16.[110]

b. BZX Response to Comments

BZX argued that its proposal does not implicate the same issues as the Benchmark Disapproval Order because the Commission's disapproval rested primarily on its finding that it raised issues under the Market Access Rule.[111] BZX also stated that, unlike Nasdaq's proposal which was designed to compete with the services offered by broker-dealers, it is seeking to compete on price with the primary listing exchanges' closing auctions.[112]

BZX responded to SIFMA's comments on regulatory immunity and its limitation on liability rule by stating that the concerns raised were ''not germane to whether the [p]roposal is consistent with the Act,'' and further stated that it believed it would be inappropriate in the context of a filing on one proposed rule change to set a new standard on an issue that has broad application to all exchange services as well as National Market System Plans.[113] BZX also asserted that SIFMA did not provide any evidence to support its claim that its members have been disadvantaged by the Exchange's limitation of liability rule as compared to limitation on liability provisions in a broker-dealer's contracts with its clients, which often disclaim all liability.[114]

c. Commission Discussion and Findings

The Commission does not believe that the differing regulatory standards applicable to Cboe Market Close and the primary listing exchanges' closing auctions create an unfair burden on competition. This is because, as discussed above, the Commission believes that, Cboe Market Close differs from the primary listing exchanges' closing auctions in design, utility, and function. As also discussed above, the fact that closing auction systems are subject to the heightened requirements of Regulation SCI for critical SCI systems could encourage market participants to send MOC orders to closing auctions on the primary listing exchanges due to the additional regulatory protections required of such systems.[115]

With regard to SIFMA's comments regarding competition with broker-dealer services and the applicability of limitations on liability, the Commission believes Cboe Market Close may compete with the off-exchange matching services operated by broker-dealers.[116] Broker-dealers and national securities exchanges currently compete with respect to a variety of functions and services that they offer to market

[100] *See* Securities Exchange Act Release No. 68629 (Jan. 11, 2013), 78 FR 3928 (Jan. 17, 2013) (NASDAQ–2012–059).

[101] *See* NYSE Statement at 17–18; and Nasdaq Statement at 12. *See also supra* notes 47–52 accompanying text (discussing the regulatory costs of operating a closing auction, including those related to Regulation SCI).

[102] *See* Nasdaq Letter 1 at 5.

[103] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA (Dec. 8, 2017) (''SIFMA Letter 3'') at 2–4.

[104] *See id.* at 1.

[105] *See id.* at 2–3.

[106] *See id.* at 3.

[107] *See* BZX Rule 11.16.

[108] *See* SIFMA Letter 3 at 4.

[109] *See id.*

[110] *See id.*

[111] *See id.* at 11.

[112] *See* BZX Letter 1 at 10.

[113] *See* Letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Cboe Global Markets, Inc. (Jan. 3, 2018) (''BZX Letter 3'') at 5.

[114] *See id.*

[115] *See supra* notes 94–96 and accompanying text.

[116] *See* BZX Letter 2 at 11.

participants within the current national market system. The Commission does not agree with commenters' characterizations that the Benchmark Disapproval Order broadly prohibits such competition or that the existence of different regulatory requirements applicable to exchanges on the one hand, and broker-dealers on the other hand is per se evidence of an unfair competitive advantage. The fact that a national securities exchange proposes to offer functionality that is similar to a service offered by a broker-dealer does not, in and of itself, render such functionality an inappropriate burden on competition. Rather, the proposal must be considered in the broader context of the existing competitive landscape and different regulatory structures applicable to exchanges and broker-dealers under the Act, respectively. In particular, while it is true that BZX may benefit from the protections of its limitations on liability provisions that may not be available to broker-dealers, this must be considered along with the other regulatory requirements imposed on BZX that are not applicable to broker-dealers, such as obligations to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and its own rules, as discussed below, among others.[117] Therefore, with respect to BZX's proposal, the Commission believes that, on balance and in light of the differing requirements under the Act and the rules and regulations thereunder applicable to national securities exchanges and broker-dealers, the limitations on liability available to BZX do not impose an inappropriate burden on competition and the proposal is consistent with Section 6(b)(8) of the Act.

With respect to the judicial doctrine of regulatory immunity, the Commission has taken the position that immunity from suit ''is properly afforded to the exchanges when engaged in their traditional self-regulatory functions—where the exchanges act as regulators of their members,'' including ''the core adjudicatory and prosecutorial functions that have traditionally been accorded absolute immunity, as well as other functions that materially relate to the exchanges' regulation of their members,'' but should not ''extend to functions performed by an exchange itself in the operation of its own market, or to the sale of products and services arising out of those functions.'' [118] The Court of Appeals for the Second Circuit recently reached a similar conclusion.[119] The Commission has also recognized that an exchange's invocation of immunity from suit should be examined on a '''case-by-case basis,' with 'the party asserting immunity bear[ing] the burden of demonstrating [an] entitlement to it.' '' [120] For purposes of its consideration of BZX's proposal, the Commission notes, as discussed in further detail below, that BZX represented that it would continue to surveil for potentially manipulative activities and BZX made commitments to enhance its surveillance procedures and work with other SROs to detect and prevent manipulative activity through the use of Cboe Market Close.[121] However, whether and to what extent a court would determine Cboe Market Close to fall within an exchange's traditional regulatory functions depends on an assessment of the facts and circumstances of the particular allegations before it and is beyond the scope of the Commission's consideration of the proposed rule change pursuant to the Act.

B. Price Discovery and Fragmentation

Many commenters addressed the potential effects of the proposal on price discovery in the closing auctions on the primary listing exchanges, including the effect of additional fragmentation of MOC interest among multiple execution venues.

1. Effect of MOC Orders on Price Discovery

a. Comments on the Proposal

Some commenters stated that the proposal would harm price discovery in the closing auctions on the primary listing exchanges.[122] For example, Nasdaq argued that BZX's MOC orders would be incapable of contributing to price discovery, and instead would draw orders and quotations away from primary closing auctions and undermine the mechanisms used to set closing prices.[123] Nasdaq asserted that any attempt to divert trading interest from its closing auction would be detrimental to investors as it would inhibit Nasdaq's closing auction from functioning as intended and would negatively affect the price discovery process and, consequently, the quality of the official closing price.[124] Nasdaq argued that Cboe Market Close would deprive it of critical information about the supply and demand of Nasdaq-listed securities, and that both the information Nasdaq disseminated about its closing auction and the price-discovery function of the auction would be impaired.[125] Nasdaq stated that even though BZX would disseminate the amount of paired-off shares at 3:35 p.m., Nasdaq would have no way to confirm that the information that BZX would disseminate regarding the amount of matched volume in Cboe Market Close is accurate or ensure that the information is timely disclosed.[126]

Nasdaq also expressed concern that the availability of Cboe Market Close could affect the behavior of limit orders,

[117] 15 U.S.C. 78s(g)(1). The Commission also notes that MOC orders submitted to other exchanges' closing auctions would similarly be subject to those exchanges' rules governing limitations on liability.

[118] Brief of the Securities and Exchange Commission, *Amicus Curiae,* No. 15–3057, *City of Providence* v. *Bats Global Markets, Inc.* (2d Cir.) (''*City of Providence* Amicus Br.''), at 22.

[119] *City of Providence* v. *Bats Global Markets, Inc.,* 878 F.3d 36 (2d Cir. 2017) (''When an exchange engages in conduct to operate its own market that is distinct from its oversight role, it is acting as a regulated entity—not a regulator. Although the latter warrants immunity, the former does not.'').

[120] *City of Providence* Amicus Br. at 21 (quoting *In re NYSE Specialists Secs. Litig.,* 503 F.3d 89, 96 (2d Cir. 2007)).

[121] *See infra* Section III.E.3.c.

[122] *See, e.g.,* Letters from: John M. Bowers, Bowers Securities (June 14, 2017) (''Bowers Letter''); Andrew Stevens, General Counsel, IMC Financial Markets (June 30, 2017) (''IMC Letter''); Cameron Bready, Senior Executive VP, Chief Financial Officer, Global Payments Inc. (Aug. 17, 2017) (''Global Payments Letter''); Mike Gregoire, CEO, CA Technologies (Aug. 17, 2017) (''CA Technologies Letter''); Nasdaq Letter 2; NYSE Letter 3; Nasdaq Letter 1; NYSE Letter 1; GTS Letter 2; T. Rowe Price Letter; NBT Bancorp Letter; Sirius Letter; PayPal Letter; NYSE Letter 2; NYSE Statement; and Nasdaq Statement. *See also* Letter from Representative Sean P. Duffy and Representative Gregory W. Meeks (Aug. 9, 2017) (''Duffy/Meeks Letter''), at 1 (stating that public companies are expressing concern that the proposal will further fragment the market and cause harm to the pricing of their companies' shares at the close and, as such, they are concerned the proposal may disrupt the process for determining the closing price on the primary listing exchange, which is viewed as ''an incredibly well-functioning part of the capital markets.''). In addition, one commenter urged the Commission to conduct a close analysis of the proposal and stated that if the BZX proposal would seriously degrade the quality of the closing price, then it should be rejected. *See* Angel Letter.

[123] *See* Nasdaq Letter 1 at 5 and 8 (stating that, for this reason Nasdaq did not believe the proposal promotes fair and orderly markets in accordance with Sections 6 and 11A of the Act); and Nasdaq Letter 2 at 3–7.

[124] *See* Nasdaq Letter 1 at 11; and Nasdaq Letter 2 at 5–6. *See also* Nasdaq Statement at 22. Nasdaq also stated that while BZX does not have a responsibility to contribute to price discovery in Nasdaq's closing auction, it also is obligated to avoid affirmatively undermining price discovery. *See* Nasdaq Letter 1 at 5. In addition, Nasdaq stated that it considered, but chose not to, disclose segmented information, such as matched MOC or limit-on-close (''LOC'') shares, for its closing auction in a piecemeal fashion, because Nasdaq believed it would lead to unintended consequences and undermine price discovery in the closing auction. *See id.* at 4; and Nasdaq Letter 2 at 6.

[125] *See* Nasdaq Statement at 22.

[126] *See id.* at 23.

which Nasdaq asserted would harm price discovery at the market close.[127] In Nasdaq's view, reducing MOC orders in the closing auction could affect the behavior of limit orders by reducing the ability of both continuous book limit orders [128] and LOC orders to compete with each other and to interact with MOC orders, which it asserted is essential to its closing auction.[129] Specifically, Nasdaq contended that if BZX were to disseminate at 3:35 p.m. that a certain amount of shares were paired-off for execution in Cboe Market Close, but Nasdaq subsequently published little or no paired-off or imbalance shares in its imbalance publications,[130] further participation in the intraday trading session leading up to the closing auction and in the closing auction could be discouraged, and thus there would be little ongoing price discovery, because market participants would know they would not have the ability to interact with market orders.[131] Nasdaq contrasted the BZX proposal with its own closing auction process, arguing that after Nasdaq disseminates an imbalance notification that combines MOC and LOC orders, market participants can continue to submit orders to interact with existing auction interest.[132] In addition, Nasdaq submitted the Pitt/Spatt Report, which asserted that the proposal would detrimentally affect Nasdaq closing auctions by preventing MOC orders from engaging with price-sensitive orders (LOC orders or imbalance-only orders) and by altering the behavior of market participants whose MOC orders went unfilled on BZX.[133]

Moreover, Nasdaq argued that even if the proposal only resulted in fewer MOC orders submitted to Nasdaq closing auctions, investors would be harmed because the official closing price could potentially represent a stale or undermined price.[134] Nasdaq asserted that its closing auction is designed to maximize the number of shares that can be executed at a single price and that the number of MOC orders affects the number of shares able to execute in a closing auction.[135] Nasdaq added that because Cboe Market Close would undermine closing auction price discovery, Cboe Market Close would also inhibit efficient capital allocation and thereby impair capital formation.[136]

Nasdaq also argued that the proposal would harm price discovery because fragmentation of MOC orders would directly affect closing auctions for which Nasdaq only received MOC orders. Nasdaq contended that, if all those MOC orders were removed from the Nasdaq closing auction, the last sale price would become the official closing price, as opposed to the price being determined through the price discovery process of its closing auction.[137] Nasdaq discussed several hypothetical examples where removal of all MOC orders from certain of its previously conducted closing auctions would have resulted in use of the last sale price as the official closing price and provided aggregated statistics denoting the differential between the last sale price and the official closing price in such situations.[138] The examples provided assume that the BZX proposal would result in no market participants choosing to send any MOC orders to the primary listing exchanges' closing auctions. Nasdaq asserted this would be the case because market participants would choose to submit their MOC orders to the lower cost execution venue.[139] Further, both Nasdaq and NYSE explained that if the fees set by BZX for Cboe Market Close were lower than the primary listing exchanges and there was no competitive response by the primary listing exchanges, a likely outcome would be that market participants would choose to submit their MOC orders to BZX.[140]

The Pitt/Spatt Report submitted by Nasdaq states that, according to formal auction theory, the auction price and bidding behaviors of auction participants are determined by the rules of the auction.[141] The Pitt/Spatt Report asserts that the price and bidding behaviors in the closing auction on the primary listing exchange (such as the Nasdaq closing auction) will change if a competing earlier auction (such as the Cboe Market Close) is introduced, even though the rules in the closing auction on the primary listing exchange are unchanged. According to the Pitt/Spatt Report, one way in which bidding behavior is affected is that traders with MOC orders may reallocate those orders to the Cboe Market Close to obtain an earlier matching resolution at 3:35 p.m. while still retaining the ability to participate in the Nasdaq closing auction. According to the report, this change in bidding behavior would then affect the closing price on the listing exchange for two reasons. First, the ''proposed [Cboe] Market Close would prevent the direct interaction of the siphoned-off orders with price sensitive orders, which are at the heart of true 'price discovery,' and necessarily would influence the determination of the closing price.'' [142] Second, participants in the Cboe Market Close, ''[a]rmed with information about the extent to which the matching efforts were successful (or unsuccessful), . . . would potentially alter the aggressiveness with which they would engage in the Nasdaq Market Close after the conclusion of the [Cboe] Market Close at 3:35 p.m.'' [143]

NYSE argued that even though Cboe Market Close would only accept MOC orders, it could materially affect official closing prices determined through a NYSE closing auction.[144] NYSE emphasized the importance of the centralization of orders during the closing auction on the primary listing exchange.[145] NYSE, as well as Nasdaq, also asserted that the proposal contradicts the Commission's approval of amendments to the National Market

[127] *See* Nasdaq Letter 1 at 5 and 11; and Nasdaq Statement at 25–26 (citing Pitt/Spatt Report at 18).

[128] A continuous book limit order is a limit order that is eligible for execution during the regular intraday trading session or in the closing auction. *See supra* note 2.

[129] *See* Nasdaq Letter 2 at 5–6. Nasdaq did not submit any specific data regarding the effect of the proposal on the use of LOC orders.

[130] Nasdaq publishes an ''Order Imbalance Indicator'' which includes, among other things, the price at which the maximum number of shares of orders eligible for participation in its closing auction could execute as well as the size of any imbalance. *See* Nasdaq Rule 4754(a)(7).

[131] *See* Nasdaq Letter 2 at 6.

[132] *See id.*

[133] *See* Pitt/Spatt Report at 15–19.

[134] *See* Nasdaq Letter 1 at 12. *See also* Nasdaq Letter 2 at 6 (providing an example of how Nasdaq believes the proposal could cause a stale closing price). Nasdaq also stated that a credible independent study of the potential risk to price discovery is essential in order to consider whether the proposal is consistent with the Act. *See* Nasdaq Letter 1 at 12.

[135] *See id.* at 11. Nasdaq submitted a memorandum providing, among other things, data relating to the level of matched MOC volume in Nasdaq closing auctions spanning the period of January 1, 2017 through September 30, 2017 (''Nasdaq Data Memo'').

[136] *See* Nasdaq Statement at 37.

[137] *See* Nasdaq Letter 2 at 3; and Nasdaq Statement at 23–24.

[138] *See* Nasdaq Letter 2 at 3–5; and Nasdaq Statement at 23. Specifically, Nasdaq identified 1,653 closing crosses between January 1, 2016, and August 31, 2017, where removal of all MOC orders would have changed the closing prices. Nasdaq asserts that this would have changed the closing valuation of Nasdaq issuers ''by nearly $870,000,000 of aggregate impact.''

[139] *See* Nasdaq Statement at 25. While NYSE asserted that one ''plausible outcome'' of the BZX proposal is that the majority of MOC orders would migrate to Cboe Market Close, it acknowledged that it was ''hard to predict what would happen if the [BZX] proposal were to be approved.'' *See* Assessment of the DERA Analysis conducted by D. Timothy McCormick, Ph.D. (Jan. 11, 2018) (''NYSE Report''), at 22.

[140] *Id. See also* Nasdaq Statement at 24.

[141] *See* Pitt/Spatt Report at 15.

[142] *See id.* at 17–18.

[143] *See id.* at 17.

[144] *See* NYSE Letter 1 at 3; and NYSE Statement at 23.

[145] *See* NYSE Statement at 21. *See also* NYSE Report at 12; and NYSE Letter 1 at 4.

System Plan to Address Extraordinary Market Volatility (the ''LULD Plan'') which, they argue, centralized re-opening auction liquidity at the primary listing exchange by prohibiting other market centers from re-opening following a trading pause until the primary listing exchange conducts a re-opening auction.[146] These commenters asserted that it would be inconsistent for the Commission to find it in the public interest to consolidate trading in a re-opening auction, while sanctioning fragmentation of trading in a closing auction.[147]

NYSE stated that producing a reliable and accurate closing price for a security requires transparency into the ''full information'' about the volume of buy and sell orders and the extent of any imbalances.[148] NYSE also stated that the closing auction is ''an iterative process'' that provides ''periodic information about order imbalances, indicative price, matched volume, and other metrics'' to help market participants anticipate the likely closing price, and that allows for investors to find contra-side liquidity and assess whether to offset imbalances, and for orders to be priced based on the true supply and demand in the market.[149] NYSE added that market participants rely on information disseminated by the primary listing exchanges to make trading decisions in the continuous market before the closing auction as well as to determine the price, size, and type of on-close orders they choose to enter, all of which ''ultimately determine the closing price.'' [150] NYSE stated that not disclosing to market participants the balance of unmatched MOC volume submitted to Cboe Market Close would deprive closing auction market participants of ''core data necessary'' to the auction's normal functioning.[151]

NYSE also asserted that information to be disseminated by BZX on the amount of matched MOC volume could discourage liquidity providers from participating in the closing process because they would surmise that their orders would be less likely to interact with market orders in the closing auction.[152] NYSE also argued that its DMMs would lose full visibility into the size and composition of MOC interest, and thus would likely have to make more risk-adverse closing decisions, resulting in inferior price formation.[153] Other commenters asserted that the proposal would make it more difficult for DMMs to facilitate an orderly close of NYSE listed securities as they would lose the ability to continually assess the composition of MOC interest.[154] Many of these commenters, all of whom are issuers listed on NYSE, asserted that one of the reasons they chose to list on NYSE was the ability to have access to a DMM that is responsible for facilitating an orderly closing auction.[155]

NYSE also argued that the proposal would detrimentally affect price discovery on the NYSE Arca and NYSE American automated closing auctions. NYSE stated that in the six months prior to June 2017 there were 130 instances where the official closing price determined through a NYSE Arca closing auction was based entirely on paired-off market order volume.[156] In those instances, pursuant to NYSE Arca rules, ''the Official Closing Price for that auction is the midpoint of the Auction NBBO as of the time the auction is conducted.'' [157] NYSE stated that if all market orders for a NYSE Arca listed security were sent to BZX, the official closing price would instead be the consolidated last sale price, which can differ from the midpoint of the Auction NBBO by as much as 3.2%.[158]

Multiple commenters stated that one of the benefits of a centralized closing auction conducted by the primary listing exchange is that it allows market participants to fairly assess supply and demand such that the closing prices reflect both market sentiment and total market participation.[159] Because they believed that the proposal may cause orders to be diverted away from the primary listing exchanges, these commenters argued that it would negatively affect the reliability and value of closing auction prices. Several commenters further argued that centralized closing auctions provide better opportunities to fill large orders with relatively little price impact.[160]

In contrast, several commenters stated that the proposal would not negatively affect price discovery in the primary listing exchanges' closing auctions because Cboe Market Close would only execute MOC orders that can be paired-off against other MOC orders, and not orders that directly affect price discovery, such as limit orders, including LOC orders.[161] Some of these commenters also argued that, because BZX will publish the size of matched MOC orders in advance of the primary listing exchange's cut-off time, market participants would have available information needed to make further decisions regarding order execution,

[146] *See* Nasdaq Letter 1 at 6; NYSE Letter 1 at 3; and Nasdaq Letter 2 at 12.

[147] *See* Nasdaq Letter 1 at 6; NYSE Letter 1 at 3; and Nasdaq Letter 2 at 12.

[148] *See* NYSE Statement at 21.

[149] *See* NYSE Report at 12. *See also* NYSE Letter 1 at 4.

[150] *See* NYSE Statement at 21–22.

[151] *See id.* at 22.

[152] *See* NYSE Report at 13 and 23; and NYSE Statement at 23. *See also* NYSE Report at 12 (arguing that ''[a]nticipation that there will be MOC orders in the closing auction is a critical component feeding into the decisions of liquidity providers and other market participants'' trading in the closing auction).

[153] *See* NYSE Letter 1 at 4. *See also* NYSE Statement at 22. GTS, a DMM on NYSE, argued that MOC orders are a vital component of closing prices and that the types of orders submitted to the closing auction, such as limit or market, also affect its pricing determinations. *See* GTS Securities Letter 1 at 2–3; and GTS Securities Letter 2 at 3. In response to this assertion, ViableMkts argues that use of Cboe Market Close is voluntary. Accordingly, if a market participant wanted a DMM to be aware of their closing activity they could still send their orders to the NYSE closing auction. *See* ViableMkts Letter at 4.

[154] *See, e.g.,* GTS Securities Letter 1 at 2–3; Letter from Jay S. Sidhu, Chairman, Chief Executive Officer, Customers Bancorp, Inc. (June 27, 2017) (''Customers Bancorp Letter''); Letter from Joanne Freiberger, Vice President, Treasurer, Masonite International Corporation (June 27, 2017) (''Masonite International Letter''); IMC Letter at 1–2; and Letter from Daniel S. Tucker, Senior Vice President and Treasurer, Southern Company (July 5, 2017) (''Southern Company Letter''). Several commenters also asserted that the proposal would have potentially detrimental effects on NYSE floor brokers. *See* Bowers Letter; Letter from Jonathan D. Corpina, Senior Managing Partner, Meridian Equity Partners (June 16, 2017); Letter from Fady Tanios, Chief Executive Officer, and Brian Fraioli, Chief Compliance Officer, Americas Executions, LLC (June 16, 2017) (''Americas Executions Letter''); and GTS Securities Letter 2 at 4.

[155] *See, e.g.,* Masonite International Letter; Letter from Sherri Brillon, Executive Vice-President and Chief Financial Officer, Encana Corporation (June 29, 2017); Letter from Steven C. Lilly, Chief Financial Officer, Triangle Capital Corporation (June 29, 2017); and Letter from Robert F. McCadden, Executive Vice President and Chief Financial Officer, Pennsylvania Real Estate Investment Trust (June 29, 2017).

[156] *See* NYSE Letter 1 at 5. *See also* NYSE Report at 11–12.

[157] *See* NYSE Letter 1 at 5. NYSE Arca Rule 7.35–E(a)(5) defines ''Auction NBBO'' to mean ''an NBBO [National Best Bid and Offer] that is used for purposes of pricing an auction. An NBBO is an Auction NBBO when (i) there is an NBB [National Best Bid] above zero and NBO [National Best Offer] for the security and (ii) the NBBO is not crossed.''

[158] *See* NYSE Letter 1 at 5.

[159] *See* Bowers Letter; Americas Executions Letter; Letter from Mickey Foster, Vice President, Investor Relations, FedEx Corporation (July 14, 2017); and Nasdaq Statement at 21. *See also, e.g.,* Letter from Rob Bernshteyn, Chief Executive Officer, Chairman of the Board of Directors, Coupa Software, Inc. (July 12, 2017) (''Coupa Software Letter''); Letter from Jeff Green, Founder, Chief Executive Officer and Chairman of the Board of Directors, The Trade Desk Inc. (July 26, 2017) (''Trade Desk Letter''); and Global Payments Letter.

[160] *See, e.g.,* Bowers Letter; Customers Bancorp Letter; and Letter from David B. Griffith, Investor Relations Manager, Orion Group Holdings, Inc. (June 27, 2017) (''Orion Group Letter'').

[161] *See* PDQ Letter; Clearpool Letter at 3; Virtu Letter at 2; SIFMA Letter 1 at 2; IEX Letter at 1–2; Angel Letter at 4; ViableMkts Letter at 3–4; and Bollerman Letter at 1. *See also* SIFMA Letter 2 at 1–2.

and thus price discovery would not be impaired.[162]

b. BZX Response to Comments

In response to concerns regarding the effect of the proposal on the price discovery process, BZX argued that it expects the Cboe Market Close would have no effect on price discovery because the proposal would only match MOC orders and would require the Exchange to publish the number of matched shares in advance of the primary listing exchanges' cut-off times on a data feed that is available free of charge.[163] BZX also stated that it does not believe the proposal would affect the use of LOC orders on the primary listing exchanges as LOC orders provide price protection, by restricting the price at which the order can execute to a price that is the same or better than the LOC order's limit price. BZX stated that it does not believe that the lower fees charged to MOC orders that participate in Cboe Market Close would outweigh the risk of receiving an execution at an unfavorable price.[164] BZX further challenged commenters' concerns that Cboe Market Close could pull all MOC orders away from the primary listing exchanges and alter the calculation of the closing price, stating that such a scenario could occur today as a result of competing closing auctions and broker-dealers that offer internal MOC order matching solutions.[165]

In response to NYSE and Nasdaq comments regarding the consistency of the Cboe Market Close with Amendment 12 of the LULD Plan, BZX asserted that while the amendment to the LULD Plan cited by NYSE and Nasdaq granted the primary listing exchange the ability to set the re-opening price, the amendment did not mandate the consolidation of orders at the primary listing exchange following a trading halt.[166] BZX believes the proposal is consistent with the LULD Plan as it seeks to avoid producing a ''bad'' or ''outlier'' closing price and does not affect the centralization of price-setting closing auction orders.[167]

In response to NYSE's arguments regarding the effect on a DMM's ability to price the close, BZX argued that this point highlights what it believes to be an additional benefit of allowing it to compete with NYSE's closing auction.[168] Specifically, BZX argued that NYSE's assertion that DMMs consider the composition of closing interest in making pricing decisions ''suggests that the NYSE closing auction is not a true auction and can be an immediate detriment to users sending MOC orders of meaningful size to the NYSE.'' [169] Accordingly, BZX stated that it believed Cboe Market Close would offer a beneficial alternative pool of liquidity and execution mechanism for large MOC order senders.[170]

c. Commission Discussion and Findings

The Commission has carefully analyzed and considered the proposal's potential effects, if any, on the primary listing exchanges' closing auctions, including their price discovery functions, and the reliability and integrity of closing prices. The Commission finds that BZX has demonstrated that based on the design of the proposal, Cboe Market Close should not disrupt the price discovery process in the closing auctions of the primary listing exchanges.[171]

Importantly, Cboe Market Close will only accept, match, and execute unpriced MOC orders with other unpriced MOC orders (*i.e.,* paired-off MOC orders). Contrary to some commenters' assertions that MOC orders contribute to the determination of the official closing price, the Commission believes that paired-off MOC orders, which do not specify a price but instead seek to be executed at whatever closing price is established via the primary listing exchange's closing auction, do not directly contribute to setting the official closing price of securities on the primary listing exchanges but, rather, are inherently the recipients of price formation information.[172] As many commenters stated, the price determined in a closing auction is designed to be a reflection of market supply and demand, and closing auctions are designed to set closing prices that maximize the number of shares executed and minimize the amount of the imbalance between buy and sell interest (*i.e.,* demand and supply). The orders that actively participate in, and contribute to, the price formation process in a closing auction would be orders that specify a desired execution price such as LOC orders, imbalance-only orders, and other limit (priced) orders that may participate in the closing auction. In addition, unpaired MOC orders may contribute to price formation because they suggest an imbalance of supply or demand. Thus, none of the orders that could influence the formation of the official closing price in a closing auction would be executed in the Cboe Market Close and could continue to be submitted to the primary listing exchange.

The orders identified above affect the determination of an official closing price because they directly affect the total number of shares that are executed in an auction. More specifically, a limit order or LOC order would only execute in a closing auction if the official closing price is at or better than that order's limit price. In addition, in a closing auction, the imbalance amount of MOC orders (*i.e.,* unpaired MOC orders) would only execute if there was limit order trading interest (*e.g.,* LOC orders or imbalance-only orders) on the opposite side of the unpaired MOC orders that was eligible to execute in the closing auction.[173] In contrast, as BZX and commenters stated,[174] executing paired-off MOC orders in the manner BZX proposes would not affect the net imbalance of closing eligible trading interest because only paired-off MOC orders, and not the orders identified above that actively participate in, and contribute to, the closing auction price formation process, would be executed in Cboe Market Close. Accordingly, the proposal should not disrupt the price discovery process and closing auction price formation.

[162] *See* Clearpool Letter at 3; SIFMA Letter 1 at 2; IEX Letter at 2; Angel Letter at 4; ViableMkts Letter at 3; and SIFMA Letter 2 at 1.

[163] *See* BZX Letter 1 at 3–4; BZX Letter 2 at 2 and 10; and BZX Statement at 9–10. In addition, BZX offered to disseminate this information via the applicable securities information processor, in addition to the Cboe Auction Feed. *See* BZX Letter 1 at 4 and 12–13; and BZX Letter 2 at 2.

[164] *See* BZX Letter 2 at 3.

[165] *See* BZX Letter 1 at 4–5 (stating that neither NYSE nor Nasdaq prohibits their members from withholding MOC orders from their closing auctions); and BZX Letter 2 at 2–3.

[166] *See* BZX Letter 1 at 8–9. *See also* Bollerman Letter at 3.

[167] *See* BZX Letter 1 at 8–9.

[168] *See* BZX Letter 1 at 10.

[169] *Id. See also supra* note 153 and accompanying text.

[170] BZX Letter 1 at 10. In response, NYSE argued that BZX's claims regarding the role of the DMM were not germane to whether the proposal is consistent with the Act and stated that it believed the scale of its closing auction and the low levels of volatility observed in the auction demonstrate its effectiveness. *See* NYSE Letter 2 at 4.

[171] For these reasons, the Commission also believes the proposal will not impair capital formation. *See supra* note 136.

[172] *See supra* notes 134–153 (discussing Nasdaq's and NYSE's arguments of how MOCs can contribute to the closing price).

[173] In other words, if there was a buy MOC order that could not be executed against a sell MOC order, the buy MOC order would only execute in the closing auction if there was a sell limit order that was able to execute in the closing auction. *See, e.g.,* ViableMkts Letter at 3–4 (providing examples that illustrate how executing paired-off MOC orders in the primary listing exchange's closing auction or on a different venue does not ultimately impact the price discovery process in the closing auction because only MOC orders that cannot be paired-off with other MOC orders are eligible to execute against limit orders in a closing auction).

[174] *See, e.g.,* Notice at 23321; ViableMkts Letter at 3–4; and Virtu Letter at 2.

Several commenters made assertions that matched MOC order flow provides informational content regarding the depth of the market that indicates true supply and demand and contributes to market participants' decisions regarding order submission and ultimately price formation.[175] But BZX proposes to publish and disseminate the size of matched MOC orders at 3:35 p.m., which is well in advance of the order entry cut-off times for the primary listing exchanges' closing auctions.[176] Market participants seeking to ascertain closing auction liquidity supply and demand could incorporate that information with any pertinent information disseminated by the primary listing exchanges. Therefore, the Commission believes that the information disseminated by BZX could be used by market participants in conjunction with the information disseminated by the primary listing exchange to make order submission decisions.

And the Commission disagrees with NYSE that, in order for the Commission to approve the proposed rule change, BZX should also disclose the balance of unpaired shares that were submitted to Cboe Market Close.[177] NYSE stated that market participants use the imbalance information published by the primary listing exchanges—which includes information on available, actionable liquidity—to make order submission decisions. However, unpaired shares on Cboe Market Close would represent only a subset of cancelled buying and selling interest that is no longer actionable and therefore, in the absence of any data or further justification to the contrary, the Commission does not believe that publishing this information would have a meaningful effect on the closing auction price formation process.

Furthermore, the Commission does not find Nasdaq's concern regarding its inability to confirm the accuracy of information disseminated by BZX compelling. A fundamental aspect of the national market system is reliance by national securities exchanges on information disseminated by another exchange, supplemented by Commission oversight of such legally enforceable obligations. Indeed, all national securities exchanges, including Nasdaq, regularly rely on information disseminated by other national securities exchanges in other contexts, such as for the handling, routing, and execution of orders.[178]

The Pitt/Spatt Report argues that, according to formal auction theory, bidding behaviors and closing price outcomes will be affected by the introduction of the Cboe Market Close. But, even if some market participants choose to send their MOC orders to the Cboe Market Close, the Commission believes that closing price efficiency is unlikely to be affected.[179] The official closing price established through the closing auction on the primary listing exchange is ultimately determined by the intersection of supply and demand, and the price does not change if an equal number of shares from MOC buy orders and MOC sell orders are executed away from the auction. If an unequal number of shares from MOC buy orders and MOC sell orders are sent to Cboe Market Close, then the shares that were not paired-off in Cboe Market Close are likely to be resubmitted back to the closing auction on the primary listing exchange. This is because the traders who would send MOC orders to Cboe Market Close instead of the closing auction on the primary listing exchange have a revealed preference for obtaining the closing price for such orders. If the trader fails to be paired-off on Cboe Market Close, then resubmitting their order to the closing auction on the primary listing exchange remains their primary option for obtaining the closing price.

It is possible that the unpaired shares from Cboe Market Close could be sent to a broker-dealer who offers off-exchange executions at the closing price. However, as a general matter, data show that most traders do not execute orders at the official closing price by trading off-exchange with broker-dealers.[180] That is, the data indicate that most traders have a revealed preference for trading in the official closing auction on the primary listing exchange over trading off-exchange with a broker-dealer at the official closing price. Thus, the Commission believes that the addition of the Cboe Market Close would not change this preference for trading in the official closing auction on the primary listing exchange over trading off-exchange with a broker-dealer, even if the trader ultimately chooses to trade in Cboe Market Close over both of these options. Finally, although it is possible that the trader who fails to execute in the Cboe Market Close could submit their order to the regular intraday trading session between 3:35 p.m. and 4:00 p.m., the Commission views this possibility as unlikely because, by virtue of sending a MOC order to Cboe Market Close, the trader has a revealed preference in executing at the official closing price, which is not guaranteed in the regular intraday trading session. Thus, the unpaired shares from the Cboe Market Close are likely to be resubmitted back to the official closing auction, and the Commission therefore believes that the closing price on the primary listing exchange is likely to remain unaffected by the Cboe Market Close.

Some commenters also argued that the proposal would affect the submission of LOC orders to the primary listing exchanges. But as BZX stated, LOC orders by their terms specify a price and therefore provide price protection. Thus, utilization of a LOC order suggests that a market participant is price sensitive and uniquely interested in obtaining an execution at, or better than, its specified price. By contrast, MOC orders do not specify a price and are submitted by market participants who may be less price sensitive and who may prioritize other aspects of a closing execution over price.[181] In addition, the cut-off times for submitting LOC orders to the primary listing exchanges are later in the trading day than the Cboe Market Close cut-off time. As such, the Commission does not believe that, solely on the basis of lower fees, it is likely that market participants would be more inclined to assume the risk of submitting MOC orders to the Cboe Market Close at or before 3:35 p.m. in circumstances where they otherwise would have submitted price-protected LOC orders into the primary listing exchanges' closing auctions later in the day.

As discussed above, Nasdaq and NYSE also asserted that the Cboe Market Close could discourage submission of orders in the intraday trading session and closing auctions in certain circumstances, such as if there were a large amount of paired-off MOC orders in Cboe Market Close and a subsequent lack of imbalance information disseminated on the primary listing exchanges.[182] However, the Commission does not believe the availability of the Cboe Market Close would increase this

[175] *See supra* notes 149–153 and 159 and accompanying text.

[176] *See supra* note 23.

[177] NYSE did not explain why it believed that MOC imbalances in Cboe Market Close would be important information.

[178] *See, e.g.,* Nasdaq Rule 4759 (which states that Nasdaq consumes quotation data from proprietary exchange data feeds for the handling, routing, and execution of orders, as well as for regulatory compliance processes related to those functions).

[179] Price efficiency is a measure of the quality of the closing price that is designed to assess whether the closing price reflects all relevant information.

[180] *See infra* note 194 and accompanying text.

[181] *See also* BZX Letter 2 at 3.

[182] *See supra* notes 129–131 and 152 and accompanying text.

risk beyond what currently exists. Again, Cboe Market Close would only execute paired-off MOC orders and therefore would not affect the net imbalance of MOC orders. And the Commission believes that the submission of orders could similarly be discouraged today if a large amount of MOC orders in a security had been paired-off on the primary listing exchange and there was little or no resulting imbalance disseminated by such exchange in their order imbalance indications. Irrespective of the exchange upon which the MOC orders are paired-off, the net imbalance published by the primary listing exchange would be expected to be the same. Moreover, because Cboe Market Close would publish the volume of paired-off MOC orders 15 minutes prior to the current NYSE MOC order entry cut-off time and 20 minutes prior to the current Nasdaq MOC order entry cut-off, market participants should have sufficient time to incorporate information relating to the levels of MOC interest paired-off in the Cboe Market Close in a given security into their decisions about order submissions into the closing auctions.

The Commission also disagrees with commenters that asserted that the proposal would inhibit DMMs' ability to establish closing prices because they would no longer have full visibility into the size and composition of MOC interest.[183] First, DMMs currently do not have full visibility into the composition of MOC interest, because they currently have no visibility into MOC interest traded on off-exchange venues. Thus, the proposal would not alter the information DMMs have relating to MOC interest executed off-exchange. Second, as already discussed above, the Commission believes that market participants, including DMMs, will have access, via the Cboe Auction Feed, to the amount of paired-off MOC volume on BZX well in advance of NYSE's order entry cut-off time and the start of the NYSE closing auction. A NYSE DMM could, for example, use the Cboe Market Close disseminated information regarding paired-off MOC interest for a given security in conjunction with information disseminated by the primary listing exchange in establishing the relevant context for any imbalances in NYSE closing auctions and calculating appropriate closing prices.[184] Moreover, the Commission believes that, as BZX stated, the Cboe Market Close could benefit market participants that do not wish to disclose information regarding their orders to DMMs by providing another venue to which they may send their orders for execution at the closing price.[185]

Nor does the Commission agree with those commenters that argued that the proposal contradicts the Commission's approval of Amendment 12 to the LULD Plan.[186] As stated above, NYSE and Nasdaq asserted that it would be contradictory for the Commission to find it in the public interest in Amendment 12 of the LULD Plan to require the centralization of re-opening auction liquidity at the primary listing exchange, but sanction the execution of closing auction trading interest on a venue other than the primary listing exchange.[187] However, the LULD Plan does not mandate that market participants consolidate their orders at the primary listing exchanges, but rather requires that a trading pause continue until the primary listing exchange has re-opened trading.[188] While trading may not begin until the re-opening on the primary listing exchange, market participants continue to have the choice as to where to submit their orders. Likewise, with respect to Cboe Market Close, official closing prices would continue to be determined through the closing auctions conducted by the primary listing exchanges. However, market participants would have the choice to submit their orders to Cboe Market Close or a closing auction on a primary listing exchange to obtain an execution at the official closing price.

As discussed above, NYSE and Nasdaq argued that if the proposed rule change resulted in the removal of all MOC orders from the primary listing exchanges' closing auctions, and circumstances arose such that due to other factors no closing auction could be held, in accordance with NYSE Arca's and Nasdaq's rules the official closing price would be the consolidated last sale price.[189] NYSE and Nasdaq provided data and, in the case of Nasdaq, counterfactual examples,[190] that sought to quantify the extent to which last consolidated sale prices would have differed from closing prices determined through closing auctions. NYSE and Nasdaq argue that these examples show that price discovery would be harmed if they were unable to conduct closing auctions because they did not receive any MOC orders and there was no other closing auction-eligible trading interest. However, the Commission believes that differences in prices alone are not dispositive of effects with respect to price discovery or efficiency, and it is not clear that the data NYSE and Nasdaq submitted actually reflects an effect on price discovery.

First, the data and analyses that commenters provided did not analyze subsequent price changes on the next trading day following the closing auction. Thus, it is unclear whether the price differentials between the official closing price and the price of the last sale prior to the closing auction indicate better or worse price discovery or efficiency. A large difference between a reference price (*e.g.,* the last sale price) and the official closing price may reflect relevant market information if the official closing price persists to the next trading day, or it may reflect a temporary price pressure if the official closing price subsequently reverses to the reference price on the next trading day.[191] Second, when comparing price differences across securities, the analyses did not distinguish whether the observed differences were due to the removal of MOC orders from the primary listing exchange or due to liquidity differences. And because Nasdaq's analysis involved only 1,653 closing crosses that occurred between January 1, 2016, and August 31, 2017 (which the Commission estimates accounts for approximately 0.44% of all Nasdaq closing auctions over that time period) the Nasdaq analysis may not be a representative sample.[192] Finally, Nasdaq did not address the liquidity of the securities analyzed. If the securities

[183] *See supra* note 153 and accompanying text.

[184] In addition, one commenter that is supportive of the proposal is a DMM on NYSE who stated that the proposal ensures that the price discovery process remains intact because BZX would only match buy and sell MOC orders and not limit orders, which it stated, ultimately lead to price formation. *See* Virtu Letter at 2.

[185] *See supra* notes 168–170 and accompanying text.

[186] *See supra* note 149 (discussing comments arguing that it would be inconsistent for the Commission to find it in the public interest to consolidate trading in a re-opening auction, while sanctioning fragmentation of trading in a closing auction).

[187] *See supra* notes 146–147 and accompanying text.

[188] *See* Securities Exchange Act Release No. 79845 (Jan. 19, 2017), 82 FR 8551, 8552 (Jan. 26, 2017). *See also* BZX Letter 1 at 8–9; and Bollerman Letter at 3.

[189] *See* Nasdaq Letter 2 at 3; NYSE Letter 1 at 5. *See also, e.g.,* NYSE Rule 123C(1)(e); NYSE Arca Rule 1.1(ll)1.

[190] *See supra* note 138 and accompanying text (stating that Nasdaq identified previously conducted closing auctions that consisted entirely of MOC orders and described what it believed the official closing price would have been had no MOC orders been submitted to those closing auctions).

[191] *See, e.g.,* Joel Hasbrouck, ''Measuring the Information Content of Stock Trades,'' *Journal of Finance* 46, 179–207 (1991), *available at www.jstor.org/stable/2328693.*

[192] *See supra* note 138.

analyzed were highly illiquid, price differences between the last sale price and the closing auction price may have been large for reasons unrelated to the specifics of the auction mechanism.[193] Given these limitations, the data and analysis provided in these comments do not alter the Commission's conclusion that the proposal is consistent with the Act.

In addition, the Commission acknowledges that it may be possible that following implementation of the Cboe Market Close there could be instances in which no MOC orders participate in a primary listing exchange's closing auction. But the fact that the majority of MOC orders today continue to be executed in the closing auctions on the primary listing exchanges [194] despite the numerous destinations currently available to which MOC orders may be sent (including primary listing exchange auctions, competing closing auctions, ATSs, and other off-exchange venues) suggests that at least some market participants base decisions regarding where to send closing orders not solely on fees, but rather on many other factors, including the reliability, stability, technology and surveillance associated with such auctions.[195] Similarly, in assessing whether to utilize Cboe Market Close, market participants may evaluate other consequences of using the proposed mechanism, such as by monitoring the extent to which their orders were matched or not matched on BZX (with the resulting need to send their MOC orders to more than one venue if not matched), as well as the opportunity cost incurred by committing to transact at the closing price at an earlier time than they otherwise would have had they chosen to send their MOC orders to the primary listing exchanges. Moreover, should market participants choose to send a substantial portion of MOC orders to the Cboe Market Close, the primary listing exchanges have various other options available to them to try to compete for such orders, for example, through improvements to their auction processes or through modifications to their fee structures, and it is unlikely that such exchanges would choose to accept the complete loss of MOC order market share and make no attempt at a competitive response.

Further, the use of the consolidated last sale price as the official closing price in situations when a primary listing exchange does not conduct a closing auction is not mandated by the Act or rules thereunder, but rather is established by the rules of that exchange.[196] Therefore, if a primary listing exchange believes that such prices no longer reflect an appropriate closing price in those scenarios, it is within the exchange's discretion to reevaluate whether reliance on the last consolidated sale price is the appropriate means for determining the official closing price in such scenarios. An exchange may, at any time, file a proposed rule change to amend its rules to establish alternative methods that it believes to be more appropriate for determining the official closing price should no auction be held.

2. Off-Exchange MOC Activity and Fragmentation

a. Comments on the Proposal

Commenters, including Nasdaq and NYSE, also argued that the proposal is inconsistent with Section 6(b)(5) of the Act because it would fragment the markets beyond what currently occurs through off-exchange closing price matching by broker-dealers. Nasdaq and NYSE stated that such off-exchange activity is structurally different from Cboe Market Close and thus asserted that it would be inappropriate to analogize to such off-exchange activity in evaluating the proposal.[197] Nasdaq stated that the proposal would introduce a new category of price-matching venues, and that as a neutral trading platform, an exchange such as BZX is capable of attracting and aggregating more liquidity than a broker-dealer which would exacerbate the harm caused by fragmentation.[198] In the Pitt/Spatt Report, Nasdaq added that the underlying structure of off-exchange markets is different from the proposal in various respects.[199] Moreover, according to Nasdaq, trades resulting from broker-dealer off-exchange activity are often also involved in the closing auction on the primary listing exchange, thus also contributing to closing auction price discovery.[200] Both Nasdaq and NYSE argued that it should not be assumed that the current level of MOC orders executed away from the primary listing exchange is a reasonable proxy for the effect of the proposal.[201] Nasdaq and NYSE stated that broker-dealers that execute MOC orders on behalf of clients at the closing price could be risking their own capital on such transactions.[202] Nasdaq and NYSE stated that such capital commitment by broker-dealers would likely be a constraining force on the magnitude of MOC orders executed away from primary listing exchanges, while BZX would have no such obligation to commit capital in Cboe Market Close.[203] For this reason, NYSE also argued that the BZX proposal, if successful, could result in a much higher percentage of MOC orders diverted away from the primary listing exchange than what occurs today.[204]

In addition, NYSE provided data that focused on existing off-exchange matching services.[205] NYSE stated that data it analyzed from certain closing auctions with large imbalances [206] shows that, for securities with 1,000 shares or less reported at the official closing price (resulting from executions

[193] *See id. See also* NYSE Report at 12 (''The difference between the last sale price in the continuous market and the closing auction price, particularly for less active securities where the last sale price may be stale, can be significant.'').

[194] *See* Memorandum to File from DERA, Bats Market Close: Off-Exchange Closing Volume and Price Discovery, dated December 1, 2017 (''DERA Analysis''), *available at https://www.sec.gov/files/bats_moc_analysis.pdf* (finding that, on average, approximately 9.3% of closing volume is matched off-exchange at the primary listing exchange's closing price); NYSE Report at 22 (stating that closing auctions on the listing exchanges currently process the vast majority of the MOC and LOC orders in the market); and Nasdaq Data Memo (providing data relating to the level of matched MOC volume in Nasdaq closing auctions).

[195] *See generally,* Nasdaq Letter 1 at 3–4 (asserting that the Nasdaq closing cross has been successful due to its integrity, stability, reliability, and regulation).

[196] *See, e.g.,* NYSE Rule 123C(1)(e); and NYSE Arca Rule 1.1(ll)(1)(C).

[197] *See, e.g.,* Nasdaq Letter 2 at 13; and NYSE Report at 10. GTS further stated that it believes such broker-dealer services deprive the DMM of content that is critical to pricing a closing auction and the Commission should study the effect of this activity on closing auctions. *See* GTS Securities Letter 2 at 4. *See infra* note 232 and accompanying text discussing the DERA analysis of the relationship between the proportion of MOC orders currently executed off-exchange and closing price discovery and efficiency.

[198] *See* Nasdaq Letter 2 at 13.

[199] *See* Pitt/Spatt Report at 21.

[200] *See id.* The Nasdaq Data Memo also provided data and analysis arguing that a portion of the broker-dealer volume executed off-exchange after the close at the primary listing exchange's closing price reflects brokers submitting customers' interest to the closing cross and subsequently reporting an over-the-counter trade between the broker and its customers. *See also* Nasdaq Statement at 31.

[201] *See* NYSE Report at 10; and Nasdaq Statement at 30.

[202] *See* NYSE Report at 10; and Nasdaq Statement at 30.

[203] *See* NYSE Report at 10; and Nasdaq Statement at 30.

[204] *See* NYSE Report at 10.

[205] *See* NYSE Letter 3 at 3; and NYSE Statement at 22. *See also* NYSE Letter 2 at 4. The Commission notes that NYSE also asserted, in regards to the DERA Analysis, that drawing conclusions regarding Cboe Market Close's potential impact on price discovery by comparing Cboe Market Close to off-exchange MOC activity represented an apples-to-oranges comparison due to the structural differences between the proposal and the services of broker-dealers executing MOC orders off-exchange. *See* NYSE Statement at 25.

[206] *See* NYSE Letter 3 at 3. NYSE stated that it reviewed closing auctions with imbalances of 50% of paired shares as of 3:50 p.m. *See id.* at 4.

that occurred both on and off-exchange), volatility in the last 10 minutes of trading leading into the closing auction is 52% higher when more than 75% of the volume executed at that security's official closing price (*i.e.,* closing share volume) is executed off-exchange, compared to when less than 25% of a security's closing share volume is executed off-exchange. In addition, NYSE asserted that its data showed that the official closing price generated in auctions for securities with 1,000 shares or less reported at the official closing price (resulting from executions that occurred both on and off-exchange) was more than twice as far away from the last consolidated sale price and nearly twice as far away from the market volume weighted average price (''VWAP'') over the last two minutes of trading before the closing auction when more than 75% of a security's closing share volume is executed off-exchange.[207] Accordingly, NYSE concluded that these price differentials suggest that existing fragmentation degrades the quality of the closing price and further asserted that this demonstrates ''a substantial likelihood that any appreciable redirection'' of MOC orders from the primary listing exchange to Cboe Market Close would negatively affect price discovery and would be most acute for ''less-liquid'' stocks.[208]

b. BZX Response to Comments

BZX stated that several off-exchange venues currently offer executions at the official closing price and therefore provide a forum to which participants may choose to send MOC orders in lieu of sending MOC or LOC orders to the primary listing exchange.[209] Contrary to assertions by Nasdaq and NYSE,[210] BZX provided certain data regarding trading volume at the close on venues other than primary listing exchanges to show that the proposal would ''not introduce a new type of fragmentation at the close.'' [211] BZX asserted that because this existing fragmentation has had no adverse effect on the price discovery process, there is no basis to believe that the proposal ''would negatively contribute to meaningful fragmentation to the detriment of the price discovery process.'' [212]

Moreover, other commenters argued that the proposal could increase transparency, reliability and price discovery at the close by incenting brokers that would otherwise seek to match MOC orders off-exchange to re-direct their MOC orders to a public exchange.[213] In addition, BZX argued that attracting order flow away from off-exchange venues would have the additional benefit of increasing the amount of volume at the close executed on systems subject to the resiliency requirements of Regulation SCI.[214]

BZX presented several critiques in response to NYSE's data regarding the effect of off-exchange MOC activity on closing auction price formation. First, BZX stated that NYSE did not provide the number of closing auctions included in its data set.[215] Based on its own analysis, discussed below, BZX estimated that the number of auctions included in NYSE's data set for auctions with 1,000 shares or less was less than a 100th of 1% of all auctions.[216] Therefore, BZX argued that NYSE's findings are ''of no statistical significance'' and BZX also asserted that NYSE selectively chose its data to support NYSE's conclusions.[217]

BZX further argued that it is possible that low volume securities with severe imbalances would be subject to price variations between the last sale and the official closing price, regardless of the amount of off-exchange closing activity.[218] In addition, BZX stated that the data that NYSE provided for auctions with more than 10,000 shares shows that the ''impact on closing prices is dampened in more actively traded securities,'' which BZX believes undercuts NYSE's conclusions and ''further highlights the selective and limited nature of NYSE's data set.'' [219]

Furthermore, despite assertions from Nasdaq and NYSE that BZX did not provide data on the effect of off-exchange MOC activity on closing auction price formation,[220] BZX conducted its own analysis of data from all primary auctions in NYSE-listed securities for which there was a closing auction and a last sale regular way trade, regardless of size, from January 2, 2017 through September 29, 2017.[221] BZX stated that its analysis shows that ''the average price gap between the last sale and the official closing price was 9.09 basis points across all groups.'' [222] BZX stated that it also found that ''price gaps are greater amongst auctions with less than 25% of closing volume'' executed off-exchange.[223] BZX concluded that its analysis contradicts NYSE's conclusions, asserting that it shows that ''the amount of [off-exchange] closing volume has little to no relationship to the primary listing [exchange's] closing auction process.'' [224]

In addition, BZX stated that it also found similar patterns ''when it analyzed securities based on their [average daily volume] instead of auction size.'' [225] BZX acknowledged that, while securities with average daily volume of less than 10,000 shares appear to have the most volatility, these securities account for a small percentage of overall auction volume, and argued that such volatility ''is more likely indicative of the applicable security's trading characteristics.'' [226]

BZX added that there is no support for a contention that the effect of the proposal on price discovery may be greater because more market participants might use an exchange offering as opposed to a non-exchange offering.[227] As such, BZX asserted that its data provides compelling evidence for the proposal's potential lack of an effect on price discovery.[228]

[207] *See id.* at 3–4. NYSE provided data that they asserted illustrates that the same degradation in the quality of the official closing price also occurs in closes for securities with 10,000 shares or more reported at the official closing price. *See id.* at 4.

[208] *See id.* at 3–4; and NYSE Statement at 23–24.

[209] BZX Letter 2 at 3.

[210] *See* Nasdaq Statement at 28; and NYSE Statement at 21.

[211] *See* BZX Letter 2 at 4–5. BZX stated that over the first nine months of 2017, off-exchange volume at the official closing price represented approximately 30% of Nasdaq closing volume for Nasdaq-listed securities and 23% of NYSE closing volume for NYSE-listed securities and that, over the course of 2017, the amount of off-exchange closing volume has been increasing. *See id.* BZX estimated, based on its internal data, that this off-exchange volume represented approximately $270 billion and $426 billion in notional volume in Nasdaq-listed and NYSE-listed securities, respectively. *See* BZX Statement at 16.

[212] *See id.*

[213] *See* Clearpool Letter at 3–4; ViableMkts Letter at 4–5; and BZX Letter 2 at 5–6. *See also* Angel Letter at 4.

[214] *See* BZX Letter 2 at 11.

[215] *See* BZX Letter 3 at 2.

[216] *See id.* at 2–3; and BZX Statement at 13–14

[217] *See* BZX Letter 3 at 2–3.

[218] *See id.*

[219] *See id.*

[220] *See* Nasdaq Statement at 28; and NYSE Statement at 21.

[221] *See* BZX Letter 3 at 3. BZX stated that it reviewed auctions with imbalances of 50% or more of paired shares at 3:55p.m. BZX also stated that it compared auctions where less than 25%, 25% to 50%, 50% to 75%, and more than 75%, of the closing volume was reported to the TRF. BZX also grouped its data amongst auctions with 1,000,000 shares or more, 100,000 shares to 1,000,000 shares, 10,000 to 100,000 shares, 1,000 to 10,000 shares, and less than 1,000 shares.

[222] *Id. See also* BZX Statement at 12 n. 41 (noting that it, like NYSE, utilized the difference between the last sale price and official closing price to determine price impact but it believes this to be a ''reasonable measure of the quality'' of closing auction price discovery).

[223] *See* BZX Letter 3 at 3.

[224] *Id.* at 3–4. *See also* BZX Statement at 13.

[225] *See* BZX Letter 3 at 3.

[226] *See id.* at 4. *See also* BZX Statement at 13.

[227] *See* BZX Statement at 13 n. 46.

[228] *See id.* at 15.

c. Commission Discussion and Findings

As Nasdaq and NYSE noted,[229] comparisons to off-exchange MOC activity are not a perfect measure of the potential resulting effect of the proposal because the structures of many off-exchange MOC trading mechanisms differ from the structure of Cboe Market Close. Importantly, unlike what occurs in some off-exchange MOC activity, Cboe Market Close would only execute paired-off MOC interest, and therefore, even if it attracts a larger percentage of MOC orders than are currently executed off-exchange, Cboe Market Close would not affect the net MOC order imbalance, which could contribute to price formation in a closing auction. The Commission agrees with NYSE and Nasdaq that it should not rely on inapposite analogies in approving the proposal. Therefore, and as discussed in more detail below, in finding that Cboe Market Close is consistent with Section 6(b)(5) the Act, the Commission is not persuaded by (or otherwise relying upon) any analyses or comparisons submitted to the record that focused on the purported effects of off-exchange MOC activity.

However, if the Commission were to consider analyses regarding off-exchange MOC activity, the Commission notes that the NYSE analysis, when comparing price differences across securities, did not distinguish whether the observed price differences were due to the removal of MOC orders from the primary listing exchange or due to liquidity or other differences not controlled for in the analysis. As described above, NYSE provided an analysis comparing price differences between securities in which 75% of the total closing volume was executed off-exchange, and securities in which 25% of the total closing volume was executed off-exchange. NYSE argued that securities with more off-exchange MOC activity have more closing price volatility. However, the Commission believes that closing price volatility and off-exchange activity may be correlated with unobserved liquidity factors. For example, small stocks tend to have high trading costs (*e.g.,* wider spreads, thinner order books) and more volatility on average.[230] Therefore, it is possible that the price differences observed by the commenter could be due to differences in liquidity or other factors not controlled for in the analysis, rather than the levels of off-exchange MOC activity.[231] In contrast, the data provided by BZX covers a broader set of auctions and provides more granular data. That data observed greater volatility in less-liquid stocks and illustrates that those securities account for a much smaller percentage of auction volume, and the observed difference is likely indicative of liquidity or other characteristics common to less-liquid stocks.

d. DERA Analysis

In connection with the consideration of the proposal, the staff from the Commission's Division of Economic and Risk Analysis (''DERA'') sought to explore the correlation of closing price discovery and efficiency with existing off-exchange MOC activity.[232] DERA found that, in a sample spanning the first quarter of 2017, variation in off-exchange MOC share (*i.e.,* the amount of MOC volume executed off-exchange relative to the amount of volume executed in the primary listing exchange closing auction) is not significantly correlated with closing price discovery or efficiency, controlling for primary auction activity, off-exchange trading activity during regular trading hours, average market capitalization, average daily trading volume, average daily stock return volatility, and closing price volatility.[233] In further sample splits (*e.g.,* by listing venue, security type, and index inclusion), DERA found some mixed evidence of statistically significant correlations, but no consistent or conclusive evidence that contradicts the full-sample analysis. This staff analysis was placed in the comment file prior to the issuance of the Approval Order. And, while the Approval Order recognized that a comparison to off-exchange MOC activity represents an inapposite analogy for purposes of considering the proposal's potential effect on closing auction price discovery, it discussed the DERA Analysis, which suggested that existing levels of fragmentation of closing auctions through the off-exchange MOC activity DERA studied are not, on average, significantly correlated with closing price discovery or efficiency.

NYSE and Nasdaq both stated that the Commission should not attempt to estimate the effect of Cboe Market Close through a comparison to off-exchange MOC trading because of the structural differences between off-exchange MOC trading and Cboe Market Close.[234] They also both critiqued the methodology employed in the DERA Analysis.[235] In addition, the Amihud/Mendelson Report commissioned by Nasdaq purports to provide evidence of a negative and statistically significant relationship between closing price efficiency, measured by weighted price contribution (*WPC*), and the off-exchange market share (*OEMS*) of closing volume that occurs off-exchange between 4:00 p.m. and 4:10 p.m. at the closing price. In particular, the Amihud/Mendelson Report studies the largest 500 Nasdaq stocks by market capitalization during the last two quarters of 2017 and states that a one standard deviation increase in *OEMS* decreases *WPC1* (their first measure of closing price efficiency) by 9.4% of its mean and *WPC2* (their second measure of closing price efficiency) by 25.7% of its mean. The Amihud/Mendelson Report further purports to show that their results are robust to the inclusion of stock fixed effects, date fixed effects, and a variety of intraday control variables.

As previously stated, the Commission agrees with NYSE and Nasdaq that the structure of existing mechanisms to conduct off-exchange MOC trading may not, in all instances, be identical to Cboe Market Close.[236] Therefore, the Commission's belief that Cboe Market Close should not disrupt the price discovery process and closing auction price formation is not dependent on the DERA Analysis or other studies focused on off-exchange MOC activity.[237] While the Commission has reviewed NYSE's and Nasdaq's critiques of the

[229] *See supra* notes 198–203 and accompanying text.

[230] For example, one study examined fragmentation in the U.S. equities markets and showed that small cap stocks are more fragmented than large cap stocks for Nasdaq-listed issues. It also found that fragmentation is correlated with higher short-term volatility, but increased market efficiency. *See* Maureen O'Hara and Mao Ye, ''Is Market Fragmentation Harming Market Quality?,'' *Journal of Financial Economics* 100, 459–474 (2011), *available at http://www.sciencedirect.com/science/article/pii/S0304405X11000390.*

[231] *See also supra* notes 215–228 and accompanying text (discussing BZX's comments with respect to NYSE's analysis and BZX's own analysis of such data).

[232] *See* DERA Analysis *supra* note 194. The DERA Analysis states that it does not attempt to establish a causal link between off-exchange activity and closing price discovery and efficiency. *See* DERA Analysis at 1–2.

[233] Though the DERA Analysis' findings suggest ''that existing levels of fragmentation do not, on average, correlate with price discovery or price efficiency,'' the DERA Analysis makes clear that ''the data we have does not allow us to predict how [Cboe Market Close] would affect price discovery in the closing auction process, and market participants' use of limit-on-close orders in the closing auction processes.''

[234] *See* NYSE Statement at 25 (stating that comparing Cboe Market Close to off-exchange MOC trading is an ''apples-to-oranges comparison''). *See also* Nasdaq Statement at 31.

[235] *See, e.g.,* NYSE Report at 9–18; Nasdaq Statement at 29–31; Pitt/Spatt Report at 21.

[236] *See supra* notes 198–203 and accompanying text.

[237] *See supra* Section III.B.

methodology of the DERA Analysis, the DERA Analysis does not bear on the Commission's decision to approve BZX's proposal.

Furthermore, even though NYSE's and Nasdaq's critiques of the methodology of the DERA Analysis are not relevant to this order, the Commission notes that it is not persuaded by the findings of the Amihud/Mendelson Report because it believes there are two methodological flaws in that study that lead to an overstatement of the economic significance of the findings. First, the Amihud/Mendelson Report expresses the changes in *WPC1* and *WPC2* as percentages of their respective means. The means of *WPC1* and *WPC2* are very close to zero because any individual *WPC1* or *WPC2* observation can be positive or negative. The percentage decreases in *WPC1* and *WPC2* appear high (9.4% and 25.7%) because the *OEMS* effects on *WPC1* and *WPC2* are expressed as percentages of near-zero numbers. If the Amihud/Mendelson Report expressed the *OEMS* effects on *WPC1* and *WPC2* as a percentage of their respective standard deviations instead, then the Amihud/Mendelson Report would obtain much lower percentage effects that are unlikely to be economically significant. Second, the Amihud/Mendelson Report takes the log transformation of the *OEMS* variable in their tests. By construction, the *OEMS* variable is bound between zero and one, and taking the log transformation of this variable will greatly skew its distribution and increase its standard deviation. If the standard deviation of the *OEMS* variable is inflated, then any economic effect on closing price efficiency resulting from a one standard deviation increase in the *OEMS* variable will also be inflated. These methodological flaws cast doubt on the economic significance of the findings in the Amihud/Mendelson Report.

3. Competing Closing Auctions

a. Comments on the Proposal

In support of its proposal, BZX stated that Nasdaq and NYSE Arca operate closing auctions for securities listed on other exchanges and that these closing auctions produce independent prices that may differ from a security's official closing price determined in the closing auction conducted by the security's primary listing exchange.[238] BZX stated that in contrast to Cboe Market Close, these competing closing auctions not only fragment closing auction trading interest, but also detrimentally impact price discovery.[239]

In response, both Nasdaq and NYSE distinguished the Cboe Market Close from competing closing auctions currently operated by Nasdaq and NYSE Arca for securities listed on other exchanges. Nasdaq stated that the BZX proposal is a price-matching order type and not a competitive single-priced auction that offers price discovery.[240] Nasdaq stated that its single-priced auction for non-Nasdaq listed stocks was designed to maximize order interaction and improve price discovery for issuers, and was not designed to siphon orders away from the primary listing exchange without seeking to improve price discovery.[241] Accordingly, Nasdaq argued that the fact that it and NYSE Arca offer competing closing auctions is irrelevant to evaluating BZX's proposal because those auctions are fundamentally different from the BZX proposal.[242] Similarly, NYSE argued that it believed it was misleading to compare the proposal to these competing closing auctions operated by Nasdaq and NYSE Arca for securities listed on other exchanges because BZX would be offering neither a competing closing auction nor a facility to establish the official closing price should a primary listing exchange invoke its closing auction contingency plan.[243]

Nasdaq further argued that competing closing auctions cause minimal fragmentation, as volumes in those auctions are ''miniscule.'' [244] Nasdaq further asserted that less than half of Nasdaq-listed corporate issues experience price dislocations in competing closing auctions.[245] Moreover, both Nasdaq and NYSE stated that there were multiple instances when they had received orders in their competing closing auctions for securities listed on another exchange, and they both chose to contact the firms that submitted those orders and encouraged them to instead route their orders directly to the primary listing exchange.[246]

In contrast, other commenters stated that these competing closing auctions may attract price-setting limit orders from the primary listing exchange and impede price discovery, unlike the BZX proposal which is limited to market orders.[247]

b. BZX Response to Comments

As noted above, BZX stated that, unlike Cboe Market Close, the competing closing auctions operated by Nasdaq and NYSE Arca accept price-setting limit orders, in addition to MOC orders, and therefore may harm price discovery.[248] Therefore, BZX questioned whether Nasdaq's and NYSE's concerns regarding the potential impact of Cboe Market Close should not also apply to the competing closing auctions operated by Nasdaq and NYSE Arca.[249] BZX argued that Nasdaq and NYSE's assertions that they currently attract low trading volumes in their competing closing auctions are irrelevant to an analysis of their potential effect on fragmentation.[250] BZX argued that should these auctions see an increase in order flow, they would increase existing market fragmentation.[251] BZX also asserted that such competing closing auctions often may produce bad auction prices on the non-primary listing exchange, as compared to the proposed Cboe Market Close which would ensure that market participants receive the official closing price.[252] In addition, in response to NYSE's assertion that it contacted firms that submitted orders to NYSE Arca's competing closing auction and encouraged them to instead submit

[238] *See* Notice at 23322.

[239] *See* BZX Letter 1 at 3–4.

[240] *See* Nasdaq Letter 2 at 8–9.

[241] *See id.* at 9.

[242] *See id.*

[243] *See* NYSE Letter 2 at 3.

[244] *See* Nasdaq Letter 2 at 9–11. *See also* NYSE Letter 3 at 5–6. NYSE also stated that it does not have a business interest in running closing auctions for securities listed on other markets. It stated it operates the NYSE Arca closing auction for resiliency purposes, which it believes outweighs any modest negative effect on fragmentation. *See id.*

[245] *See* Nasdaq Letter 2 at 11.

[246] *See id.* at 13; and NYSE Letter 3 at 6. *See also infra* note 253 and accompanying text.

[247] *See* Clearpool Letter at 3; IEX Letter at 2; Angel Letter at 4; SIFMA Letter 2 at 2; and Bollerman Letter at 3.

[248] *See* BZX Letter 1 at 5; BZX Letter 2 at 2; and BZX Letter 3 at 4. BZX provided evidence of 14 instances in June 2017 where a Nasdaq-listed security had no volume in Nasdaq's closing auction but did have volume in NYSE Arca's closing auction. *See* BZX Letter 1 at 5.

[249] *See, e.g.,* BZX Letter 2 at 2.

[250] *See* BZX Letter 1 at 6.

[251] *See id.* BZX also stated that, despite their potential utility as a back-up in case of a market impairment, Nasdaq and NYSE Arca run these competing auctions on a daily basis, regardless of whether there is an impairment at a primary listing exchange. *See id.* BZX further questioned why these exchanges do not utilize test symbols and test data in order to confirm the operational integrity of the auction processes without potentially harming the price discovery process by the primary's closing auction. *See* BZX Letter 3 at 5.

[252] *See* BZX Letter 1 at 4; and BZX Letter 2 at 2. BZX asserted that 86% of closing auctions conducted by Nasdaq for NYSE-listed securities in June 2017 resulted in closing prices different from the official closing price and 84% of competing closing auctions conducted by NYSE Arca for Nasdaq-listed securities in June 2017 resulted in closing prices different from the official closing price. BZX Letter 1 at 4.

orders to the primary listing exchange, BZX provided data that it stated evidences that NYSE has not, in fact, discouraged order flow to their competing auctions and that NYSE Arca's competing auction ''continues to maintain not insignificant monthly volume'' in at least two securities.[253]

c. Commission Discussion and Findings

The Commission believes, as some commenters argued, that there are certain fundamental differences between BZX's proposed Cboe Market Close and existing competing closing auctions. First, BZX's proposed Cboe Market Close is not a closing auction. Further, as NYSE and Nasdaq stated, their existing competing, single-priced closing auctions accept LOC orders (which specify target prices) and therefore, produce closing prices independent from those determined through the primary listing exchanges' closing auctions. As pointed out by BZX, this could affect the closing price on the primary listing exchange by potentially diverting LOC orders that contribute to price discovery away from the primary listing exchange's closing auction.[254] In contrast, BZX's proposal would not accept LOC orders. Rather, Cboe Market Close only matches MOC orders. Thus, based on its design, Cboe Market Close should not affect the price formation process in the closing auctions on the primary listing exchanges.

C. Potential Effect on Issuers and Other Market Participants

1. Comments on the Proposal

Several commenters stated that the proposal could harm issuers, particularly small and mid-cap companies.[255] Many of these commenters argued that because, in their view, the proposal undermines the reliability of the closing process and/or the official closing price it also poses a risk to listed companies and their shareholders.[256] Many of these commenters, some of which are issuers, stated that the current centralized closing auctions on the primary listing exchanges contribute meaningful liquidity to a company's stock, facilitate investment in the company, and help to lower the cost of capital. These commenters expressed concern that the potential additional fragmentation they believed could be caused by the proposal could negatively affect liquidity during the closing auction, causing detrimental effects to listed issuers.[257]

In addition, commenters stated that closing prices play an important role in the pricing of pooled investment vehicles, derivative securities, and benchmark indices.[258] One of these commenters asserted that because the closing price is a critical data point for investors, the Commission should take ''great caution'' in considering any changes related to the primary listing exchanges' closing auctions.[259]

Moreover, some commenters argued that the centralization of liquidity at the open and close of trading, and how primary listing exchanges perform during the opening and closing, are important factors for issuers in determining where to list their securities.[260] Commenters also stated that the additional risk posed to listed companies from an unreliable or unrepresentative closing price and/or process could affect an issuer's decision where to list and/or cause companies to forgo going public.[261] Nasdaq added that the proposal would undermine confidence in the price discovery process and the mere perception of these risks could discourage issuers from going public.[262]

2. BZX Response to Comments

BZX stated that because the proposal only matches paired-off MOC orders, it ''would not adversely impact the trading environment for issuers and their securities.'' [263] BZX further stated that unlike the competing closing auctions run by NYSE Arca and Nasdaq, the proposal would not create a price that deviates from the official closing price, and therefore, the proposal ''would not impact listed issuers or the market for their securities.'' [264]

3. Commission Discussion and Findings

As discussed above, BZX has demonstrated that because Cboe Market Close will only execute paired-off MOC orders, it should not disrupt the price discovery process.[265] Accordingly, the proposal should not lead to the detrimental effects that commenters have raised regarding the reliability of official closing prices, confidence in closing prices and pricing of benchmark indices, increased volatility, liquidity conditions for particular stocks, and the cost of raising capital. Further, as described above, because BZX will disseminate the amount of matched shares at 3:35 p.m.—well before the cut-off time for the primary listing exchanges' closing auctions [266]—the Commission does not believe that the proposal would negatively affect visibility and transparency into the closing auction process on the primary listing exchanges, nor would it limit the quality and quantity of information on trading dynamics that the primary

[253] BZX Letter 3 at 4.

[254] Competing auctions could also potentially reduce the centralization of orders at the primary listing exchange's closing auction, which NYSE and Nasdaq argued was a critical element of the primary listing exchanges' closing auctions. *See* Nasdaq Letter 1 at 11; Nasdaq Letter 2 at 5–6; Nasdaq Statement at 22; NYSE Statement at 21; NYSE Report at 12; and NYSE Letter 1 at 4.

[255] *See, e.g.,* Nasdaq Letter 1 at 6–7; Nasdaq Letter 2 at 1–2; Nasdaq Statement at 27; NYSE Letter 1 at 3; GTS Securities Letter 1 at 2–5; Customers Bancorp Letter; Orion Group Letter; IMC Financial Letter at 1–2; Southern Company Letter; Letter from Cole Stevens, Investor Relations Associate, Nobilis Health, (July 6, 2017) (''Nobilis Health Letter''); Letter from Christopher A. Iacovella, Chief Executive Officer, Equity Dealers of America, (July 12, 2017) (''EDA Letter'') at 1–2; Coupa Software Letter; Trade Desk Letter; and Duffy/Meeks Letter at 1.

[256] *See, e.g.,* NYSE Letter 1 at 3; IMC Financial Letter at 1–2; Nobilis Health Letter; EDA Letter at 1–2; Coupa Software Letter; Letter from M. Farooq Kathwari, Chairman, President & CEO, Ethan Allen Interiors, Inc. (July 24, 2017) (''Ethan Allen Letter''); Trade Desk Letter; BioCryst Letter; Digimarc Letter; Duffy/Meeks Letter at 1–2; NBT Bancorp Letter; Global Payments Letter; CA Technologies Letter; Sirius Letter; and PayPal Letter. Several issuers also asserted that decentralizing closing auctions will increase volatility, reduce visibility, and negatively affect liquidity for equity securities. *See, e.g.,* Customers Bancorp Letter; Orion Group Letter; and Nobilis Health Letter.

[257] *See, e.g.,* Customers Bancorp Letter; Orion Group Letter; Southern Company Letter; and Duffy/Meeks Letter at 1–2. In contrast, one commenter argued that the proposal would attract more liquidity at the official closing price because the lower aggregate cost of trading at the official closing price would likely result in incremental increases in trading volumes at the official closing price. In addition, this commenter stated that the ability to enter MOC orders into Cboe Market Close with little risk of information leakage may attract an additional source of liquidity from ''patient investors'' that seek to trade large amounts of stock but may not utilize the primary listing exchanges' closing auctions due to concerns about information leakage. *See* ViableMkts Letter at 2.

[258] *See* Pitt/Spatt Report at 6–7; and Letter from Alexander J. Matturri, CEO, S&P Dow Jones Indices (July 18, 2017) (''SPDJI Letter'') at 1–2. *See also, e.g.,* Coupa Software Letter; and Trade Desk Letter.

[259] *See* SPDJI Letter at 2. *See also* NYSE Report at 23–24. In contrast, one commenter acknowledged that while affecting the quality of the closing price is an objection that deserves close analysis, as the closing price is ''the most important price of the day,'' and would warrant rejection of the proposal, the commenter does not believe the proposal would harm the quality of the closing price. *See* Angel Letter at 4.

[260] *See, e.g.,* EDA Letter at 1; Duffy/Meeks Letter at 1; and GTS Securities Letter 2 at 1–2.

[261] *See, e.g.,* NYSE Letter 1 at 3 and 9; GTS Securities Letter 1 at 3–5; and EDA Letter at 1. In addition, one commenter stated that further fragmenting the market would limit the quality and quantity of information on trading dynamics that the primary listing exchanges provide to their listed issuers. *See* CA Technologies Letter.

[262] *See* Nasdaq Statement at 27–28.

[263] *See* BZX Letter 1 at 2 and 4; and BZX Letter 2 at 10.

[264] *See* BZX Letter 2 at 10.

[265] *See supra* Section III.B.

[266] *See supra* note 23.

listing exchanges could provide to their listed issuers.

D. Effect on Market Complexity and Operational Risk

1. Comments on the Proposal

Several commenters addressed the potential effect of the proposal on market complexity and operational risk to the securities markets.

Some of these commenters believed that the proposal would not introduce significant additional complexity or operational risk. For example, two commenters argued that the proposal could enhance the resiliency of the closing auction process by providing market participants an additional mechanism through which to execute orders at the official closing price in the event of a disruption at a primary listing exchange.[267] Another commenter argued that exchanges already have many market data feeds that firms must purchase to ensure that they have all of the information necessary to make informed execution decisions and that adding another data feed will not add complexity given the small amount of information that goes into the closing data feed and the current capabilities of market participants to re-aggregate multiple data feeds.[268]

In contrast, other commenters argued that the proposal would add unnecessary market complexity and operational risk to the securities markets. Nasdaq asserted that the proposal would impair the statutory objective of fair and orderly markets by ''fostering complexity and fragmentation in the securities markets.'' [269] In particular, Nasdaq and other commenters stated that the proposal would exacerbate market complexity by requiring market participants to monitor and analyze an additional data feed, the Cboe Auction Feed.[270] These commenters argued that monitoring an additional data feed could create challenges and increase operational risk by creating another point of failure at a critical time of the trading day.[271] Some commenters stated that additional exchanges, broker-dealers, or ATSs are likely to adopt similar functionality to Cboe Market Close, which would require monitoring of even more data feeds and further increase fragmentation, risk, and operational challenges in the market.[272] While acknowledging that sophisticated market participants are capable of monitoring additional data feeds, Nasdaq and NYSE argued that many closing auction participants are less-active traders than the professional market participants who trade during the continuous trading session.[273] Such market participants, they argued, do not have the technology and systems to analyze an additional data feed and would thereby be placed at a disadvantage to sophisticated market participants who already have such systems in place.[274]

One commenter also argued that the proposal increases operational risk and complexity at a critical point of the trading day by forcing market participants whose orders did not match in Cboe Market Close to quickly send MOC orders from one exchange to another before the cut-off time at the primary listing exchange closing auction.[275] This added complexity, the commenter argued, puts additional stress on the systems of exchanges and increases the potential for disruptions.[276]

2. BZX Response to Comments

In response, BZX argued that the proposal would not increase market complexity or operational risks.[277] BZX characterized the proposal as a simple crossing process that provides one additional venue, among the many that exist today, to which market participants may send MOC orders.[278] BZX asserted that Cboe Market Close would provide a way to address the single point of failure risk that exists for closing auctions conducted on the primary listing exchanges.[279] Specifically, BZX argued that in the event there is an impairment at a primary listing exchange, Cboe Market Close could provide an alternative option for market participants to route MOC orders and still receive the official closing price.[280]

BZX also argued that modern software can easily and simply add volume data disseminated by the primary listing exchanges regarding the closing auction and data regarding matched MOC orders from the Cboe Market Close.[281] Moreover, BZX stated that it believed the 3:35 p.m. cut-off time would provide market participants with adequate time to receive any necessary information and to route any unmatched orders to the primary listing exchange.[282] BZX stated that market participants would not be obligated to use Cboe Market Close or subscribe to its data feed (or any other additional functionality or feeds that competitors develop), and accordingly, may weigh the value of seeking an execution in such a facility against any perceived risks.[283] BZX also stated that the proposal should not be evaluated based on speculation about whether others might mimic the functionality in the future.[284]

3. Commission Discussion and Findings

The Cboe Market Close will offer market participants an additional venue to which they may send orders for execution at the official closing price and an additional data feed that some market participants may choose to monitor. However, as several commenters stated, many market participants already monitor multiple data feeds, and the Commission believes that the market participants that monitor information disseminated by BZX relating to Cboe Market Close would likely already maintain systems and software that are able to aggregate such feeds. While NYSE and Nasdaq argue that many closing auction

[267] *See* SIFMA Letter 1 at 2; and ViableMkts Letter at 3 (further stating that once BZX is able to process MOC orders, BZX would be in a position to develop the capability to offer a full backup closing auction process).

[268] *See* Clearpool Letter at 4.

[269] *See* Nasdaq Statement at 32.

[270] *See* Nasdaq Statement at 33; NYSE Letter 1 at 7; NYSE Statement at 26–27; and IMC Letter at 1.

[271] *See* IMC Letter at 1; NYSE Letter 1 at 7; and Nasdaq Statement at 33. *See also* Ethan Allen Letter (arguing the proposal would add a layer of complexity).

[272] *See* NYSE Letter 3 at 3; NYSE Statement at 26; T. Rowe Price Letter at 1–2; Nasdaq Letter 1 at 8; and Nasdaq Statement at 33–34.

[273] *See* Nasdaq Statement at 33–34; and NYSE Statement at 27–28.

[274] *See* Nasdaq Statement at 33–34; and NYSE Statement at 27–28.

[275] *See* GTS Securities Letter 1 at 6. Furthermore, NYSE argued that in certain situations, investors may not be able to participate in a closing auction on NYSE American or NYSE Arca if they wait until after their order was cancelled by BZX to send in a market-on-close order to closing auctions on NYSE Arca and NYSE American. NYSE explained that in situations where there is an order imbalance priced outside the Auction Collars, orders on the side of the imbalance are not guaranteed to participate in the closing auctions on those two exchanges. Earlier submitted MOC orders have priority. *See* NYSE Letter 1 at 8.

[276] *See* GTS Securities Letter 1 at 6.

[277] *See* BZX Letter 1 at 12; BZX Letter 2 at 10–11; and BZX Statement at 17–20.

[278] *See* BZX Statement at 17.

[279] *See* BZX Letter 1 at 12; and BZX Letter 2 at 10–11.

[280] *See id.* In contrast, Nasdaq argued that Cboe Market Close could not serve as a back-up for a primary listing exchange suffering an impairment because it is not a price-discovering auction and would not operate in the absence of the auction it would be backing-up. *See* Nasdaq Letter 2 at 12.

[281] *See* BZX Letter 1 at 4; BZX Letter 2 at 3; and BZX Statement at 19.

[282] *See* BZX Letter 2 at 8; and BZX Statement at 18.

[283] *See* BZX Letter 2 at 8–9; and BZX Statement at 19. In contrast, NYSE argued that it is irrelevant whether it is optional to send market orders to the Cboe Market Close, as the analysis should turn on whether the mere existence of the Cboe Market Close would increase complexity and operational risk in the market. *See* NYSE Letter 3 at 2.

[284] *See* BZX Statement at 19.

participants are less active, less sophisticated participants that would not have the systems or ability to aggregate an additional feed, there are currently numerous destinations available to send MOC orders—primary listing auctions, competing auctions, ATSs, and other off-exchange venues. As a result, the Commission believes that even less active traders seeking closing executions likely already monitor, have the capability to monitor, or rely on their broker-dealers to monitor, multiple data points for closing auction liquidity and information.

Further, the Commission notes that exchanges currently offer a wide array of proprietary market data products providing expansive trading information, including auction information.[285] Unlike some of these other proprietary market data feeds offered by certain exchanges, the Cboe Auction Feed is equally available to all market participants at no charge,[286] and, as part of this proposal, BZX has proposed to enhance the Cboe Auction Feed to include only one point of additional data (total matched shares in the Cboe Market Close), once a day. Accordingly, the Commission does not believe that monitoring the Cboe Auction feed or having one additional venue to which market participants may submit MOC interest would significantly increase complexity or fragmentation, or impose substantial burdens on market participants, in such a manner as to render the proposal inconsistent with the Act.[287] Specifically, the Commission does not believe that the proposal adds such a level of complexity so as to be inconsistent with the Act, such as, among other things, by impeding fair and orderly markets, imposing impediments to a free and open market and a national market system, being unfairly discriminatory, or impeding fair competition among market participants.

In addition, in response to comments regarding the potential for other exchanges and venues to adopt similar functionality that would require monitoring of even more data feeds, again the Commission believes that those participants that would choose to monitor such data feeds likely already have the capability to monitor and aggregate information from multiple data feeds.

Finally, the Commission believes that because BZX will disseminate the amount of paired-off shares well in advance of the order entry cut-off times for the primary listing exchanges' closing auctions, the proposal is reasonably designed to limit market complexity and risk by giving market participants adequate time to review the necessary data, make informed decisions about closing order submission, and route orders to the primary listing exchange when desired.[288]

E. Manipulation

1. Manipulation Due to Information Asymmetries

a. Comments on the Proposal

Several commenters asserted that the proposal would increase the risk of manipulation. Commenters argued that the proposal increases opportunities for manipulation due, in part, to the information asymmetries that they argue Cboe Market Close would create. For example, Nasdaq argued that information obtained by Cboe Market Close participants regarding their paired-off MOC orders could be used to gauge the depth of the market, the direction and magnitude of existing imbalances, and the likely depth remaining at Nasdaq, creating manipulation opportunities and undermining fair and orderly markets.[289] Similarly, NYSE offered several hypothetical examples to illustrate how Cboe Market Close could potentially be used to manipulate the official closing price, including by providing market participants who participate in Cboe Market Close with useful information that is unavailable to other market participants, such as the direction of an imbalance.[290] Although not citing concerns regarding manipulation specifically, T. Rowe Price similarly argued that the proposal would lead to information asymmetries that could result in changes in continuous trading behavior leading into the market close as some market participants could be trading on information gathered from Cboe Market Close pairing results.[291] Specifically, T. Rowe Price asserted that a market participant that is aware of the composition of volume paired-off through Cboe Market Close at 3:35 p.m. would be in a position to use that information to influence its trading behavior over the next ten to fifteen minutes leading in to the closing auction cut-off times on NYSE and Nasdaq, respectively.[292]

While Nasdaq acknowledged that information asymmetries exist today as a result of broker-dealer MOC order matching services, it argued that BZX, ''as a neutral platform, is more likely to gather orders from multiple brokers and enable a small number of participants to gain actionable asymmetric information,'' which could potentially change the Nasdaq closing price.[293]

[285] *See, e.g.,* Clearpool Letter at 2 (stating that imbalance feeds that are published for NYSE's and Nasdaq's closing auctions are only available as part of the exchanges' premium data products). Therefore, less active traders that wish to trade in the NYSE or Nasdaq closing auction arguably already would have the technology and systems necessary to integrate the additional proprietary data products offered by the exchanges.

[286] BZX does not charge a fee for the data provided by the Cboe Auction Feed, which also includes market data not related to Cboe Market Close; however, BZX does charge logical port and connectivity fees for the receipt of the Cboe Auction Feed.

[287] *See also supra* Section III.B. further discussing and addressing concerns regarding the potential effects of the proposal on fragmentation of the markets.

[288] As noted above, NYSE pointed out one instance on NYSE Arca and NYSE American where, pursuant to their rules, if there is an order imbalance priced outside of the Auction Collars, orders are not guaranteed to participate in the closing auction, and MOC orders entered earlier in the day have priority over later-arriving MOC orders. As such, NYSE argued that if a market participant waits to enter an MOC order on NYSE Arca or NYSE American until after their MOC order is cancelled by BZX, that MOC order could lose priority over earlier-entered MOC orders. *See supra* note 275. However, as noted above, market participants are not required to send MOC orders to Cboe Market Close. Further, the Commission believes that the operation of the NYSE Arca and NYSE American's auctions are clearly delineated in their rules, and this limited scenario is the type of potential risk that the Commission expects that market participants will need to evaluate in any determination as to whether to send their orders to Cboe Market Close.

[289] *See* Nasdaq Letter 1 at 8; Nasdaq Letter 2 at 13–14; Nasdaq Statement at 17–20; and Pitt/Spatt Report at 21–23. The Nasdaq Statement and accompanying Pitt/Spatt Report provided several examples to illustrate how such information could potentially be utilized to ''mark the close,'' learn the direction of the order imbalance, and/or determine the relative magnitude of the imbalance. For example, Nasdaq argued that a market participant could enter both buy and sell MOC orders in the Cboe Market Close to learn the likely direction of the MOC imbalance in advance of other market participants and use such information to its benefit in the closing auction on the primary listing exchange. *See* Nasdaq Statement at 17–20; and Pitt/Spatt Report at 21–23.

[290] *See* NYSE Letter 1 at 6; and NYSE Statement at 28–30. However, ViableMkts argued that because these market participants would not know the full magnitude of the imbalance, it does not believe the proposal creates an incremental risk of manipulation. *See* ViableMkts Letter at 5.

[291] *See* T. Rowe Price Letter at 2–3.

[292] *See id.* T. Rowe Price argued that, as a result, the proposal could not only affect price discovery in closing auctions on the primary listing exchanges but it could also affect continuous trading behavior. *See id.*

[293] *See* Nasdaq Letter 2 at 14. Nasdaq argued that this would weaken the price discovery process, create a cycle of closing price deterioration, and increase volatility. *See id. But see supra* Section III.B, discussing why the Commission believes the proposal, based on its design, will not disrupt the price discovery process of the primary listing exchanges' closing auctions.

Nasdaq also distinguished its closing auction from the proposed Cboe Market Close, stating that by having its data dissemination and cut-off time occur simultaneously, all market participants learn the imbalance at the same time, avoiding such risks.[294]

Nasdaq further argued that information asymmetries can undermine public confidence in the markets.[295] In particular, Nasdaq asserted that the proposal could disincent market participants from submitting LOC orders for fear of competing with other market participants with more market information.[296] This decreased liquidity, Nasdaq argued, could make stocks even more susceptible to manipulation, particularly those with relatively lower levels of liquidity.[297]

b. BZX Response to Comments

In contrast, BZX argued that information asymmetries are inherent in trading, including the primary listing exchanges closing auctions.[298] For example, BZX argued that the current operation of d-Quotes [299] on NYSE provides an informational advantage to NYSE DMMs and floor brokers, and allows d-Quotes to be entered, modified, or cancelled up until 3:59:50 p.m. while other market participants are prohibited from entering, modifying or cancelling on-close orders after 3:45 p.m.[300] Lastly, BZX argued that the information disseminated through the Cboe Auction Feed would not provide any indication of whether the cancelling of a particular side of an order that has not been matched back to a market participant ''is meaningful or just happenstance,'' which limits this information's ability to create or increase manipulative activity.[301]

c. Commission Discussion and Findings

While commenters argue that those who participate in Cboe Market Close would be able to discern the direction of an imbalance and use such information to manipulate the closing price, the Commission believes the utility of such gleaned information is limited. In particular, a market participant would only be able to determine the direction of the imbalance, and would have difficulty determining the magnitude of any imbalance, as it would only know the unexecuted size of its own order.[302] In addition, the information would only be with regard to the pool of liquidity on BZX and would provide no insight into imbalances on the primary listing exchange, competing auctions, ATSs, or other off-exchange matching services which, as described above, can represent a significant portion of trading volume at the close.

Likewise, while a market participant would be able to determine whether its own order made up a large or small percentage of the paired-off shares for a security in Cboe Market Close, it would not be able to determine the composition of same-side or contra-side MOC orders submitted to Cboe Market Close, nor would such information enable it to determine the composition of orders submitted to the primary listing exchange, competing auctions, ATSs, or other off-exchange matching services.[303] Therefore, the Commission believes the utility of this information is also limited.

Further, the Commission believes information asymmetries as those described by commenters exist today and are inherent in trading, including with respect to closing auctions. For example, any party to a trade gains valuable insight regarding the depth of the market when an order is executed or partially executed. In addition, on NYSE, not only DMMs,[304] but also NYSE floor brokers have access to closing auction imbalance information that is not simultaneously available to other market participants, far in advance of the NYSE order entry cut-off time. Specifically, pursuant to NYSE rules, floor brokers receive the amount of, and any imbalance between, MOC and marketable LOC interest every fifteen seconds beginning at 2:00 p.m. until 3:50 p.m.[305] Floor brokers are permitted to provide their customers with specific data points from this imbalance feed. In arguing for the Commission to approve its proposal to disseminate such information to floor brokers, NYSE stated that the imbalance information does not represent overall supply or demand for a security, but rather is a small subset of buying and selling interest that is subject to change before the close, nor is it actionable prior to 15 minutes before the close.[306] NYSE further asserted that it believed the information it disseminates to all participants at 3:45 p.m. is more material to investors, as it is more accurate, complete, and timely information.[307]

The Commission believes that the same arguments apply with respect to BZX's proposal. In particular, as discussed above, even if a market participant becomes aware of the

[294] *See* Nasdaq Letter 2 at 14; Nasdaq Statement at 18; and Pitt/Spatt Report at 23.

[295] *See* Nasdaq Statement at 19.

[296] *See* Nasdaq Statement at 19.

[297] *See* Nasdaq Statement at 19–20.

[298] *See* BZX Letter 1 at 11–12; BZX Letter 2 at 9; and BZX Statement at 20.

[299] Pursuant to NYSE Rules, a floor broker may enter discretionary instructions as to size and/or price with respect to his or her e-Quotes (''discretionary e-Quotes'' or ''d-Quotes''). The discretionary instructions relate to the price at which the d-Quote may trade and the number of shares to which the discretionary price instructions apply. Discretionary instructions are active during the trading day, unless the Protected Best Bid and Offer (''PBBO'') (as defined in NYSE Rule 1.1(o)) is crossed, and at the opening, reopening and closing transactions, and may include instructions to participate in the opening or closing transaction only. Exchange systems will reject any d-Quotes that are entered 10 seconds or less before the scheduled close of trading. Executions of d-Quotes within the discretionary pricing instruction range are considered non-displayable interest. *See* NYSE Rule 70.25(a).

[300] *See* BZX Letter 1 at 12; and BZX Letter 2 at 9. The Commission notes that NYSE's cut-off time for entering, modifying, or cancelling on-close orders is now 3:50 p.m. *See* NYSE Rule 123C(2)(a)(i).

[301] *See id.*

[302] While Nasdaq argued that the size of a market participant's cancelled order and time of day would provide some indication of the magnitude of the imbalance, as discussed herein, the Commission believes the value of this information to be extremely limited as it does not give accurate or comprehensive insight into the overall MOC imbalance size in the Cboe Market Close or of the MOC imbalances in the entire market inclusive of other venues. *See* Nasdaq Statement at 18. The Commission acknowledges that the greater the size of the cancelled order, the more useful the information may be in determining the imbalance magnitude on Cboe Market Close, but the Commission believes it is unlikely that a market participant would risk placing and receiving an execution of a large MOC order (for example, 10,000 shares as in Nasdaq's example), purely to gain limited insight into MOC imbalance size. The risk of receiving an execution of a large order that may be inconsistent with a market participant's goals is likely to eclipse any limited potential benefit that could be gained.

[303] While one commenter expressed concern that market participants that are aware of the composition of volume paired-off through Cboe Market Close would be in a position to use that information to influence their trading behavior leading up to the close, under BZX's proposal, BZX would only publish the size, and not the composition, of paired-off MOC shares, and such disseminated information would be available to all market participants. *See supra* notes 291–292 and accompanying text.

[304] The Commission has acknowledged the information asymmetries that benefit DMMs, explaining that, ''[i]n return for their obligations and responsibilities, DMMs have significant priority and informational advantages in trading on the Exchanges, both during continuous trading and during the closing auction'' and that ''DMMs have unique access to aggregated information about closing auction interest at each price level, and during the auction itself, DMMs are aware of interest represented by floor brokers, which is not publicly disseminated''. *See* Securities Exchange Release No. 81150 (July 20, 2017), 82 FR 33534, 33536–37 (July 20, 2017) (NYSE–2016–71 and NYSEMKT–2016–99) (''NYSE DMM Disapproval Order'').

[305] *See* NYSE Rule 123C(6)(b).

[306] *See* Securities Exchange Act Release No. 62923 (Sept. 15, 2010), 75 FR 57541, 57542 (Sept. 21, 2010) (SR–NYSE–2010–20; SR–NYSEAmex–2010–25).

[307] *See id.*

direction of the imbalance for a security in Cboe Market Close as a result of receiving a cancellation of part or all of that participant's order, such information does not represent overall supply or demand for the security, is subject to change before the close, and is only one piece of relevant information. Therefore, given these limitations, the Commission believes that such information is likely less useful than other more comprehensive information regarding the close that would be available to market participants, such as the total matched amount of MOC shares that would be disseminated by BZX at 3:35 p.m. and available to all market participants on equal terms, as well as any imbalance information disseminated by the primary listing exchanges.

Given the limited usefulness of information that can be discerned from participants of Cboe Market Close, the Commission also believes it is unlikely that the proposal will have a negative effect on public confidence in the markets or on market participants' use of LOC orders in the close. This is not to say that merely because some information asymmetries exist in the market today and are inherent in all trading that those created by Cboe Market Close need not be carefully considered. Rather, after careful consideration and analysis of the proposal and the information that may be gleaned from Cboe Market Close, its utility, and potential use, the Commission believes BZX has demonstrated that the potential for increased manipulation due to information asymmetries created by this proposal is negligible and that it is in line with other proposals that have similarly introduced certain limited information asymmetries into the market but been found by the Commission to be consistent with the Act, as described above.[308]

2. Other Causes for Increased Potential for Manipulation

a. Comments on the Proposal

Commenters advanced several other theories as to how the proposal could enhance the risk of manipulation.[309] For example, NYSE and Nasdaq asserted that the potential for manipulative activity at the close would increase because primary listing exchange closing auctions would decrease in size and thus be easier to manipulate.[310] NYSE and Nasdaq also argued that the proposal facilitates manipulative activity by providing an incentive for market participants to influence the closing price when they know they have been successfully matched on BZX to the benefit of the price of its already matched order.[311] Further, NYSE argued that market participants could manipulate information leading up to the close by entering orders into Cboe Market Close in an attempt to send a false signal regarding demand and subsequently reverse such positions after hours.[312]

Some commenters did not believe Cboe Market Close would increase manipulation. For example, one commenter stated that incentives to manipulate the closing price already exist and it is unlikely the proposal would result in increased manipulation of the market close.[313]

b. BZX Response to Comments

In response, BZX argued that the proposal does not introduce any specific or new ways to manipulate the closing price.[314] BZX further asserted that commenters' arguments regarding increased chances for manipulation ignore the supervisory responsibilities and capabilities of exchanges and the existing cross-market surveillance conducted by FINRA today.[315] As discussed in more detail below, BZX stated that it would continue to surveil for potentially manipulative activities and made commitments to enhance surveillance procedures and work with other SROs to detect and prevent manipulation through the use of Cboe Market Close.[316]

c. Commission Discussion and Findings

The Commission recognizes that, with or without Cboe Market Close, the potential exists that there may be market participants who may seek to engage in manipulative or illegal trading activity, including with respect to closing prices.[317] While an exchange must show that their proposal is designed to prevent fraudulent and manipulative acts and practices, the Act does not require an exchange to ensure, with certainty, that their proposal will not give rise to any attempted manipulation or illegal acts. Scholarly articles have suggested that closing auction manipulations are often characterized by large, unrepresentatively priced orders submitted in the final seconds of the auction.[318] Accordingly, while it is possible that the potential for manipulation could increase if the closing auctions on the primary listing exchanges decreased significantly in size, existing surveillance systems should be able to continue to detect such activity.[319] With respect to NYSE's

[308] The Commission believes that Nasdaq's reliance on recent Direct Edge and NYSE enforcement cases as support for the principle that the Commission has found informational advantages to be inconsistent with the Act is misplaced. *See* Nasdaq Statement at 19. Both of the cases cited by Nasdaq are distinguishable from the current proposal in that they involved instances where the exchanges' rules were inaccurate or incomplete regarding the description of the operation of certain order types. Informational asymmetries arose as a result of such inaccuracies and/or omissions in the exchanges' rules and because only certain members had access to correct information regarding the operation of such order types. *See* Securities Exchange Act Release No. 82808, In the Matter of NYSE LLC, NYSE American LLC, and NYSE Arca, Inc. (Mar. 6, 2018), *available at: https://www.sec.gov/litigation/admin/2018/33-10463.pdf* and Securities Exchange Act Release No. 74032, In the Matter of EDGA Exchange, Inc. (Jan. 12, 2015) (settled orders), *available at: https://www.sec.gov/litigation/admin/2015/34-74032.pdf* (''It is essential that an exchange operate in compliance with its own rules regarding order types so that the exchange's members and all other participants in trading that occurs on an exchange can understand on what terms and conditions their trading will be conducted. When an exchange fails to completely and accurately describe its order types in its rules, it creates a significant risk that the manner in which those order types operate will not be understood by all market participants, thereby compromising the integrity and fairness of trading on that exchange. This risk is compounded when the exchange discloses information regarding the operation of those order types to some but not all of its members.'').

[309] *See, e.g.,* NYSE Letter 1 at 6; NYSE Report at 19–22; and Americas Executions Letter.

[310] *See* NYSE Letter 1 at 6; and Nasdaq Statement at 19–20. *See also supra* notes 295–297 (discussing Nasdaq's assertion that the proposal would affect public confidence in the markets, resulting in decreased liquidity and more susceptibility to manipulation).

[311] *See* NYSE Letter 1 at 6; NYSE Report at 19; Nasdaq Statement at 17; and Pitt/Spatt Report at 22–23.

[312] *See* NYSE Report at 19–20.

[313] *See* Angel Letter at 5.

[314] *See* BZX Letter 1 at 11; BZX Letter 2 at 9; and BZX Letter 4 at 1–2.

[315] *See* BZX Letter 1 at 11; and BZX Letter 2, at 9.

[316] *See* BZX Letter 1 at 11; BZX Letter 2 at 9; and BZX Letter 4 at 1–2. *See also infra* Section III.E.3.

[317] NYSE also asserted that arbitrageurs will look for opportunities presented by Cboe Market Close to ''gam[e] the system.'' However, NYSE also acknowledged that, ''[i]t is hard to predict all of the ways in which, and the degree to which, this might occur because it will depend on a wide range of variables, including the degree of usage of the [Cboe Market Close], the changes to order flow and liquidity provision in the primary listing exchange's closing mechanism, the profits realized from manipulation, and the vitality of market oversight.'' *See* NYSE Report at 19–22. Further, the Pitt/Spatt Report acknowledged that, ''closing prices are inherently somewhat vulnerable to manipulation.'' *See* Pitt/Spatt Report at 22.

[318] *See* Carole Comerton-Forde and Talis J. Putnins, ''Measuring Closing Price Manipulation,'' *Journal of Financial Intermediation* 20, 135–158 (2011), *available at https://www.sciencedirect.com/science/article/pii/S104295731000015X*; and Talis J. Putnins, ''Market Manipulation: A Survey,'' Journal of Economic Surveys, 26, 952–967 (2012), *available at http://onlinelibrary.wiley.com/doi/10.1111/j.1467-6419.2011.00692.x/full.*

[319] *See infra* Section III.E.3 for discussion of the obligations under the Act of national securities exchanges, as self-regulatory organizations, to surveil for manipulative activity on their markets.

comment that the proposal would provide an incentive for market participants to influence the closing price when they know they have been successfully matched on BZX, market participants can attempt this today with respect to existing off-exchange MOC matching services, including ATSs (which are surveilled by FINRA), and any attempts to use Cboe Market Close to do this would result in such activity occurring on BZX, a national securities exchange with obligations under the Act to regulate and surveil its market. Similarly, entering non-bona fide orders in an attempt to give the appearance of high demand is not a new form of potential manipulation unique to the proposal; rather, similar forms of market manipulation exist today, and the Commission believes that current surveillance systems are designed to detect such activity.

3. Surveillance

a. Comments on the Proposal

Lastly, some commenters argued that BZX and other exchanges would need to develop new cross-market surveillance systems in order to address these risks and expressed concerns regarding the costs and complexities of doing so.[320] For example, NYSE stated that there are no safeguards built-in to the proposal to prevent manipulation, and identifying manipulative activity would also become more difficult under the proposal due to the time difference between the Cboe Market Close and primary listing exchange closing auctions and the cross-market nature of the manipulation.[321] Further, NYSE argued that market participants may have legitimate reasons to want to reverse their trades that have been matched in Cboe Market Close by trading in the primary listing exchange auction, and thus, it would be difficult to distinguish between manipulative behavior and legitimate trading activity.[322] Both NYSE and Nasdaq stated that BZX's commitment to enhance its surveillance mechanisms [323] and its statutory obligation to surveil for manipulative activity was insufficient to render the proposal consistent with the Act.[324] Nasdaq recommended that, at a minimum, BZX should be required to memorialize its enhanced procedures in its rules,[325] and NYSE added that BZX must demonstrate affirmatively that the proposal is designed to prevent fraudulent activity, not merely mitigate the risks of such activity.[326] In contrast, IEX argued that participation in the Cboe Market Close, followed by activity intended to affect the closing price on the primary listing exchange, would make manipulation of closing crosses as or more conspicuous than other trading patterns for which exchanges already conduct surveillance.[327] Two commenters also stated that the Consolidated Audit Trail would provide a new tool for detecting any such manipulation.[328]

b. BZX Response to Comments

In response, BZX made several arguments as to why it does not believe that the proposal creates a potential for increased manipulation.[329] BZX stated that, should the Commission approve the proposal, both it and FINRA, as well as other exchanges, would continue to surveil for manipulative activity and seek to address such behavior.[330] BZX further stated that it is ''committed to enhancing its current surveillance procedures and working with other [SROs], including FINRA, the NYSE, and Nasdaq, to ensure that any potential inappropriate trading activity is detected and prevented.'' [331] In addition, BZX stated that, consistent with its obligations as an SRO, it currently surveils all trading activity on its system including trading activity at the close, and intends to implement and enhance in-house surveillance processes designed to detect potential manipulative activity related to the Cboe Market Close.[332] In particular, BZX stated that the surveillance would include, among other things, monitoring for possible non-bona fide order activity, such as the submission of orders for the purpose of gaining an informational advantage, the entry of large size orders on one side of the market, or other trading activity that would indicate a pattern or practice aimed at manipulating the closing auction.[333] BZX committed to provide the Commission staff its surveillance plan and stated that it would implement that plan on the date that Cboe Market Close becomes available to market participants.[334]

BZX also highlighted the cross-market surveillance that FINRA conducts on its behalf.[335] In particular, BZX stated that FINRA's comprehensive cross-market surveillance program can monitor for nefarious activity by a market participant across two or more markets and includes surveillance designed to detect activity geared towards manipulating a security's closing price.[336] Stating that it currently provides FINRA the necessary trade data to conduct such surveillance, BZX represented that it is also committed to work with FINRA on enhancements to the current cross market surveillance program to account for any potential manipulative activity by participants in Cboe Market Close and the primary listing exchanges' closing auctions.[337] BZX also stated that, as a member of the Intermarket Surveillance Group (''ISG''), it would share the necessary information concerning Cboe Market Close with NYSE and Nasdaq, as part of their participation in ISG, to allow them to properly surveil for potentially manipulative activity within their closing auctions.[338]

c. Commission Discussion and Findings

With respect to manipulative or illegal trading activity more broadly, self-regulatory organizations such as

[320] *See* Nasdaq Letter 2 at 14; Nasdaq Statement at 20–21; Pitt/Spatt Report at 23–24; NYSE Report at 20–21; NYSE Letter 1 at 6; NYSE Statement at 30; GTS Securities Letter 1 at 6; and GTS Securities Letter 2 at 5.

[321] *See* NYSE Report at 20–21; NYSE Letter 1 at 6; and NYSE Statement at 30.

[322] *See* NYSE Report at 19; and NYSE Statement at 30.

[323] *See infra* notes 329–338 and accompanying text.

[324] *See* Nasdaq Statement at 21; and NYSE Statement at 31. As support for this argument, Nasdaq and NYSE referenced a Commission disapproval of a proposal by NYSE to eliminate certain restrictions on the trading activities of DMMs that were designed to address the risk of manipulative activity. *See* Nasdaq Statement at 21; and NYSE Statement at 31 (discussing the Commission's disapproval of NYSE–2016–17). *See also* NYSE DMM Disapproval Order, *supra* note 304.

[325] *See* Nasdaq Statement at 21 (citing the Commission's Benchmark Disapproval Order as support for the assertion that an exchange must include any enhanced procedures to mitigate risk in its rules). *See also* Securities Exchange Act Release No. 68629 (Jan. 11, 2013), 78 FR 3928 (Jan. 17, 2013) (NASDAQ–2012–059).

[326] *See* NYSE Statement at 31.

[327] *See* IEX Letter at 2.

[328] *See id.* at 2–3; and Bollerman Letter at 2.

[329] *See* BZX Letter 1 at 11–12; and BZX Letter 2 at 9.

[330] *See* BZX Letter 1 at 11; and BZX Letter 2 at 9.

[331] *See* Letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Cboe Global Markets, Inc. (Jan. 12, 2018) (''BZX Letter 4'') at 1. *See also* BZX Statement at 21–22.

[332] *See* BZX Letter 4 at 1.

[333] *See* BZX Letter 4 at 1.

[334] *See id.* at 2.

[335] *See id.* Under regulatory services agreements, national securities exchanges, such as BZX, may enter into contracts with other regulatory entities, such as FINRA, to provide regulatory services on the exchange's behalf. Notwithstanding the existence of a regulatory services agreement, the exchange retains legal responsibility for the regulation of its members and its market and the performance of its regulatory services provider.

[336] *Id.*

[337] *See id.* at 2; and BZX Statement at 21.

[338] *See* BZX Letter 4 at 2; and BZX Statement at 21.

BZX and the primary listing exchanges have an obligation under the Act to surveil for manipulative activity on their markets. The Commission agrees with commenters who say that relying on this obligation alone and/or a mere declaration that existing surveillances are adequate is not necessarily sufficient to render a proposal consistent with the Act. At the same time, contrary to commenters' assertions that enhanced surveillance procedures must be included as part of the exchange's proposed rules,[339] exchanges generally do not delineate detailed surveillance procedures in their rules as doing so could present a security risk and potentially give those seeking to engage in manipulative behavior advance notice as to how the exchange will be monitoring and surveilling for such behavior and potentially a roadmap for evading detection.[340]

For the reasons discussed above, the Commission believes that the proposal raises only a minimal risk of increased manipulation, and this, coupled with the detailed commitments made by BZX to enhance surveillance and share surveillance plans with the Commission staff,[341] support the Commission's finding that BZX has demonstrated that its proposal is designed to prevent fraudulent and manipulative acts and practices.[342] In particular, the Commission believes that existing self-regulatory organization surveillance and enforcement activity, and the enhanced measures that the Exchange has represented that it would take to surveil for and detect manipulative activity related to the proposal, would help to deter market participants who might otherwise seek to try and abuse Cboe Market Close or a closing auction on a primary listing exchange. While the Commission agrees with BZX that the proposal raises minimal risk of increased manipulation, it also believes that it is prudent and consistent with an Exchange's surveillance obligations to undertake efforts to tailor and enhance surveillance measures in anticipation of any potentially manipulative conduct that may arise in connection with Cboe Market Close. Such actions to enhance surveillance procedures are not unique to the current proposal; rather, exchanges commonly make changes to their surveillance programs to better detect manipulative or improper behavior in connection with proposed rule changes to implement new functionality. Thus, the Commission expects that, once the proposal is implemented, BZX will continue to closely monitor Cboe Market Close and implement new or enhanced surveillance measures, as necessary, designed to identify potential manipulative behavior that potentially could result from Cboe Market Close. Further, the Commission expects that, as required by Section 19(g)(1) of the Act,[343] BZX, FINRA, and other national securities exchanges will enforce compliance by their members and persons associated with their members with the Act, the rules and regulations thereunder, and their own rules, including with regard to manipulative conduct.

With respect to NYSE's comment on the potential challenges that time differences or cross-market activity may pose in identifying manipulative activity,[344] these issues also exist today with respect to existing off-exchange MOC matching services as well as to trading generally. Surveillance procedures already must account for time differences and cross-market activity throughout the trading day. To the extent that such attempted manipulative activity instead occurs on BZX, it would simply shift surveillance from FINRA to BZX, a national securities exchange with obligations under the Act to regulate and surveil its market. Further, with regard to comments concerning the challenge of differentiating between legitimate trading and manipulative activity, this too exists today with regard to many different trading scenarios and is not unique to this proposal. Despite the challenges of detecting and accurately identifying manipulative activity, SROs have been able to design their surveillance programs to flag potentially manipulative behavior in a variety of contexts and then subsequently further analyze and investigate such behavior to determine whether, in fact, there is evidence of improper activity. The Commission expects the same to be true with regard to Cboe Market Close. Further, the Commission agrees with the commenters that noted that the Consolidated Audit Trail is designed to provide an additional cross-market surveillance mechanism that should help to identify and prevent any potentially manipulative activity.

F. Amendment No. 2

BZX filed Amendment No. 2 to the proposed rule change in response to the statements submitted by Nasdaq and NYSE which stated, among other arguments, that Cboe Market Close would potentially cause BZX to violate Rule 201(b) of Regulation SHO.[345]

Rule 201(b) of Regulation SHO generally requires that trading centers, such as the Exchange, establish, maintain, and enforce written policies and procedures that are reasonably designed to (i) prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from that

[339] As noted above, Nasdaq argued that the Commission made clear in its Benchmark Disapproval Order that if an exchange represents that it will enhance its oversight procedures to mitigate the risks of a proposal, it must, at a minimum, memorialize such procedures in its rules. *See supra* note 325. However, the Commission does not agree that the Benchmark Disapproval Order imposed such a requirement. The Benchmark Disapproval Order discussed the lack of order handling requirements being set forth in the Nasdaq proposed rule change. The Benchmark Order Disapproval did not express the need for surveillance procedures to be set forth in a proposed rule change. The Benchmark Disapproval Order discussion was specific to concerns regarding risk controls of Rule 15c3–5 and the general statements that were made by Nasdaq that although such Rule 15c3–5 risk controls were inapplicable, it would impose substantial risk controls on the proposed Benchmark Orders. The Commission noted in its disapproval order that Nasdaq had not amended the proposed rule change to address this concern or detail its commitments, but that if appropriately developed and reflected in the proposed rule change, the Commission's concerns could have been potentially addressed. *See* Benchmark Disapproval Order at 3929–30.

[340] The staff reviews the adequacy and effectiveness of self-regulatory organizations' surveillance procedures and programs as part of its routine and for-cause examinations and inspections.

[341] *Id.*

[342] As noted above, NYSE and Nasdaq referenced the NYSE DMM Disapproval Order as support for the argument that an exchange must affirmatively demonstrate that its proposal is designed to prevent fraudulent activity and that a mere commitment to comply with market surveillance obligations is insufficient. *See* NYSE DMM Disapproval Order. As stated, the Commission generally agrees with these principles; however, it believes that the factual differences between the NYSE DMM Disapproval Order and the current BZX proposal support a different outcome. In particular, in the case of the NYSE DMM Disapproval Order, NYSE proposed to *eliminate existing restrictions* on DMM trading activity that, when adopted and subsequently retained through several market model changes, were determined to be necessary to address the risk of DMM manipulative activity. Although NYSE asserted that the rule was no longer needed because of developments in the equity markets and that existing rules and surveillances would address the manipulation risk, the Commission found, among other things, that NYSE had not met its burden of establishing how these other rules and surveillance procedures were an adequate substitute for the rule that NYSE sought to delete. *See* NYSE DMM Disapproval Order at 33537 (stating that, ''the Commission believes that NYSE and NYSE MKT have merely asserted that, but not explained how, existing surveillances can act as an adequate substitute for this bright-line rule''). In contrast, as described above, the Commission believes that BZX has established that there is minimal risk of increased manipulation from its current proposal and has described its plans for enhanced surveillance.

[343] 15 U.S.C. 78s(g)(1).

[344] *See supra* note 321 and accompanying text.

[345] *See supra* note 10.

covered security's closing price as determined by the listing market for that covered security as of the end of regular trading hours on the prior day, and (ii) impose such short sale circuit breaker restriction for the remainder of the day and the following day. In addition, the Exchange's policies and procedures, among other things, must be reasonably designed to permit the execution or display of a short sale order of a covered security marked ''short exempt'' without regard to whether the order is at a price that is less than or equal to the current national best bid.

In Amendment No. 2, the Exchange recognized that since the Cboe Market Close will match buy and sell MOC orders at 3:35 p.m. without knowing the later determined execution price (namely, the official closing price as determined by the primary listing exchange), there is a possibility that a short sale MOC order that is matched for execution in the Cboe Market Close could result in an execution price that violates Rule 201 of Regulation SHO. To prevent such a violation of Rule 201 of Regulation SHO, the Exchange proposed to reject all short sale MOC orders that are designated for participation in the Cboe Market Close. The Exchange noted, however, that MOC orders marked ''short exempt'' are not subject to the short sale circuit breaker restriction under Regulation SHO, and would therefore be accepted for participation in the Cboe Market Close.

One commenter addressed the proposed Amendment No. 2.[346] In particular, Nasdaq acknowledged that the proposed amendment could help BZX avoid violations of Rule 201 of Regulation SHO.[347] The Commission believes that the Exchange's proposed handling of short sale MOC orders and ''short exempt'' MOC orders in the context of the Cboe Market Close, as described in Amendment No. 2, will help to ensure that the Exchange is in compliance with its responsibilities under Rule 201(b) of Regulation SHO and is otherwise consistent with the protection of investors and in the public interest.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

[346] *See* Nasdaq Letter 4.

[347] *See id.* (noting also Nasdaq's belief that Amendment No. 2 did not address any of the other issues that had been raised in prior comment letters).

It is therefore ordered, pursuant to Rule 431 of the Commission's Rules of Practice, that the earlier action taken by delegated authority, Exchange Act Release No. 82522 (January 17, 2018), 83 FR 3205 (January 23, 2018), is set aside and, pursuant to Section 19(b)(2) of the Exchange Act, the proposed rule change (SR–BatsBZX–2017–34), as modified by Amendment No. 1 and Amendment No. 2, hereby is approved.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01253 Filed 1–24–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10747; 34–88012; File No. 265–32]

SEC Small Business Capital Formation Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: The Securities and Exchange Commission Small Business Capital Formation Advisory Committee, established pursuant to Section 40 of the Securities Exchange Act of 1934 as added by the SEC Small Business Advocate Act of 2016, is providing notice that it will hold a public meeting. The public is invited to submit written statements to the Committee.

DATES: The meeting will be held on Tuesday, February 4, 2020, from 9:30 a.m. to 3:30 p.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Written statements should be received on or before February 4, 2020.

ADDRESSES: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC. The meeting will be webcast on the Commission's website at *www.sec.gov.* Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rule-comments@sec.gov.* Please include File Number 265–32 on the subject line; or

Paper Statements

- Send paper statements to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–32. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the SEC's website at *www.sec.gov.*

Statements also 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. (ET). All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Julie Z. Davis, Senior Special Counsel, Office of the Advocate for Small Business Capital Formation, at (202) 551–5407, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Persons needing special accommodations because of a disability should notify the contact person listed in the section above entitled **FOR FURTHER INFORMATION CONTACT**. The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

Dated: January 22, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–01313 Filed 1–24–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88009; File No. SR–NYSEArca–2020–06]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Schedule of Fees and Charges To Remove the Ineligibility for Certain Discounts

January 21, 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 January 10, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 remove the ineligibility for certain discounts when an issuer transfers an Exchange Traded Product or Structured Product off the Exchange (except to an Exchange affiliate) in a trailing 12-month period. The Exchange proposes to implement the fee changes effective January 10, 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 remove the ineligibility for certain discounts when an issuer transfers an Exchange Traded Product (''ETP'') or Structured Product off the Exchange (except for transfers to an Exchange affiliate) in a trailing 12-month period.

The proposed change responds 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 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 adopted a competitive pricing structure that combines higher minimum annual fees for certain securities with discounts for issuers that list multiple ETPs and Structured Products.[4] The proposed change is designed to encourage more issuers to qualify for the discounts and enhance competition among issuers and listing venues by removing ineligibility for certain discounts when an issuer transfers a Product off the Exchange (except for transfers to an Exchange affiliate) in a trailing 12-month period.

The Exchange proposes to implement the fee changes effective January 10, 2020.

Proposed Rule Change

Currently, the Exchange offers non-mutually exclusive ''Fund Family'' and ''High Volume Products'' discounts for ETPs and Structured Products that are set forth in Section 9 of the Schedule of Fees and Charges. Eligibility for the discounts is subject to the limitation 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 is ineligible for either or both discounts for the following calendar year. The Exchange proposes to remove this limitation from the Schedule of Fees and Charges.

The purpose of the proposed change is to encourage more issuers to qualify for the discounts by removing the restriction on achieving or retaining them. Although the limitation is a reasonable attempt to incentivize issuers to maintain listings on the Exchange and discourage transfers to and from the Exchange solely for the purpose of securing one or more discounts, the Exchange believes that removing the limitation outweighs those considerations because it would result in more issuers qualifying for and retaining discounts while enhancing competition among issuers and listing venues, to the benefit of all market participants. The proposed change described above is 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.

[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.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[6] 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.'' [7]

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 Exchange believes that the proposed change is a reasonable attempt to encourage more issuers to qualify for discounts that the Exchange offers by removing restrictions on achieving or retaining them, thereby enhancing competition among issuers and listing venues.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) & (5).

[7] *See* Regulation NMS, 70 FR at 37499.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the 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 removal of the limitation on discounts for ETPs and Structured Products is equitable because it would apply uniformly to all issuers and to all ETPs and Structured Products listed on the Exchange either generically or pursuant to a rule filing with the Commission. For the same reasons, the proposal neither targets nor will it have a disparate impact on any particular category of market participant.

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 remove an eligibility restriction on issuers transferring Products off the Exchange because removal of the restriction would apply to and potentially benefit all issuers equally.

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,[8] 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 change would encourage competition by removing an incentive for issuers not to transfer Products off of the Exchange (except to an Exchange affiliate) in a trailing 12-month period, which the Exchange believes will enhance competition among issuers and listing venues, to the benefit of investors. As noted, 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 change impose a burden on competition.

Intramarket Competition. The proposed change is designed to remove a restriction in order to encourage more issuers to qualify for and retain discounts that the Exchange offers. Removal of the restriction would be apply [sic] to and potentially benefit all issuers equally, and, as such, the proposed change would 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 change can impose any burden on intermarket competition.

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)[9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] 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)[11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2020–06 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–2020–06. 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–2020–06 and

[8] 15 U.S.C. 78f(b)(8).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 15 U.S.C. 78s(b)(2)(B).

should be submitted on or before February 18, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01237 Filed 1–24–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, January 29, 2020.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: January 22, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–01366 Filed 1–23–20; 11:15 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS FORM—404

Title: Potential Board Member Information.

Purpose: Is used to identify individuals willing to serve as members of local, appeal or review boards in the Selective Service System.

Respondents: Potential Board Members.

Burden: A burden of 15 minutes or less on the individual respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of the publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: January 14, 2020.

Donald M. Benton,

Director.

[FR Doc. 2020–01330 Filed 1–24–20; 8:45 am]

BILLING CODE 8015–01–P

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS FORM—402

Title: Uncompensated Registrar Appointment Form.

Purpose: Is used to verify the official status of applicants for the position of Uncompensated Registrars and to establish authority for those appointed to perform as Selective Service System Registrars.

Respondents: United States citizens over the age of 18.

Frequency: One time.

Burden: The reporting burden is three minutes or less per respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of the publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: January 14, 2020.

Donald M. Benton,

Director.

[FR Doc. 2020–01331 Filed 1–24–20; 8:45 am]

BILLING CODE 8015–01–P

SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans Interest Rate for Second Quarter FY 2020

The Small Business Administration publishes an interest rate for Military Reservist Economic Injury Disaster Loans (13 CFR 123.512) on a quarterly

basis. The interest rate will be 3.750 for loans approved on or after January 17, 2020.

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2020–00703 Filed 1–24–20; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2020–0001]

Procedures To Consider Retention or Withdrawal of the Exclusion of Bifacial Solar Panels From the Safeguard Measure on Solar Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: On January 23, 2018, the President imposed a safeguard measure on imports of certain solar products pursuant to a Section 201 investigation. On February 14, 2018, the U.S. Trade Representative established procedures for interested persons to request product-specific exclusions from application of the safeguard measure and comment on the submitted requests. Based on the requests and comments received, the U.S. Trade Representative granted certain requests on June 13, 2019, including a request to exclude from the safeguard measure bifacial solar panels that consist only of bifacial solar cells. This notice establishes procedures for interested persons to submit comments, and respond to comments, on whether the U.S. Trade Representative should maintain the exclusion of bifacial solar panels from the safeguard measure, withdraw the exclusion, or take some other action within his authority with respect to this exclusion.

DATES: *February 17, 2020, at 11:59 p.m. EST:* Submission of comments on whether the U.S. Trade Representative should maintain the exclusion of bifacial solar panels from the safeguard measure, withdraw the exclusion, or take some other action within his authority with respect to this exclusion.

February 27, 2020, at 11:59 p.m. EST: Submission of responses to comments.

FOR FURTHER INFORMATION CONTACT: Victor Mroczka, Office of WTO and Multilateral Affairs, at *vmroczka@ustr.eop.gov* or (202) 395–9450, or Dax Terrill, Office of General Counsel, at *Dax.Terrill@ustr.eop.gov* or (202) 395–4739.

SUPPLEMENTARY INFORMATION:

A. Background

On January 23, 2018, the President issued Proclamation 9693 (83 FR 3541) to impose a safeguard measure under section 201 of the Trade Act of 1974 (19 U.S.C. 2251) with respect to certain crystalline silicon photovoltaic (CSPV) cells and other products (CSPV products) containing these cells. The Proclamation directed the U.S. Trade Representative to establish procedures for interested persons to request product-specific exclusions from the safeguard measure. It also authorized the U.S. Trade Representative, after consultation with the Secretaries of Commerce and Energy, to exclude products by modifying the Harmonized Tariff Schedule of the United States (HTSUS) with publication of a determination in the **Federal Register** to exclude such products.

On February 14, 2018, the U.S. Trade Representative issued a notice setting out the procedures to request a product exclusion and opened a public docket. *See* 83 FR 6670 (the February 2018 notice). Under the February 2018 notice, requests for exclusion were to identify the particular product in terms of its physical characteristics (such as dimensions, wattage, material composition, or other distinguishing characteristics) that differentiate it from other products subject to the safeguard measure. The February 2018 notice provided that the U.S. Trade Representative would not consider requests identifying the product at issue in terms of the identity of the producer, importer, or ultimate consumer; the country of origin; or trademarks or tradenames. The notice also confirmed that the U.S. Trade Representative would only grant exclusions that did not undermine the objectives of the safeguard measure.

Based on the February 2018 notice, the Office of the U.S. Trade Representative (USTR) received 48 product exclusion requests and 213 subsequent comments responding to the various requests. The exclusion requests generally fell into seven categories, one of which concerned bifacial solar panels.

On September 19, 2018, and June 13, 2019, the U.S. Trade Representative granted certain product exclusion requests and modified the HTSUS accordingly. *See* 83 FR 47393 and 84 FR 27684. The notice published on June 13, 2019 (the June 2019 notice) excluded from application of the safeguard measure ''bifacial solar panels that absorb light and generate electricity on each side of the panel and that consist of only bifacial solar cells that absorb light and generate electricity on each side of the cells.''

On October 9, 2019, the U.S. Trade Representative concluded, based on an evaluation of newly available information and after consultation with the Secretaries of Commerce and Energy, that maintaining the exclusion would undermine the objectives of the safeguard measure. Accordingly, the U.S. Trade Representative published a notice withdrawing the exclusion of bifacial solar panels, effective as of October 28, 2019. *See* 84 FR 54244.

On October 21, 2019, Invenergy Renewables LLC filed a complaint with the U.S. Court of International Trade alleging that USTR failed to provide notice and comment required under the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* before withdrawing the exclusion of bifacial solar panels. Invenergy filed a motion for a preliminary injunction to prevent the withdrawal from entering into effect. The Court issued a preliminary injunction on December 5, 2019, enjoining the U.S. Trade Representative from withdrawing the exclusion on bifacial solar panels from the safeguard measure. If the U.S. Trade Representative determines after receipt of comments pursuant to this notice that it would be appropriate to withdraw the bifacial exclusion or take some other action with respect to this exclusion, the U.S. Trade Representative will request that the Court lift the injunction.

B. Comments on the Retention or Withdrawal of the Exclusion of Bifacial Solar Panels

USTR is concerned that: (1) The bifacial solar panel exclusion will result in significant increases in imports of bifacial solar panels and therefore will undermine the objectives of the safeguard measure; (2) the precise definition of bifacial solar panels excluded from the safeguard measure may require clarification; and (3) the exclusion in the June 2019 notice is broader than the category of products described in the exclusion requests submitted as of March 16, 2018.

For these reasons, USTR is seeking public comment on whether the U.S. Trade Representative should maintain the exclusion of bifacial solar panels from the safeguard measure, withdraw the exclusion, or take some other action within his authority with respect to this exclusion.

The U.S. Trade Representative specifically requests information or views regarding the following, with sufficient evidence to support a particular position:

• Global and United States production and production capacity for bifacial solar panels prior to and following the exclusion of these products in the June 2019 notice, along with any information on expected changes in production and production capacity for the remaining term of the safeguard measure (*i.e.,* until February 6, 2022).

• Projections for the production and importation into the United States of bifacial solar panels for the remaining term of the safeguard measure.

• Import data and entry documentation to establish the level of bifacial solar panels imported into the United States prior to and following the exclusion of these products in the June 2019 notice.

• Projections of demand for bifacial solar panels by companies building or planning to build solar facilities or otherwise to install bifacial solar panels.

• Contracts, purchase orders, or other agreements that establish sales or other transactions, including those between suppliers and customers, regarding bifacial solar panels that have been or will be imported into the United States and such agreements regarding bifacial solar panels that have been or will be produced in the United States.

• Production cost and price differential between the manufacture and distribution of monofacial and bifacial solar panels.

• Substitutability or competitiveness between monofacial and bifacial solar panels in the United States.

• Domestic production and production capacity of bifacial solar cells or bifacial solar panels in the United States.

• Whether the U.S. Trade Representative should modify the exclusion to implement a tariff-rate quota (TRQ) on the importation of bifacial solar panels that enter with no additional duty and, if so, the level (*e.g.,* in megawatts) of that TRQ.

• The potential impact, if any, on the domestic workforce and economy in general should the exclusion be withdrawn.

• Any other information or data that interested persons consider relevant to the U.S. Trade Representative's evaluation.

C. Responses to Comments on the Exclusion of Bifacial Solar Panels

After the submission of comments on whether the U.S. Trade Representative should maintain the exclusion of bifacial solar panels from the safeguard measure, withdraw the exclusion, or take some other action within his authority with respect to this exclusion, interested persons will have an opportunity to respond to comments. Interested persons can view the submitted comments on *www.regulations.gov* by entering docket number USTR–2020–0001 in the search field on the home page.

Responses to comments should indicate whether they support or oppose a particular view and provide reasons for that position. As with the initial round of comments, responses should address the information or factors identified above with sufficient evidence to support or oppose the particular view in question. If a supporter or opponent of a particular view fails to provide evidence in its control that is relevant to one of the factors listed above, USTR may conclude, that the omitted evidence would not support the supporter or opponent's position.

D. Consultation With Other Government Agencies

As with the initial determination to exclude bifacial solar panels from the safeguard measure, the U.S. Trade Representative will consult with the Secretaries of Commerce and Energy regarding the comments, responses, and supporting evidence received in response to this notice to determine what, if any, action to take regarding the exclusion of bifacial solar panels from the safeguard measure.

E. No Other Exclusion Determinations, Additional Requests for Exclusion, or Additional Requests for Withdrawal of Exclusions

At this time, USTR is not evaluating any other exclusion determinations and is not accepting additional requests for exclusion from the safeguard measure or requests to withdraw exclusions. USTR will continue monitoring developments in the U.S. market for CSPV products and, if warranted, provide for additional exclusion requests at a future date.

F. Submission Instructions

USTR seeks comments and responses to comments with respect to the issues described in Sections B and C through a public comment process. To be assured of consideration, you must submit written comments by 11:59 p.m. EST on February 17, 2020, and any written responses to those comments by 11:59 p.m. EST on February 27, 2020. All comments must be in English and must identify on the reference line of the first page of the submission ''Comments or Responses on the Exclusion of Bifacial Solar Panels From the Safeguard Measure on Solar Products.''

We strongly encourage commenters to make on-line submissions using the *www.regulations.gov* website. To submit comments via *www.regulations.gov,* enter docket number USTR–2020–0001 on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled 'comment now!' For further information on using *www.regulations.gov,* please consult the resources provided on the website by clicking 'how to use *regulations.gov*' on the bottom of the home page. We will not accept hand-delivered submissions.

The *www.regulations.gov* website allows users to provide comments by filling in a 'type comment' field, or by attaching a document using an 'upload file' field. We prefer that you provide comments as an attached document in Microsoft Word (.doc) or Adobe Acrobat (.pdf) format. If the submission is in another file format, please indicate the name of the software application in the 'type comment' field. File names should reflect the name of the person or entity submitting the comments. Please do not attach separate cover letters to electronic submissions; rather please, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

Comments or responses based on this notice may entail the submission of business confidential information. In that event, the submitter must provide both a public version for publication and a confidential version. The file name for the business confidential version should begin with the characters 'BC.' The first page of the confidential version, and each subsequent page that actually contains business confidential information, must be clearly marked 'BUSINESS CONFIDENTIAL' on the top of the page. Moreover, the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. The submitter also must certify that the information is business confidential and would not customarily be released to the public.

As indicated above, a submitter that provides a version containing business confidential information also must provide a public version of the submission with the relevant information redacted. The file name of the public version should begin with the character 'P.' The 'BC' and 'P' should be followed by the name of the person or

entity submitting the comments. Submissions that do not contain business confidential information should have a file name identifying the person or entity submitting the comments.

We emphasize that submitters are strongly encouraged to file comments through *www.regulations.gov.* You must make arrangements for any alternative method of submission with Yvonne Jamison at (202) 395–9666 in advance of transmitting a comment. You can find general information about USTR at *www.ustr.gov.*

As noted, we will publish non-confidential versions of submissions in the docket for public inspection. You can view submissions on *www.regulations.gov* by entering the relevant docket number in the search field on the home page.

Jeffrey Gerrish,

Deputy United States Trade Representative, Office of the U.S. Trade Representative.

[FR Doc. 2020–01260 Filed 1–24–20; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Limited-Scope Supplemental Environmental Impact Statement: City of Burlington, Chittenden County, Vermont

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to prepare a Limited-Scope Supplemental Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that a Limited-Scope Supplemental Environmental Impact Statement will be prepared for the proposed Southern Connector/Champlain Parkway project in the City of Burlington, Chittenden County, Vermont.

FOR FURTHER INFORMATION CONTACT: Rob Sikora, Environmental Program Manager, Federal Highway Administration, 87 State Street, Room 216, Montpelier, Vermont 05602. Telephone: (802) 828–4573.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Vermont Agency of Transportation (VTrans) and the City of Burlington, will prepare a Limited-Scope Supplemental Environmental Impact Statement (EIS) for the Burlington Southern Connector/Champlain Parkway between Interstate 189 and Main Street in Burlington, Vermont.

The Southern Connector/Champlain Parkway project has a long history with National Environmental Policy Act (NEPA) reviews dating back to the 1970's. The most recent NEPA document for the project was a Final Supplemental EIS approved by FHWA on September 22, 2009 and a Record of Decision (ROD) issued on January 13, 2010 identifying the Selected Alternative and the reasons for its selection. On October 11, 2019, the FHWA published a notice to rescind the ROD in order to re-evaluate the project's impacts to low-income and minority populations in accordance with 23 CFR 771.129. Based on the environmental re-evaluation, FHWA has determined that a Limited-Scope Supplemental EIS should be prepared for the project to address changes subsequent to 2010 in FHWA guidance and methodology for performing environmental justice analyses, updated demographic information contained in the latest available census data, and to provide additional opportunities for meaningful public involvement.

The Supplemental EIS will be limited in the scope of issues, and only assess impacts to low-income and minority populations. Based on the Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and FHWA's ''Guidance on Environmental Justice and NEPA,'' it is FHWA's policy to identify and address any disproportionately high and adverse effects of FHWA actions on the health or environment of low-income and minority populations to the greatest extent practicable and permitted by law. The Supplemental EIS review will also address a limited portion of the project along the Pine Street section of the Selected Alternative, between Maple Street and Main Street.

Public involvement is a critical component of the National Environmental Policy Act (NEPA) review and Federal-aid highway project development process. A Draft Limited-Scope Supplemental EIS will be made available for review and comment by Federal and state resource agencies and the public. A public hearing will be held at an accessible location in Burlington at the time the document is made available. In addition to the public hearing, and as needed during the project's NEPA review, FHWA will work with VTrans and the City of Burlington to plan, organize and provide public involvement opportunities and project status updates through the project website, local media, and a project open house. Public notice will be given of the time and place of public meetings and hearings through local newspapers and the project website at *http://champlainparkway.com/.* No formal scoping meeting is planned at this time. Following approval of the Draft Limited-Scope Supplemental EIS, FHWA plans to issue a combined Final Limited-Scope Supplemental EIS/ROD.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 16, 2020.

Matthew R. Hake,

Division Administrator, Montpelier, Vermont.

[FR Doc. 2020–01333 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0154; FMCSA–2012–0332; FMCSA–2013–0122; FMCSA–2013–0123]

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 12 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: The exemptions were applicable on January, 14, 2020. The exemptions expire on January 14, 2022. Comments must be received on or before February 26, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0154, Docket No. FMCSA–2012–0332, Docket No. FMCSA–2013–0122, or Docket No. FMCSA–2013–0123 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–2012–0154, FMCSA–2012–0332, FMCSA–2013–0122, or FMCSA–2013–0123), 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, FMCSA–2012–0154, FMCSA–2012–0332, FMCSA–2013–0122, or FMCSA–2013–0123, 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–2012–0154, FMCSA–2012–0332, FMCSA–2013–0122, or FMCSA–2013–0123, 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 12 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 12 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 12 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.

As of January 14, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 12 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Geoffrey Canoyer (MN)
Chase Cook (VA)
Jerry Ferguson (TX)

Douglas Gray (OR)
Sue Gregory (UT)
Buford Hudson (KY)
William Larson (NC)
Raymond Norris (TX)
Jonathan Pitts (MD)
James Queen (FL)
James Schubin (CA)
Morris Townsend (NC)

The drivers were included in docket number FMCSA–2012–0154, FMCSA–2012–0332, FMCSA–2013–0122, or FMCSA–2013–0123. Their exemptions are applicable as of January 14, 2020, and will expire on January 14, 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 12 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 2 years unless revoked earlier by FMCSA.

Issued on: January 17, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–01272 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0107; FMCSA–2015–0119; FMCSA 2015–0320]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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 seven individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on January 21, 2020. The exemptions expire on January 21, 2022. Comments must be received on or before February 26, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0107; Docket No. FMCSA–2015–0119; Docket No. FMCSA–2015–0320 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2013-0107*, *http://www.regulations.gov/docket?D=FMCSA-2015-0119* or *http://www.regulations.gov/docket?D=FMCSA-2015-0320.* 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–2013–0107; FMCSA–2015–0119; FMCSA 2015–0320), 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-2013-0107* or *http://www.regulations.gov/docket?D=FMCSA-2015-0119* or *http://www.regulations.gov/docket?D=FMCSA-2015-0320.* 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-2013-0107* or *http://www.regulations.gov/docket?D=FMCSA-*

2015-0119 or *http://www.regulations.gov/docket?D=FMCSA-2015-0320* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting 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

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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 epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The seven individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), 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 seven applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The seven drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. 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 renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of January 21, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Thomas DeAngelo (IL)
Nathan Dermer (AK)
Toriano Mitchell (OH)
Tyler Schaefer (ME)
Stephen Stawinsky (PA)
Alvin Strite (PA)
Thomas Vivirito (PA)

The drivers were included in docket numbers FMCSA–2013–0107; FMCSA–2015–0119; and FMCSA–2015–0320. Their exemptions are applicable as of January 21, 2020, and will expire on January 21, 2022.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. 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 on its evaluation of the seven exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Issued on: January 17, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–01279 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0387]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for two 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: The exemptions were applicable on October 22, 2019. The exemptions expire on October 22, 2021.

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. 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-2014-0387* 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.

B. 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

On November 21, 2019, FMCSA published a notice announcing its decision to renew exemptions for two individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (84 FR 64393). The public comment period ended on December 23, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

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).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the two renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41 (b)(11).

As of October 22, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (84 FR 64393):

Richard A. Carter (MD); Donnie Lamar McEntire, Jr. (GA)

The drivers were included in docket number FMCSA–2014–0387. Their exemptions are applicable as of October 22, 2019, and will expire on October 22, 2021.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (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 prior to being 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).

Issued on: January 17, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–01285 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0140]

Agency Information Collection Activities; Extension of an Approved Information Collection Request: Transportation of Hazardous Materials, Highway Routing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to extend an existing ICR titled, ''Transportation of Hazardous Materials, Highway Routing.'' The information reported by States, the District of Columbia, Indian tribes, and U.S. Territories is necessary to identify designated/restricted routes and restrictions or limitations affecting how motor carriers may transport certain hazardous materials on their highways, including dates that such routes were established and information on subsequent changes or new hazardous materials routing designations.

FMCSA received one anonymous comment to the 60-day **Federal Register** Notice published on August 13, 2019. The comment was in support of the information collection.

DATES: Please send your comments by February 26, 2020. OMB must receive

your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2019–0140. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Rach, Office of Enforcement and Compliance, Hazardous Materials Division, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–385–2307; email *suzanne.rach@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Background: The data for the Transportation of Hazardous Materials; Highway Routing ICR is collected under authority of 49 U.S.C. 5112 and 5125. Specifically, 49 U.S.C. 5112(c) requires that the Secretary, in coordination with the States, ''shall update and publish periodically a list of currently effective hazardous material highway route designations.''

In 49 CFR 397.73, FMCSA requires that each State, the District of Columbia, Indian tribes, and U.S. Territories, through its routing agency, provide information identifying new, or changes to existing, hazardous materials routing designations within its jurisdiction within 60 days after their establishment (or 60 days of the change). That information is collected and consolidated by FMCSA and published annually, in whole or as updates, in the **Federal Register** at *https://www.fmcsa.dot.gov/.*

Title: Transportation of Hazardous Materials, Highway Routing.

OMB Control Number: 2126–0014.

Type of Request: Extension of a currently-approved information collection.

Respondents: The reporting burden is shared by 50 States, the District of Columbia, Indian tribes with designated routes, *and* U.S. Territories including; Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands.

Estimated Number of Respondents: 57 [36 States + the District of Columbia, with designated hazardous materials highway routes + 19 States/U.S. Territories without designated hazardous materials highway routes + 1 Indian tribe with a designated route = 57].

Estimated Time per Response: 15 minutes.

Expiration Date: April 30, 2020.

Frequency of Response: Once every two years.

Estimated Total Annual Burden: 7 hours [57 annual respondents × 1 response per 2 years × 15 minutes per response/60 minutes per response = 7.125 hours rounded to 7 hours].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform it's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: January 17, 2020.

Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2020–01284 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0207]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its decision to deny applications from 41 individuals who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce.

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 material in the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. 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-2019-0207* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting 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.

B. 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

FMCSA received applications from 41 individuals who requested an exemption from the FMCSRs prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a CMV from operating CMVs in interstate commerce.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(8).

III. Basis for Exemption Determination

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 Agency's decision regarding these exemption applications is based on the eligibility criteria, the terms and conditions for Federal exemptions, and an individualized assessment of each applicant's medical information provided by the applicant.

IV. Conclusion

The Agency has determined that these applicants do not satisfy the eligibility criteria or meet the terms and conditions of the Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(8). Therefore, the 41 applicants in this notice have been denied exemptions from the physical qualification standards in § 391.41(b)(8).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 41 applicants do not meet the minimum time requirement for being seizure-free, either on or off of anti-seizure medication:

Justin Bartlett (ME)
Robert Bonds (SC)
Michael Bretz (MN)
Theresa Buchanan (MI)
Kenneth Caldwell (CA)
Joseph Campbell (AK)
Timothy Campbell (IN)
Leslie Dillard (NC)
Earnest Drummond (GA)
Jackie Frolund (MN)
Michael Galloway (WI)
Aaron Gnoinsky (ND)
Kenny Goins (TN)
Michael Gravley (NV)
Nathanial Harmon (WI)
Dustan Hendrickson (OR)
Alfonzo Hennigan (GA)
Timothy Howard (NY)
Billy Hunter (KY)
Brian Iverson (CA)
Lance Johnson (TN)
Michael Kramer (KS)
Kurtis Kuhl (OH)
Blake Kunkel (MN)
Michael Leiterman (WI)
Nicholas Liebe (WI)
Robert Macarthur (MO)
Brian Manning (NJ)
Kevin Mast (CA)
Anthony Middleton (NJ)
Christopher Monsky (CT)
Joshua Pittman (CA)
Lee Riebe (OH)
Blake Shaw (NY)
Gregory Stone (SC)
David Thomas (OK)
Laranzo White (SC)
Patrick Willis (CO)
Kenneth Winn (UT)
James Woltz (GA)
David Wright (MA)

Issued on: January 17, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–01274 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2003–16241; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2008–0231; FMCSA–2009–0054; FMCSA–2009–0154; FMCSA–2011–0124; FMCSA–2011–0142; FMCSA–2011–26690; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2014–0297; FMCSA–2014–0298; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2017–0019]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 77 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

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. 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–1999–5578; FMCSA–1999–5748; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2003–16241; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2008–0231; FMCSA–2009–0054; FMCSA–2009–0154; FMCSA–2011–0124; FMCSA–2011–0142; FMCSA–2011–26690; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2014–0297; FMCSA–2014–0298; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; or FMCSA–2017–0019, 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.

B. 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

On December 4, 2019, FMCSA published a notice announcing its decision to renew exemptions for 77

individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (84 FR 66447). The public comment period ended on January 3, 2020, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the 77 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in § 391.41(b)(10).

As of December 3, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 34 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 40404; 64 FR 66962; 66 FR 63289; 67 FR 68719; 68 FR 2629; 68 FR 52811; 68 FR 61860; 68 FR 64944; 70 FR 48797; 70 FR 61165; 70 FR 61493; 70 FR 67776; 72 FR 64273; 73 FR 46973; 73 FR 54888; 74 FR 11988; 74 FR 21427; 74 FR 37295; 74 FR 48343; 74 FR 53581; 74 FR 62632; 76 FR 29026; 76 FR 34136; 76 FR 44652; 76 FR 49528; 76 FR 53708; 76 FR 55463; 76 FR 61143; 76 FR 64171; 76 FR 70215; 78 FR 20376; 78 FR 24798; 78 FR 27281; 78 FR 30954; 78 FR 34141; 78 FR 34143; 78 FR 41188; 78 FR 41975; 78 FR 46407; 78 FR 47818; 78 FR 52602; 78 FR 56986; 78 FR 63307; 78 FR 64280; 78 FR 68137; 78 FR 77782; 78 FR 78477; 79 FR 63211; 79 FR 69985; 80 FR 2471; 80 FR 8927; 80 FR 33007; 80 FR 37718; 80 FR 44188; 80 FR 48411; 80 FR 50917; 80 FR 59225; 80 FR 59230; 80 FR 62161; 80 FR 63869; 80 FR 67472; 80 FR 67476; 81 FR 1284; 81 FR 11642; 81 FR 15404; 82 FR 18818; 82 FR 32919; 82 FR 35043; 82 FR 47295; 82 FR 47312; 82 FR 47313; 83 FR 2306; 83 FR 3861):

Thomas E. Adams (IN)
Rickie L. Boone (NC)
Jerry A. Bordelon (LA)
Rickie L. Brown (MS)
Timothy V. Burke (CO)
James E. Byrnes (MO)
Westcott G. Clarke (MA)
Joseph Coelho (RI)
Kevin R. Cowger (ID)
Jeffrey M. Dauterman (OH)
Thomas P. Davidson (NJ)
Edward J. Genovese (IN)
Nirmal S. Gill (CA)
Britt A. Green (ND)
Bradley O. Hart (UT)
Dennis H. Heller (KS)
Jesus J. Huerta (NV)
Darrell W. Knorr (IL)
Dale R. Knuppel (CO)
Carmelo A. Lana (NJ)
Michael Lancette (WI)
Keith A. Lang (TX)
Larry W. Lunde (WA)
Rodney M. Mimbs (GA)
Michael A. Mitchell (MS)
Dennis L. Morgan (WA)
James A. Parker (PA)
Chris A. Ritenour (MI)
Steven L. Roberts (AR)
Derek J. Savko (MT)
Manjinder Singh (WA)
Wesley C. Slattery (KS)
Mark R. Stevens (IA)
Daniel R. Viscaya (NC)
Paul B. Williams (NY)

The drivers were included in docket numbers FMCSA–1999–5748; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2008–0231; FMCSA–2009–0054; FMCSA–2009–0154; FMCSA–2011–0124; FMCSA–2011–0142; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2014–0297; FMCSA–2014–0298; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; and FMCSA–2017–0019. Their exemptions are applicable as of December 3, 2019, and will expire on December 3, 2021.

As of December 5, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 64169; 76 FR 75943; 78 FR 62935; 78 FR 65032; 78 FR 76395; 80 FR 67481; 83 FR 2306):

Kevin G. Clem (SD)
Rocky J. Lachney (LA)
Chase L. Larson (WA)
Fred L. Stotts (OK)

The drivers were included in docket numbers FMCSA–2011–26690; and FMCSA–2013–0166. Their exemptions are applicable as of December 5, 2019, and will expire on December 5, 2021.

As of December 6, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (70 FR 57353; 70 FR 72689; 72 FR 62897; 74 FR 60021; 76 FR 70210; 78 FR 66099; 80 FR 67481; 83 FR 2306):

Thomas C. Meadows (NC)
David A. Morris (TX)
Richard P. Stanley (MA)
Scott A. Tetter (IL)

The drivers were included in docket number FMCSA–2005–22194. Their exemptions are applicable as of December 6, 2019, and will expire on December 6, 2021.

As of December 15, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (80 FR 70060; 81 FR 16265; 83 FR 2306):

Ricky A. Bray (AR)
Michael D. Judy (KS)
Joel H. Kohagen (IA)
Kelly K. Kremer (OR)
Edward R. Lockhart (MS)
Rodolfo Martinez (TX)
Tobias G.E. Olsen (ND)
Gregory A. Woodward (OR)
Alton R. Young (MS)

The drivers were included in docket number FMCSA–2015–0072. Their exemptions are applicable as of December 15, 2019, and will expire on December 15, 2021.

As of December 17, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 62935; 78 FR 76395; 80 FR 67481; 83 FR 2306):

Herbert R. Benner (ME)
Henry D. Smith (NC); and
Kolby W. Strickland (WA)

The drivers were included in docket number FMCSA–2013–0166. Their exemptions are applicable as of December 17, 2019, and will expire on December 17, 2021.

As of December 22, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following individual has satisfied the renewal conditions for

obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 49528; 76 FR 61143; 78 FR 67460; 80 FR 67481; 83 FR 2306):

Robert E. Morgan, Jr. (GA)

The driver was included in docket number FMCSA–2011–0142. The exemption is applicable as of December 22, 2019, and will expire on December 22, 2021.

As of December 24, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 63302; 78 FR 64274; 78 FR 77778; 78 FR 77780; 80 FR 67481; 83 FR 2306):

Ernest J. Bachman (PA)
Eugene R. Briggs (MI)
Bradley R. Dishman (KY)
Thomas G. Gholston (MS)
Chad A. Miller (IA)
Kerry R. Powers (IN)
Robert Thomas (PA)
Herman D. Truewell (FL)
Janusz K. Wis (IL)

The drivers were included in docket numbers FMCSA–2013–0168; and FMCSA–2013–0169. Their exemptions are applicable as of December 24, 2019, and will expire on December 24, 2021.

As of December 27, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 27027; 64 FR 51568; 66 FR 53826; 66 FR 63289; 66 FR 66966; 67 FR 10471; 67 FR 19798; 68 FR 64944; 68 FR 69434; 69 FR 19611; 70 FR 48797; 70 FR 53412; 70 FR 57353; 70 FR 61493; 70 FR 67776; 70 FR 72689; 70 FR 74102; 74 FR 60021; 76 FR 75942; 78 FR 67452; 80 FR 67481; 83 FR 2306):

Stanley E. Elliott (UT)
Elmer E. Gockley (PA)
Randall B. Laminack (TX)
Robert W. Lantis (MT)
Eldon Miles (IN)
Neal A. Richard (LA)
Rene R. Trachsel (OR)
Kendle F. Waggle, Jr. (IN)
DeWayne Washington (NC)

The drivers were included in docket numbers FMCSA–1999–5578; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2005–21711; and FMCSA–2005–22194. Their exemptions are applicable as of December 27, 2019, and will expire on December 27, 2021.

As of December 31, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (68 FR 61857; 68 FR 75715; 71 FR 646; 72 FR 71998; 74 FR 65846; 76 FR 78729; 78 FR 67454; 78 FR 67462; 79 FR 4803; 80 FR 67481; 83 FR 2306):

Martiniano L. Espinosa (FL)
Dustin K. Heimbach (PA) and
Lonnie Lomax, Jr. (IL)

The drivers were included in docket numbers FMCSA–2003–16241; and FMCSA–2013–0170. Their exemptions are applicable as of December 31, 2019, and will expire on December 31, 2021.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (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 prior to being 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).

Issued on: January 17, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–01283 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0389; FMCSA–2013–0107; FMCSA–2016–0011; FMCSA–2017–0181]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for seven individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication 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.

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. 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–2011–0389, FMCSA–2013–0107, FMCSA–2016–0011, or FMCSA–2017–0181, 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 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.

B. 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

On December 4, 2019, FMCSA published a notice announcing its decision to renew exemptions for seven individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (84 FR 66440). The public comment period ended on January 3, 2020, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would

achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the seven renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of November and are discussed below.

As of November 6, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (84 FR 66440):

Christopher Bird (OH)
Ronald Bohr (IA)
Joseph D'Angelo (NY)
Craig Lasecki (WI)

The drivers were included in docket number FMCSA–2011–0389; FMCSA–2013–0107; and FMCSA–2016–0011. Their exemptions are applicable as of November 6, 2019, and will expire on November 6, 2021.

As of November 14, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (84 FR 66440): Gary J. Gress (PA); Kenneth Lewis (NC); and Sean Moran (MA).

The drivers were included in docket number FMCSA–2017–0181. Their exemptions are applicable as of November 14, 2019, and will expire on November 14, 2021.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (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 prior to being 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).

Issued on: January 17, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–01277 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0102; FMCSA–2014–0383]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

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.

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. 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-2014-0102* or *http://www.regulations.gov/docket?D=FMCSA-2014-0383* 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.

B. 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

On August 28, 2019, FMCSA published a notice announcing its decision to renew exemptions for 11 individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (84 FR 45199). The public comment period ended on September 27, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

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).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the 11 renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41 (b)(11).

As of May 8, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 10 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (84 FR 45199):

Herbert Crowe (IN)
Jessica Crowe (MO)
Mark Dickson (TX)
Jason Gensler (OH)
David Grady (CO)
Frankye Helbig (FL)
Thomas Lipyanic (FL)
Donald Malley (MO)
David Shores (NC)
Richard Whittaker (IN)

The drivers were included in docket number FMCSA–2014–0383. Their exemptions are applicable as of May 8, 2019, and will expire on May 8, 2021.

As of May 21, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), Timothy Gallagher (PA) has satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers. (84 FR 45199)

This driver was included in docket number FMCSA–2014–0102. The exemption is applicable as of May 21, 2019, and will expire on May 21, 2021.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (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 prior to being 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).

Issued on: January 17, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–01273 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2019–0036]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt seven individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on January 10, 2020. The exemptions expire on January 10, 2022.

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. 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-2019-0036* 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.

B. 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

On December 4, 2019, FMCSA published a notice announcing receipt of applications from seven individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (84 FR 66446). The public comment period ended on January 3, 2020, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received one comment in this proceeding that supported granting these exemptions.

IV. Basis for Exemption Determination

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

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

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 Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). A summary of each applicant's seizure history was discussed in the December 4, 2019, **Federal Register** notice (84 FR 66446) and will not be repeated in this notice.

These seven applicants have been seizure-free over a range of 18 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

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 seven exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition, § 391.41(b)(8), subject to the requirements cited above:

David Crouch (KY)

Demetrius Furman (SD)

Christopher Gilbert (VA)

Jeffrey Koesterer (MO)

Kevin Market (OH)

Randy Wentz (PA)

Robert Williams (IL)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (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 prior to being 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).

Issued on: January 17, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–01278 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5748; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–20027; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–26653; FMCSA–2007–0017; FMCSA–2007–2663; FMCSA–2007–27897; FMCSA–2007–28695; FMCSA–2009–0154; FMCSA–2009–0303; FMCSA–2011–0092; FMCSA–2011–0140; FMCSA–2011–0275; FMCSA–2011–0325; FMCSA–2011–26690; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2017–0026; FMCSA–2017–0027]

Qualification of Drivers; Exemption Applications; Vision

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 76 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before February 26, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–1999–5748, Docket No. FMCSA–2001–10578, Docket No. FMCSA–2003–15268, Docket No. FMCSA–2003–15892, Docket No. FMCSA–2005–20027, Docket No. FMCSA–2005–21711, Docket No. FMCSA–2005–22194, Docket No. FMCSA–2005–22727, Docket No. FMCSA–2006–26653, Docket No. FMCSA–2007–0017, Docket No. FMCSA–2007–2663, Docket No. FMCSA–2007–27897, Docket No. FMCSA–2007–28695, Docket No. FMCSA–2009–0154, Docket No. FMCSA–2009–0303, Docket No. FMCSA–2011–0092, Docket No.

FMCSA–2011–0140, Docket No. FMCSA–2011–0275, Docket No. FMCSA–2011–0325, Docket No. FMCSA–2011–26690, Docket No. FMCSA–2013–0026, Docket No. FMCSA–2013–0027, Docket No. FMCSA–2013–0028, Docket No. FMCSA–2013–0029, Docket No. FMCSA–2013–0030, Docket No. FMCSA–2013–0165, Docket No. FMCSA–2013–0166, Docket No. FMCSA–2013–0167, Docket No. FMCSA–2013–0168, Docket No. FMCSA–2013–0170, Docket No. FMCSA–2013–0174, Docket No. FMCSA–2015–0053, Docket No. FMCSA–2015–0055, Docket No. FMCSA–2015–0056, Docket No. FMCSA–2015–0070, Docket No. FMCSA–2015–0071, Docket No. FMCSA–2015–0072, Docket No. FMCSA–2015–0345, Docket No. FMCSA–2015–0347, Docket No. FMCSA–2017–0026, or Docket No. FMCSA–2017–0027 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–1999–5748; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–20027; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–26653; FMCSA–2007–0017; FMCSA–2007–2663; FMCSA–2007–27897; FMCSA–2007–28695; FMCSA–2009–0154; FMCSA–2009–0303; FMCSA–2011–0092; FMCSA–2011–0140; FMCSA–2011–0275; FMCSA–2011–0325; FMCSA–2011–26690; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2017–0026; and FMCSA–2017–0027), 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, FMCSA–1999–5748; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–20027; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–26653; FMCSA–2007–0017; FMCSA–2007–2663; FMCSA–2007–27897; FMCSA–2007–28695; FMCSA–2009–0154; FMCSA–2009–0303; FMCSA–2011–0092; FMCSA–2011–0140; FMCSA–2011–0275; FMCSA–2011–0325; FMCSA–2011–26690; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2017–0026; or FMCSA–2017–0027, 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–1999–5748; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–20027; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–26653; FMCSA–2007–0017; FMCSA–2007–2663; FMCSA–2007–27897; FMCSA–2007–28695; FMCSA–2009–0154; FMCSA–2009–0303; FMCSA–2011–0092; FMCSA–2011–0140; FMCSA–2011–0275; FMCSA–2011–0325; FMCSA–2011–26690; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2017–0026; or FMCSA–2017–0027, 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 vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 76 individuals listed in this notice have requested renewal of their exemptions from the vision standard in § 391.41(b)(10), 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 76 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 64 FR 40404; 64 FR 66962; 66 FR 53826; 66 FR 66966; 66 FR 66969; 68 FR 37197; 68 FR 52811; 68 FR 61860; 68 FR 69432; 68 FR 69434; 70 FR 2701; 70 FR 16887; 70 FR 48797; 70 FR 57353; 70 FR 61165; 70 FR 61493; 70 FR 71884; 70 FR 72689; 70 FR 74102; 71 FR 644; 71 FR 4632; 72 FR 8417; 72 FR 36099; 72 FR 39879; 72 FR 46261; 72 FR 52419; 72 FR 54971; 72 FR 54972; 72 FR 62896; 72 FR 62897; 72 FR 64273; 72 FR 67340; 72 FR 71993; 72 FR 71995; 72 FR 71998; 73 FR 1395; 73 FR 5259; 73 FR 6246; 74 FR 34395; 74 FR 37295; 74 FR 43221; 74 FR 43223; 74 FR 48343; 74 FR 49069; 74 FR 53581; 74 FR 60021; 74 FR 60022; 74 FR 62632; 74 FR 65845; 74 FR 65847; 75 FR 1450; 75 FR 1451; 75 FR 4623; 76 FR 25766; 76 FR 37169; 76 FR 37885; 76 FR 44652; 76 FR 50318; 76 FR 53708; 76 FR 55469; 76 FR 62143; 76 FR 64164; 76 FR 64169; 76 FR 64171; 76 FR 70210; 76 FR 70212; 76 FR 70215; 76 FR 75940; 76 FR 75943; 76 FR 78728; 76 FR 78729; 76 FR 79760; 77 FR 539; 77 FR 543; 77 FR 545; 77 FR 3554; 77 FR 10608; 78 FR 22598; 78 FR 24798; 78 FR 27281; 78 FR 34143; 78 FR 37270; 78 FR 37274; 78 FR 41188; 78 FR 41975; 78 FR 46407; 78 FR 47818; 78 FR 52602; 78 FR 56986; 78 FR 56993; 78 FR 62935; 78 FR 63302; 78 FR 63307; 78 FR 64271; 78 FR 64280; 78 FR 65032; 78 FR 66099; 78 FR 67454; 78 FR 67460; 78 FR 67462; 78 FR 68137; 78 FR 76395; 78 FR 76704; 78 FR 76705; 78 FR 76707; 78 FR 77780; 78 FR 77782; 78 FR 78475; 78 FR 78477; 79 FR 1908; 79 FR 2748; 79 FR 3919; 79 FR 4803; 79 FR 6993; 79 FR 14333; 79 FR 53708; 80 FR 31635; 80 FR 31640; 80 FR 33007; 80 FR 36395; 80 FR 37718; 80 FR 40122; 80 FR 44188; 80 FR 48411; 80 FR 49302; 80 FR 50915; 80 FR 53383; 80 FR 59225; 80 FR 59230; 80 FR 62161; 80 FR 62163; 80 FR 63839; 80 FR 63869; 80 FR 67472; 80 FR 67476; 80 FR 67481; 80 FR 70060; 80 FR 79414; 80 FR 80443; 81 FR 1284; 81 FR 1474; 81 FR 11642; 81 FR 15401; 81 FR 15404; 81 FR 16265; 81 FR 44680; 81 FR 48493; 82 FR 37499; 82 FR 47312; 83 FR 2292; 83 FR 2306; 83 FR 2311; 83 FR 3861; 83 FR 4537; 83 FR 6922; 83 FR 6925; 83 FR 18648; or 83 FR 24589). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at § 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant 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 February and are discussed below. As of February 9, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 61 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 40404; 64 FR 66962; 66 FR 53826; 66 FR 66966; 66 FR 66969; 68 FR 37197; 68 FR 52811; 68 FR 61860; 68 FR 69432; 68 FR 69434; 70 FR 2701; 70 FR 16887; 70 FR 48797; 70 FR 57353; 70 FR 61165; 70 FR 61493; 70 FR 71884; 70 FR 72689; 70 FR 74102; 71 FR 644; 71 FR 4632; 72 FR 8417; 72 FR 36099; 72 FR 39879; 72 FR 46261; 72 FR 52419; 72 FR 54971; 72 FR 54972; 72 FR 62896; 72 FR 62897; 72 FR 64273; 72 FR 67340; 72 FR 71993; 72 FR 71995; 72 FR 71998; 73 FR 1395; 73 FR 5259; 73 FR 6246; 74 FR 34395; 74 FR 37295; 74 FR 43221; 74 FR 43223; 74 FR 48343; 74 FR 49069; 74 FR 53581; 74 FR 60021; 74 FR 60022; 74 FR 62632; 74 FR 65845; 74 FR 65847; 75 FR 1450; 75 FR 1451; 75 FR 4623; 76 FR 25766; 76 FR 37169; 76 FR 37885; 76 FR 44652; 76 FR 50318; 76 FR 53708; 76 FR 55469; 76 FR 62143; 76 FR 64164; 76 FR 64169; 76 FR 64171; 76 FR 70210; 76 FR 70212; 76 FR 70215; 76 FR 75940; 76 FR 75943; 76 FR 78728; 76 FR 78729; 76 FR 79760; 77 FR 543; 77 FR 545; 77 FR 3554; 78 FR 22598; 78 FR 24798; 78 FR 27281; 78 FR 34143; 78 FR 37270; 78 FR 37274; 78 FR 41188; 78 FR 41975; 78 FR 46407; 78 FR 47818; 78 FR 52602; 78 FR 56986; 78 FR 56993; 78 FR 62935; 78 FR 63302; 78 FR 63307; 78 FR 64271; 78 FR 64280; 78 FR 65032; 78 FR 66099; 78 FR 67454; 78 FR 67460; 78 FR 67462; 78 FR 68137; 78 FR 76395; 78 FR 76704; 78 FR 76705; 78 FR 76707; 78 FR 77780; 78 FR 77782; 78 FR 78475; 78 FR 78477; 79 FR 2748; 79 FR 3919; 79 FR 4803; 79 FR 53708; 80 FR 31635; 80 FR 31640; 80 FR 33007; 80 FR 36395; 80 FR 37718; 80 FR 40122; 80 FR 44188; 80 FR 48411; 80 FR 49302; 80 FR 50915; 80 FR 53383; 80 FR 59225; 80 FR 59230; 80 FR 62161; 80 FR 62163; 80 FR 63839; 80 FR 63869; 80 FR 67472; 80 FR 67476; 80 FR 67481; 80 FR 70060; 80 FR 79414; 80 FR 80443; 81 FR 1284; 81 FR 11642; 81 FR 15401; 81 FR 15404; 81 FR 16265; 81 FR 44680; 82 FR 37499; 82 FR 47312; 83 FR 2306; 83 FR 3861; 83 FR 4537; 83 FR 6922; and 83 FR 6925):

Deneris G. Allen (LA)
Christopher L. Bagby (VA)
Wayne Barker (OK)
Richard D. Becotte (NH)
Gary L. Best (MI)
Timothy A. Bohling (CO)

Charles W. Bradley (SC)
Jean-Pierre G. Brefort (CT)
Duane W. Brzuchalski (AZ)
John Camp (GA)
Henry L. Chastain (GA)
Martina B. Classen (IA)
Aubrey R. Cordrey, Jr. (DE)
Robert L. Cross, Jr. (MO)
Matthew W. Daggs (MO)
James M. Del Sasso (IL)
Albert M. DiVella (NV)
Michael M. Edleston (MA)
Elhadji M. Faye (CA)
James P. Fitzgerald (MA)
Russell W. Foster (OH)
Gordon R. Fritz (WI)
Richard L. Gandee (OH)
James E. Goodman (AL)
Christopher L. Granby (MI)
John N. Guilford (AL)
Louis M. Hankins (IL)
Steven M. Hoover (IL)
Frank E. Johnson, Jr. (FL)
Carol Kelly (IN)
Roger D. Kool (IA)
William E. Leimkuehler (OK)
Michael S. Lewis (NC)
Jose A. Marco (TX)
Dennis L. Maxcy (NY)
George A. McCue (NV)
Cameron S. McMillen (NM)
David L. Menken (NY)
Gregory G. Miller (OH)
Rashawn L. Morris (VA)
James R. Murphy (NY)
Charles D. Oestreich (MN)
Carlos A. Osollo (NM)
Robert M. Pickett II (MI)
Johnny L. Powell (MD)
Branden J. Ramos (CA)
Andres Regalado (CA)
Daniel T. Rhodes (IL)
Thenon D. Ridley (TX)
Christopher M. Rivera (NM)
Richard S. Robb (NM)
Angelo D. Rogers (AL)
Juan M. Rosas (AZ)
David J. Rothermal (RI)
James J. Slemmer (PA)
Juan E. Sotero (FL)
George E. Todd (WV)
Aaron M. Vernon (OH)
John H. Voigts (AZ)
Joseph A. Wells (IL)
James D. Zimmer (OH)

The drivers were included in docket numbers FMCSA–1999–5748; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–20027; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–26653; FMCSA–2007–0017; FMCSA–2007–2663; FMCSA–2007–27897; FMCSA–2007–28695; FMCSA–2009–0154; FMCSA–2009–0303; FMCSA–2011–0092; FMCSA–2011–0140; FMCSA–2011–0275; FMCSA–2011–26690; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0170; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; and FMCSA–2015–0345. Their exemptions are applicable as of February 9, 2020, and will expire on February 9, 2022.

As of February 12, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (81 FR 1474; 81 FR 48493; and 83 FR 6925):

Charles H. Baim (PA); Walton W. Smith (VA); and Aaron D. Tillman (DE)

The drivers were included in docket number FMCSA–2015–0347. Their exemptions are applicable as of February 12, 2020, and will expire on February 12, 2022.

As of February 16, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (83 FR 2292; 83 FR 2311; 83 FR 18648; and 83 FR 24589):

Jordan N. Bean (ND)
Micheal H. Eheler (WI)
Colin D. McGregor (WI)
Ryan J. Plank (PA)
Douglas E. Porter (MI)
Jorge A. Rodriguez (CA)
Jimmy W. Rowland (FL)
Aaron R. Rupe (IL)
Juan D. Zertuche (TX)

The drivers were included in docket numbers FMCSA–2017–0026; and FMCSA–2017–0027. Their exemptions are applicable as of February 16, 2020, and will expire on February 16, 2022.

As of February 22, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 539; 77 FR 10608; 79 FR 6993; 81 FR 15401; and 83 FR 6925):

Brian K. Cline (NC); and Mickey Lawson (NC)

The drivers were included in docket number FMCSA–2011–0325. Their exemptions are applicable as of February 22, 2020, and will expire on February 22, 2022.

As of February 27, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (79 FR 1908; 79 FR 14333; 81 FR 15401; and 83 FR 6925):

Danielle Wilkins (CA)

The driver was included in docket number FMCSA–2013–0174. The exemption is applicable as of February 27, 2020, and will expire on February 27, 2022.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified medical examiner (ME), as defined by § 390.5, who attests that the driver is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. 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.

VI. Conclusion

Based upon its evaluation of the 76 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in § 391.41(b)(10), subject to the requirements cited above. 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 17, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–01280 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0012]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel REALITY CHECK (Sailing Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 26, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0012 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0012 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0012, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel REALITY CHECK is:

—*Intended Commercial Use of Vessel:* ''Carrying passengers for hire.''
—*Geographic Region Including Base of Operations:* ''California'' (Base of Operations: Long Beach, CA)
—*Vessel Length and Type:* 42′ Sailing Catamaran

The complete application is available for review identified in the DOT docket as MARAD–2020–0012 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0012 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * *

Dated: January 22, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–01304 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0006]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel RED JACKET (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 26, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0006 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0006 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0006, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RED JACKET is:

—Intended Commercial Use of Vessel: ''Up to six passengers cruising in Maine waters.''

—*Geographic Region Including Base of Operations:* ''Maine'' (Base of Operations: Owls Head, ME)

—*Vessel Length and Type:* 37′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0006 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0006 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * *

Dated: January 22, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2020–01305 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0007]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel THE DODO (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is

authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 26, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD 2020–0007 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0007 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0007, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel THE DODO is:

—Intended Commercial use of Vessel: ''Harbor and coastal cruises for no more than 12 passengers departing primarily from Marina Del Rey, CA.''

—*Geographic Region Including Base of Operations:* ''California, Washington, and Alaska (excluding Southeast Alaska)'' (Base of Operations: Marina Del Ray, CA)

—*Vessel Length and Type:* 70' Motor Vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0007 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0007 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

* * *

Dated: January 22, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–01306 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0008]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LAPIS LAZULI (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 26, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0008 one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0008 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0008, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LAPIS LAZULI is:

—*Intended Commercial Use of Vessel:* ''Coastline Charter''

—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Key West, FL)

—*Vessel Length and Type:* 66′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0008 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov* keyword search MARAD–2020–0008 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

* * * * *

Dated: January 22, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–01309 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0009]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MOLI (Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 26, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0009 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0009 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0009, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m.,

Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MOLI is:

—*Intended Commercial use of Vessel:* ''Passenger carry coastwise for sail training.''

—*Geographic Region Including Base of Operations:* ''California, Hawaii'' (Base of Operations: San Francisco, CA)

—*Vessel Length and Type:* 43' sailboat

The complete application is available for review identified in the DOT docket as MARAD–2020–0009 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0009 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

* * * * *

Dated: January 22, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–01310 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0005]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel TWENTY FOUR VII 2 (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 26, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0005 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0005 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0005, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information

provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TWENTY FOUR VII 2 is:

—*Intended Commercial Use of Vessel:* ''Charters and sport fishing''
—*Geographic Region Including Base of Operations:* ''Wisconsin, Illinois, Indiana, and Michigan'' (Base of Operations: Kenosha, WI)
—*Vessel Length and Type:* 38′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0005 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0005 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: January 22, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–01307 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0010]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PELICAN (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 26, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0010 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0010 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0010, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey

Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PELICAN is:

—*Intended Commercial use of Vessel:* ''Carrying of passengers for sightseeing and sunset cruises''
—*Geographic Region Including Base of Operations:* ''Virginia'' (Base of Operations: Charlottesville, VA)
—*Vessel Length and Type:* 48' motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0010 *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0010 or visit the Docket Management Facility (see ADDRESSES for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

* * *

Dated: January 22, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2020–01311 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0011]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel GRYPHON (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 26, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0011 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0011 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0011, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GRYPHON is:

—*Intended Commercial Use of Vessel:* ''Coast wise and river sightseeing cruises''
—*Geographic Region Including Base of Operations:* ''North Carolina'' (Base of Operations: Wrightsville Beach, NC)
—*Vessel Length and Type:* 42' motor vessel

The complete application is available for review identified in the DOT docket

as MARAD–2020–0011 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0011 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

* * *

Dated: January 22, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–01308 Filed 1–24–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On October 4, 2019, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to revise and extend the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051) and the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), which are currently approved collections of information.

The comment period for the October 2019 notice ended on December 3, 2019. As described in the **SUPPLEMENTARY INFORMATION** section, after considering the comments received on the proposal, the agencies are proceeding with the proposed revisions to the reporting forms and instructions for the Call Reports and the FFIEC 101 (except for the reporting changes arising from the proposed total loss absorbing capacity holdings rule that has not yet been finalized), but with certain modifications. In general, the modifications relate to the disclosure of an institution's election of the community bank leverage ratio framework, a change in the scope of the FFIEC 031 Call Report, and the reporting of home equity lines of credit that convert from revolving to non-revolving status. The reporting revisions that implement various changes to the agencies' capital rule would take effect in the same quarters as the effective dates of the capital rule changes, *i.e.,* primarily as of the March 31 and June 30, 2020, report dates. Call Report revisions applicable to operating lease liabilities and home equity lines of credit would take effect in the first quarter of 2020 and 2021, respectively.

In addition, the agencies are giving notice they are sending the collections to OMB for review.

DATES: Comments must be submitted on or before February 26, 2020.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the ''Call Report and FFIEC 101 Reporting Revisions,'' will be shared among the agencies.

OCC: You may submit comments, which should refer to ''Call Report and FFIEC 101 Reporting Revisions,'' by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Office of the Comptroller of the Currency, Attention: 1557–0081 and 1557–0239, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''1557–0081 and 1557–0239'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to these information collections following the close of the 30-Day comment period for this notice by any of the following methods:

• *Viewing Comments Electronically:* Go to *www.reginfo.gov*. Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' These information collections can be located by searching by OMB control number ''1557–0081'' or ''1557–0239.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

• *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: You may submit comments, which should refer to ''Call Report and FFIEC 101 Reporting Revisions,'' by any of the following methods:

• *Agency Website: http://www.federalreserve.gov*. Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.

• *Email: regs.comments@federalreserve.gov*. Include ''Call Report and FFIEC 101 Reporting Revisions'' in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

FDIC: You may submit comments, which should refer to ''Call Report and FFIEC 101 Reporting Revisions,'' by any of the following methods:

• *Agency Website: https://www.fdic.gov/regulations/laws/federal/*. Follow the instructions for submitting comments on the FDIC's website.

• *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments.

• *Email: comments@FDIC.gov*. Include ''Call Report and FFIEC 101 Reporting Revisions'' in the subject line of the message.

• *Mail:* Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

• *Public Inspection:* All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center, 3501 North Fairfax Drive, Arlington, VA 22226, or by telephone at (877) 275–3342 or (703) 562–2200.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions to the information collections discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the report forms for the Call Report and the FFIEC 101 can be obtained at the FFIEC's website (*https://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490, or for persons who are deaf or hearing impaired, TTY, (202) 649–5597.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

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I. Affected Reports

All of the proposed changes discussed below affect the Call Reports, while a number of the changes also affect the FFIEC 101. On December 27, 2019, the Board separately proposed to make revisions to the Consolidated Financial Statements for Holding Companies (FR Y–9C) [1] corresponding to those initially proposed by the agencies on October 4, 2019.[2]

A. Call Reports

The agencies propose to extend for three years, with revision, the FFIEC 031, FFIEC 041, and FFIEC 051 Call Reports.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: FFIEC 031 (Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices), FFIEC 041 (Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only), and FFIEC 051 (Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than $5 Billion).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Type of Review: Revision and extension of currently approved collections.

OCC

OMB Control No.: 1557–0081.

Estimated Number of Respondents: 1,143 national banks and federal savings associations.

Estimated Average Burden per Response: 41.24 burden hours per quarter to file.

Estimated Total Annual Burden: 188,549 burden hours to file.

Board

OMB Control No.: 7100–0036.

Estimated Number of Respondents: 779 state member banks.

Estimated Average Burden per Response: 44.45 burden hours per quarter to file.

Estimated Total Annual Burden: 138,506 burden hours to file.

FDIC

OMB Control No.: 3064–0052.

Estimated Number of Respondents: 3,386 insured state nonmember banks and state savings associations.

Estimated Average Burden per Response: 39.43 burden hours per quarter to file.

Estimated Total Annual Burden: 534,040 burden hours to file.

The estimated average burden hours collectively reflect the estimates for the FFIEC 051, the FFIEC 041, and the FFIEC 031 reports for each agency. When the estimates are calculated by type of report across the agencies, the estimated average burden hours per quarter are 36.70 (FFIEC 051), 50.11(FFIEC 041), and 95.42 (FFIEC 031). The estimated burden hours for the currently approved reports are 40.27 (FFIEC 051), 53.72 (FFIEC 041), and 95.60 (FFIEC 031), so the revisions proposed in this notice would represent a reduction in estimated average burden hours per quarter of 3.57 (FFIEC 051), 3.61 (FFIEC 041), and 0.18 (FFIEC 031). The change in burden is predominantly due to changes associated with the community bank leverage ratio final rule. The reduction in average burden hours is significantly less for the FFIEC 031 than for the FFIEC 041 or the FFIEC 051 because greater percentages of institutions that would be eligible to report under the proposed community bank leverage ratio framework currently file the FFIEC 041 or the FFIEC 051 than the FFIEC 031.[3] The estimated burden per response for the quarterly filings of the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.,* size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices).

Type of Review: Extension and revision of currently approved collections.

Legal Basis and Need for Collections

The Call Report information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (for federal and state savings associations). At present, except for selected data items and text, these information collections are not given confidential treatment.

Banks and savings associations submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data serve a regulatory or public policy purpose by assisting the agencies in fulfilling their shared missions of ensuring the safety and soundness of financial institutions and the financial system and protecting consumer financial rights, as well as agency-specific missions affecting national and state-chartered institutions, such as conducting monetary policy, ensuring financial stability, and administering federal deposit insurance. Call Reports are the source of the most current statistical data available for identifying areas of focus for on-site and off-site examinations. Among other purposes, the agencies use Call Report data in evaluating institutions' corporate applications, including interstate merger and acquisition applications for which the agencies are required by law to determine whether the resulting institution would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Call Report data also are used to calculate institutions' deposit insurance assessments and national banks' and federal savings associations' semiannual assessment fees.

B. FFIEC 101

The agencies propose to extend for three years, with revision, the FFIEC 101 report.

Report Title: Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework.

Form Number: FFIEC 101.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC:

OMB Control No.: 1557–0239.

[1] See 84 FR 71414, December 27, 2019. Consolidated Financial Statements for Holding Companies (FR Y–9C), OMB Number 7100–0128.

[2] 84 FR 53227, October 4, 2019.

[3] For estimating burden hours, the agencies assumed 60 percent of eligible institutions would use the framework.

Estimated Number of Respondents: 5 national banks and federal savings associations.

Estimated Time per Response: 674 burden hours per quarter to file for banks and federal savings associations.

Estimated Total Annual Burden: 13,480 burden hours to file.

Board

OMB Control No.: 7100–0319.

Estimated Number of Respondents: 4 state member banks; 4 bank holding companies and savings and loan holding companies that complete Supplementary Leverage Ratio (SLR) Tables 1 and 2 only; 9 other bank holding companies and savings and loan holding companies; and 6 intermediate holding companies.

Estimated Time per Response: 674 burden hours per quarter to file for state member banks; 3 burden hours per quarter to file for bank holding companies and savings and loan holding companies that complete Supplementary Leverage Ratio (SLR) Tables 1 and 2 only; 677 burden hours per quarter to file for other bank holding companies and savings and loan holding companies; and 3 burden hours per quarter to file for intermediate holding companies.

Estimated Total Annual Burden: 10,784 burden hours for state member banks to file; 48 burden hours for bank holding companies and savings and loan holding companies that complete Supplementary Leverage Ratio (SLR) Tables 1 and 2 only to file; 24,372 burden hours for other bank holding companies and savings and loan holding companies to file; and 72 burden hours for intermediate holding companies to file.

FDIC

OMB Control No.: 3064–0159.

Estimated Number of Respondents: 1 insured state nonmember bank and state savings association.

Estimated Time per Response: 674 burden hours per quarter to file.

Estimated Total Annual Burden: 2,696 burden hours to file.

Type of Review: Extension and revision of currently approved collections.

Legal Basis and Need for Collections

Each advanced approaches institution [4] is required to report quarterly regulatory capital data on the FFIEC 101. Each Category III institution [5] is required to report supplementary leverage ratio information on the FFIEC 101. The FFIEC 101 information collections are mandatory for advanced approaches and Category III institutions: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1844(c) (bank holding companies), 12 U.S.C. 1467a(b) (savings and loan holding companies), 12 U.S.C. 1817 (insured state non-member commercial and savings banks), 12 U.S.C. 1464 (savings associations), and 12 U.S.C. 1844(c), 3106, and 3108 (intermediate holding companies). Certain data items in this information collection are given confidential treatment under 5 U.S.C. 552(b)(4) and (8).

The agencies use data reported in the FFIEC 101 to assess and monitor the levels and components of each reporting entity's applicable capital requirements and the adequacy of the entity's capital under the Advanced Capital Adequacy Framework [6] and the supplementary leverage ratio,[7] as applicable; to evaluate the impact of the Advanced Capital Adequacy Framework and the supplementary leverage ratio, as applicable, on individual reporting entities and on an industry-wide basis and its competitive implications; and to supplement on-site examination processes. The reporting schedules also assist advanced approaches institutions and Category III institutions in understanding expectations relating to the system development necessary for implementation and validation of the Advanced Capital Adequacy Framework and the supplementary leverage ratio, as applicable. Submitted data that are released publicly will also provide other interested parties with information about advanced approaches institutions' and Category III institutions' regulatory capital.

II. Current Actions

A. Overview

On October 4, 2019, the agencies proposed revisions to the Call Reports and the FFIEC 101 that would implement various changes to the agencies' regulatory capital rule [8] that, as of that date, the agencies had finalized or were considering finalizing.[9] The changes to the agencies' regulatory capital rule included in their October 2019 notice were the capital simplifications rule, the community bank leverage ratio (CBLR) rule, the proposed tailoring rule, the proposed total loss absorbing capacity (TLAC) holdings rule, the proposed rule for supplementary leverage ratio (SLR) revisions for certain central bank deposits of custodial banks, the proposed rule for the standardized approach for counterparty credit risk (SA–CCR) on derivative contracts, and the high volatility commercial real estate (HVCRE) land development proposal.

The agencies also proposed a change in the scope of the FFIEC 031 Call Report; a change in the reporting of construction, land development, and other land loans with interest reserves in the Call Report; and Call Report instructional revisions for the reporting of operating lease liabilities and home equity lines of credit (HELOCs) that convert from revolving to non-revolving status.

The comment period for the October 2019 notice ended on December 3, 2019. The agencies received comments on the proposed reporting changes covered in the notice from four entities: Three bankers' associations and one savings association. These comments are addressed in the following sections of this notice.

Except for the proposed TLAC holdings rule, final rules have been adopted for all of the regulatory capital rulemakings addressed in the October 2019 notice. The capital-related reporting changes discussed in the October 2019 notice will be effective in the same quarters as the effective dates of the various capital rules that have been finalized (see Section III below). However, because the proposed TLAC holdings rule has not been finalized, at this time the agencies are not proceeding with the implementation of the TLAC-related reporting changes proposed in the October 2019 notice. Once the proposed TLAC holdings rule is finalized, the agencies plan to issue a 30-day **Federal Register** notice pursuant to the PRA to implement the associated reporting changes, which would address any comments received on the proposed changes.

After carefully considering the comments received on the October 2019 notice, the agencies are adopting the reporting changes proposed in that notice (other than for TLAC) with modifications discussed in the following sections of this notice.

[4] *See* 12 CFR 3.100(b) (OCC); 12 CFR 217.100(b) (Board); 12 CFR 324.100(b) (FDIC).

[5] See 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

[6] 12 CFR part 3, subpart E (OCC); 12 CFR part 217, subpart E (Board); 12 CFR part 324, subpart E (FDIC).

[7] 12 CFR 3.10(c)(4) (OCC); 12 CFR 217.10(c)(4) (Board); 12 CFR 324.10(c)(4) (FDIC).

[8] 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC). While the agencies have codified the capital rule in different parts of title 12 of the Code of Federal Regulations, the internal structure of the sections within each agency's rule is substantially similar.

[9] 84 FR 53227, October 4, 2019.

B. Capital Simplifications Rule

1. Background

On July 22, 2019, the agencies published a final rule amending their regulatory capital rule to make a number of burden-reducing changes to the capital rule (capital simplifications rule).[10] The capital simplifications rule had an effective date of April 1, 2020. However, the agencies subsequently approved a final rule that permits non-advanced approaches banking organizations [11] to implement the capital simplifications rule on January 1, 2020.[12] As a result, non-advanced approaches banking organizations have the option to implement the capital simplifications rule on the revised effective date of January 1, 2020, or in the quarter beginning April 1, 2020.

The agencies proposed revisions to Call Report Schedule RC–R, Regulatory Capital, in all three versions of the Call Report to implement the associated changes to the agencies' regulatory capital rule effective as of the March 31, 2020, report date, consistent with the final rule that effectively permits early adoption of the capital simplifications rule.

2. Proposed Revisions to Call Report Schedule RC–R

The revisions in the capital simplifications rule would make a number of changes to the calculation of common equity tier 1 (CET1) capital, additional tier 1 capital, and tier 2 capital for non-advanced approaches institutions that do not apply to advanced approaches institutions. Thus, the capital simplifications rule results in different sets of calculations for these tiers of regulatory capital for non-advanced approaches institutions and advanced approaches institutions. At present, the FFIEC 031 and the FFIEC 041 Call Reports are completed by both non-advanced approaches institutions and advanced approaches institutions while only non-advanced approaches institutions are eligible to file the FFIEC 051 Call Report. To mitigate the complexity of revising existing Schedule RC–R, Part I, Regulatory Capital Components and Ratios, to incorporate the different sets of regulatory capital calculations for non-advanced approaches institutions and advanced approaches institutions, and to reflect the effects of the capital simplifications rule in both the FFIEC 031 and FFIEC 041 Call Reports, the agencies proposed in the October 2019 notice to require all advanced approaches institutions to file the FFIEC 031 Call Report effective as of the March 31, 2020, report date.[13] As a result, the agencies proposed to adjust the existing regulatory capital calculations reported on Schedule RC–R, Part I, for the FFIEC 041 Call Report, and also for the FFIEC 051 Call Report, to reflect the effects of the capital simplifications rule for non-advanced approaches institutions. For the FFIEC 031 Call Report, which is filed by the fewest number of institutions, the agencies proposed to incorporate the two different sets of regulatory capital calculations (one for non-advanced approaches institutions and the other for advanced approaches institutions) in Schedule RC–R, Part I, and, as mentioned above, require all advanced approaches institutions to file this version of the Call Report.

In the October 2019 notice, the agencies proposed a number of revisions that would simplify the capital calculations on each version of Schedule RC–R, Part I, effective March 31, 2020, and thereby reduce reporting burden. Because both non-advanced approaches institutions and advanced approaches institutions file the FFIEC 031 Call Report, the FFIEC 031 Call Report would include two different sets of calculations (one that incorporates the effects of the capital simplifications rule and another that does not) in adjacent columns in the affected portion of Schedule RC–R, Part I. An institution would complete only the column for the set of calculations applicable to that institution. For the March 31, 2020, report date, non-advanced approaches institutions that file the FFIEC 031 Call Report and elect to adopt the capital simplifications rule on January 1, 2020, would complete the column for the set of calculations that incorporates the effects of the capital simplifications rule. Non-advanced approaches institutions that elect to wait to adopt the capital simplifications rule on April 1, 2020, and all advanced approaches institutions would complete the column for the set of calculations that does not reflect the effects of the capital simplifications rule (*i.e.,* that reflects the capital calculation in effect for all institutions before this revision). Beginning with the June 30, 2020, report date, all non-advanced approaches institutions that file the FFIEC 031 Call Report would complete the column for the set of calculations that incorporates the effects of the capital simplifications rule; all advanced approaches institutions that file this Call Report would complete the column that does not reflect the effects of the capital simplifications rule.

Because advanced approaches institutions currently are not permitted to file the FFIEC 051 Call Report and, as proposed in the October 2019 notice, would not be permitted to file the FFIEC 041 Call Report, the FFIEC 041 and FFIEC 051 Call Reports would include a single column for the capital calculation in Schedule RC–R, Part I, that would be revised effective March 31, 2020, to incorporate the effects of the capital simplifications rule. For the March 31, 2020, report date, non-advanced approaches institutions that file the FFIEC 041 or FFIEC 051 Call Report and elect to adopt the capital simplifications rule on January 1, 2020, would complete the capital calculation column in Schedule RC–R, Part I, as revised for the capital simplifications rule. The agencies would provide instructions for non-advanced approaches institutions that file the FFIEC 041 or FFIEC 051 Call Report that elect to wait to adopt the capital simplifications rule on April 1, 2020, on how to complete Schedule RC–R, including the capital calculation column, for the March 31, 2020, report date in accordance with the capital rule in effect before the capital simplifications rule's revised effective date of January 1, 2020. Such non-advanced approaches institutions would use these instructions on a one-time basis for the March 31, 2020, report date only. Beginning with the June 30, 2020, report date, all non-advanced approaches institutions that file the FFIEC 041 or FFIEC 051 Call Report would complete Schedule RC–R as revised for the capital simplifications rule.

In connection with proposing that all advanced approaches institutions file the FFIEC 031 Call Report in the October 2019 notice, the agencies proposed to remove certain items from the FFIEC 041 Call Report that apply only to advanced approaches institutions. Thus, for Schedule RC–R, Part I, in the FFIEC 041 Call Report, the agencies proposed to remove items 30.b, 32.b, 34.b, 35.b, 40.b, 41 through 43 (Column B only), 45.a, 45.b, and 46.b. The agencies proposed to renumber items 30.a, 32.a, 34.a, 35.a, 40.a, and 46.a as items 30, 32, 34, 35, 40, and 46, respectively.

In the capital simplifications rule, the agencies increased the thresholds for

[10] 84 FR 35234 (July 22, 2019).

[11] Non-advanced approaches banking organizations are institutions that do not meet the criteria in 12 CFR 3.100(b) (OCC); 12 CFR 217.100(b) (Board); or 12 CFR 324.100(b) (FDIC).

[12] 84 FR 61804 (November 13, 2019).

[13] As discussed in Sections II.B.3. and II.D.1., below, the agencies also proposed in their October 2019 notice to require all Category III institutions to file the FFIEC 031 Call Report effective as of the March 31, 2020, report date.

including mortgage servicing assets (MSAs), temporary difference deferred tax assets that could not be realized through net operating loss carrybacks (temporary difference DTAs),[14] and investments in the capital of unconsolidated financial institutions for non-advanced approaches institutions. In addition, the agencies revised the capital calculation for minority interests included in the various capital categories for non-advanced approaches institutions and to the calculation of the capital conservation buffer.

The current regulatory capital calculations in Call Report Schedule RC–R, which do not yet reflect the revisions contained in the capital simplifications rule, require that an institution's capital cannot include MSAs, certain temporary difference DTAs, and significant investments in the common stock of unconsolidated financial institutions in an amount greater than 10 percent of CET1 capital, on an individual basis, and those three data items combined cannot comprise more than 15 percent of CET1 capital. When the reporting of regulatory capital calculations by non-advanced approaches institutions in accordance with the capital simplifications rule takes effect, this calculation would be revised in Schedule RC–R, Part I, to require that only MSAs or temporary difference DTAs in an amount greater than 25 percent of CET1 capital, on an individual basis, could not be included in a non-advanced approaches institution's regulatory capital. The 15 percent aggregate limit would be removed. In addition, the capital simplifications rule combines the current three categories of investments in financial institutions (non-significant investments in the capital of unconsolidated financial institutions, significant investments in the capital of unconsolidated financial institutions that are in the form of common stock, and significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock) into a single category, investments in the capital of unconsolidated financial institutions, and applies a limit of 25 percent of CET1 capital on the amount of these investments that can be included in capital. Any investments in excess of the 25 percent limit would be deducted from regulatory capital using the corresponding deduction approach.

Consistent with the current capital rule, an institution must risk weight MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions that are not deducted. The agencies proposed revisions to allow institutions to enter values into the Column K—250% risk weight on Schedule RC–R, Part II, in the FFIEC 051 Call Report, which is currently shaded out, and remove footnote two on the second page of Schedule RC–R, Part II, and the corresponding footnote on subsequent pages of Schedule RC–R, Part II, in all three versions of the Call Reports effective as of the March 31, 2020, report date to accommodate the capital simplifications rule revisions to the risk weight for MSAs and temporary difference DTAs. Consistent with the capital simplifications rule, non-advanced approaches institutions will not be required to differentiate among categories of investments in the capital of unconsolidated financial institutions. The risk weight for such equity exposures generally will be 100 percent, provided the exposures qualify for this risk weight.[15] For non-advanced approaches institutions, the capital simplifications rule eliminates the exclusion of significant investments in the capital of unconsolidated financial institutions in the form of common stock from being eligible for a 100 percent risk weight.[16] The application of the 100 percent risk weight (i) requires a banking organization to follow an enumerated process for calculating adjusted carrying value and (ii) mandates the equity exposures that must be included in determining whether the threshold has been reached. Equity exposures that do not qualify for a preferential risk weight will generally receive risk weights of either 300 percent or 400 percent, depending on whether the equity exposures are publicly traded.

In order to implement these regulatory capital changes from a regulatory reporting perspective, the agencies proposed in their October 2019 notice to make a number of revisions to Schedule RC–R, Part I, for non-advanced approaches institutions effective March 31, 2020. Specifically, in Schedule RC–R, Part I, in the FFIEC 041 and FFIEC 051 Call Reports, the agencies proposed to remove item 11 and modify item 13 to reflect the consolidation of all investments in unconsolidated financial institutions into a single category and apply a single 25 percent of CET1 capital limit to these investments. The agencies proposed to modify items 14 and 15 to reflect the 25 percent of CET1 capital limit for MSAs and certain temporary difference DTAs, respectively. The agencies also proposed to remove item 16, which applies to the aggregate 15 percent limitation that was removed from the capital rule for non-advanced approaches institutions. In the FFIEC 031 Call Report, the agencies proposed to create two columns for existing items 11 through 19. Column A would be reported by non-advanced approaches institutions that elect to adopt the capital simplifications rule on January 1, 2020, in the March 2020 Call Report and by all non-advanced approaches institutions beginning in the June 2020 Call Report using the definitions under the capital simplifications rule. Column A would not include items 11 or 16, and items 13 through 15 would be designated as items 13.a through 15.a to reflect the new calculation methodology. Column B would be reported by advanced approaches institutions and by non-advanced approaches institutions that elect to wait to adopt the capital simplifications rule on April 1, 2020, in the March 2020 Call Report and only by advanced approaches institutions beginning in the June 2020 Call Report using the existing definitions. Existing items 13 through 15 would be designated as items 13.b through 15.b to reflect continued use of the existing calculation methodology.

The agencies did not propose any changes to the form to incorporate the minority interest revisions. However, the agencies proposed to modify the instructions for the existing minority interest items in all versions of the Call Report to reflect the ability of non-advanced approaches institutions to use the revised method under the capital simplifications rule to calculate minority interest in existing items 4, 22,

[14] The agencies note that An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Public Law 115–97 (originally introduced as the Tax Cuts and Jobs Act), enacted December 22, 2017, eliminated the concept of net operating loss carrybacks for U.S. federal income tax purposes, although the concept may still exist in particular jurisdictions for state or foreign income tax purposes.

[15] 12 CFR 3.52 and .53 (OCC); 12 CFR 217.52 and .53 (Board); 12 CFR 324.52 and .53 (FDIC). Note that for purposes of calculating the 10 percent nonsignificant equity bucket, the capital rule excludes equity exposures that are assigned a risk weight of zero percent and 20 percent, and community development equity exposures and the effective portion of hedge pairs, both of which are assigned a 100 percent risk weight. In addition, the 10 percent non-significant bucket excludes equity exposures to an investment firm that would not meet the definition of traditional securitization were it not for the application of criterion 8 of the definition of traditional securitization, and has greater than immaterial leverage.

[16] Equity exposures that exceed, in the aggregate, 10 percent of a non-advanced approaches banking organization's total capital would then be assigned a risk weight based upon the approaches available in sections 52 and 53 of the capital rule. 12 CFR 3.52 and .53 (OCC); 12 CFR 217.52 and .53 (Board); 12 CFR 324.52 and .53 (FDIC).

and 29 (CET1, additional tier 1, and tier 2 minority interest, respectively).

3. Comments Received and Final Capital Simplifications Rule Reporting Revisions

Two commenters opposed the agencies' proposal to require all advanced approaches institutions and Category III institutions to file the FFIEC 031 Call Report because this requirement could impact the reporting burden of numerous small depository institution subsidiaries of holding companies that are advanced approaches and Category III institutions. The agencies agree with the commenters with respect to Category III institutions, and therefore they will allow such institutions that are not otherwise required to file the FFIEC 031 Call Report to file the FFIEC 041 Call Report. To do so, the agencies will retain three existing data items for reporting supplementary leverage ratio information and countercyclical capital buffer information in the FFIEC 041 Call Report for use by Category III institutions. Specifically, the agencies will retain items 45.a and 45.b (renumbered as items 55.a and 55.b) in the FFIEC 041 to collect supplementary leverage ratio information from institutions with domestic offices only and total assets less than $100 billion that are subsidiaries of banking organizations subject to Category III capital standards. Additionally, the agencies will retain item 46.b (renumbered as item 52.b) in the FFIEC 041 to collect countercyclical capital buffer information from Category III institutions.

In proposing to require all advanced approaches institutions to file the FFIEC 031 Call Report (including those advanced approaches institutions that currently file the FFIEC 041 Call Report) in conjunction with the implementation of the capital simplifications rule, the agencies sought to retain a streamlined and straightforward Part I of Schedule RC–R for the more than 1,400 non-advanced approaches institutions that filed the FFIEC 041 Call Report (based on data as of September 30, 2019). When the capital simplifications rule takes effect in the first quarter of 2020, allowing advanced approaches institutions currently filing the FFIEC 041 Call Report to continue to do so, rather than requiring them to begin filing the FFIEC 031 Call Report as had been proposed, would subject all institutions filing the FFIEC 041 to the complexity of the same dual column structure for items 11 through 19 of Schedule RC–R, Part I, that is discussed above in the context of the FFIEC 031 reporting form. The benefit of a simple, straightforward Part I of Schedule RC–R in the FFIEC 041 Call Report that would be applicable only to the more than 1,400 non-advanced approaches institutions is expected to offset the impact on the small group of less than 20 advanced approaches institutions that currently file the FFIEC 041 Call Report of having to migrate to the FFIEC 031 Call Report when the capital simplifications rule takes effect. Thus, the agencies are not adopting the commenters' recommendation to permit advanced approaches institutions currently eligible to file the FFIEC 041 to continue to file this version of the Call Report.

In addition, as a consequence of the technical amendments that the capital simplifications rule made to the agencies' capital rule effective October 1, 2019, the agencies are clarifying when an institution must report the amount of distributions and discretionary bonus payments in Schedule RC–R, Part I, item 48 (which would be renumbered as item 54). The agencies are clarifying the instructions for renumbered item 54 to explain that an institution must report the amount of distributions and discretionary bonus payments made during the calendar quarter ending on the report date if the amount of its capital conservation buffer that it reported for the previous calendar quarter-end report date was less than its applicable required buffer percentage on that previous calendar quarter-end report date. This change will enhance the agencies' ability to monitor compliance with the limitations on distributions and discretionary bonus payments. Institutions must comply with this instructional clarification beginning with the March 31, 2020, report date.

C. Community Bank Leverage Ratio Rule

1. Background

In November 2019, the agencies published a final rule to provide a simplified alternative measure of capital adequacy, the community bank leverage ratio (CBLR), for qualifying community banking organizations with less than $10 billion in total consolidated assets (CBLR final rule).[17]

In addition, the FDIC recently approved a final rule regarding the application of the CBLR framework to the deposit insurance assessment system (CBLR assessments final rule).[18] Certain clarifications would be made to the Schedule RC–O instructions to address the application of the CBLR framework to the FDIC's deposit insurance assessment system in accordance with the CBLR assessments final rule, but no revisions would be made to the data items in this schedule.

Under the CBLR final rule, banking organizations that have less than $10 billion in total consolidated assets, meet risk-based qualifying criteria, and have a leverage ratio of greater than 9 percent are eligible to opt into the CBLR framework. A banking organization that opts into the CBLR framework, maintains a leverage ratio of greater than 9 percent, and meets the other qualifying criteria will not be subject to other risk-based and leverage capital requirements and, in the case of an insured depository institution (IDI), is considered to have met the well capitalized capital ratio requirements for purposes of the agencies' prompt corrective action framework.

Under the CBLR final rule, a bank or savings association (bank) that opts into the CBLR framework (CBLR bank) may opt out of the CBLR framework at any time, without restriction, by reverting to the generally applicable capital requirements in the agencies' capital rule[19] and reporting its regulatory capital information in Call Report Schedule RC–R, ''Regulatory Capital,'' Parts I and II, at the time of opting out.

As described in the CBLR final rule, a banking organization that no longer meets the qualifying criteria for the CBLR framework will be required within two consecutive calendar quarters (grace period) either to once again satisfy the qualifying criteria or demonstrate compliance with the generally applicable capital requirements. During the grace period, the bank would continue to be treated as a CBLR bank and would be required to report its leverage ratio and related components in Call Report Schedule RC–R, Part I, in the manner described in this notice.[20] A CBLR bank that ceases to meet the qualifying criteria as a result of a business combination (*e.g.,* a merger) would receive no grace period,

[17] 84 FR 61776 (November 13, 2019).

[18] 84 FR 66833 (December 6, 2019). *See also* FDIC Press Release 80–2019, dated September 17, 2019.

[19] 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC).

[20] For example, if the banking organization electing the CBLR no longer meets one of the qualifying criteria as of February 15, and still does not meet the criteria as of the end of that quarter, the grace period for such a banking organization will begin as of the end of the quarter ending March 31. The banking organization may continue to use the community bank leverage ratio framework as of June 30, but will need to comply fully with the generally applicable rule (including the associated reporting requirements) as of September 30, unless the banking organization once again meets all qualifying criteria of the community bank leverage ratio framework, including a leverage ratio of greater than 9 percent, by that date.

and would immediately become subject to the generally applicable capital requirements. Similarly, a CBLR bank that fails to maintain a leverage ratio greater than 8 percent would not be permitted to use the grace period and would immediately become subject to the generally applicable capital requirements.

2. Proposed Revisions to Call Report Schedule RC–R

In the October 2019 notice, the agencies proposed reporting revisions to the Call Reports for banks that qualify for and opt into the CBLR framework, consistent with the CBLR final rule. The agencies also proposed in the October 2019 notice that the reporting changes to the Call Reports to implement the CBLR framework would take effect in the same quarter as the effective date of the final rule adopting the CBLR framework.

As provided in the CBLR final rule, the numerator of the community bank leverage ratio will be tier 1 capital, which is currently reported in Schedule RC–R, Part I, item 26. Therefore, the agencies are not proposing any changes related to the numerator of the community bank leverage ratio.

As provided in the CBLR final rule, the denominator of the community bank leverage ratio will be average total consolidated assets. Specifically, average total consolidated assets would be calculated in accordance with the existing reporting instructions for Schedule RC–R, Part I, items 36 through 39. The agencies did not propose any substantive changes related to the denominator of the community bank leverage ratio. However, the agencies are proposing to move existing items 36 through 39 of Schedule RC–R, Part I, and renumber them as items 27 through 30 of Schedule RC–R, Part I, to consolidate all of the community-bank-leverage-ratio-related capital items earlier in Schedule RC–R, Part I.

As provided in the CBLR final rule, a CBLR bank will calculate its community bank leverage ratio by dividing tier 1 capital by average total consolidated assets (as adjusted), and the community bank leverage ratio would be reported as a percentage, rounded to four decimal places. Since this calculation is essentially identical to the existing calculation of the tier 1 leverage ratio in Schedule RC–R, Part I, item 44, the agencies are not proposing a separate item for the community bank leverage ratio in Schedule RC–R, Part I. Instead, the agencies proposed to move the tier 1 leverage ratio from item 44 of Part I and renumber it as item 31, and rename the item the Leverage Ratio, as this ratio would apply to all institutions (as the community bank leverage ratio for qualifying institutions or the tier 1 leverage ratio for all other institutions).

As provided in the CBLR final rule, a CBLR bank will need to satisfy certain qualifying criteria in order to be eligible to opt into the CBLR framework. The proposed items identified below would collect information necessary to ensure that a bank continuously meets the qualifying criteria for using the CBLR framework.

Specifically, a CBLR bank is a bank that is not an advanced approaches institution and meets the following qualifying criteria:

- A leverage ratio of greater than 9 percent;
- Total consolidated assets of less than $10 billion;
- Total trading assets and trading liabilities of 5 percent or less of total consolidated assets; and
- Total off-balance sheet exposures (excluding derivatives other than sold credit derivatives and unconditionally cancelable commitments) of 25 percent or less of total consolidated assets.[21]

Accordingly, the agencies proposed to collect the items described below for community bank leverage ratio reporting purposes.

In proposed item 32 of Schedule RC–R, Part I, a CBLR bank would report total assets, as reported in Call Report Schedule RC, item 12.

In proposed item 33, a CBLR bank would report the sum of trading assets from Schedule RC, item 5, and trading liabilities from Schedule RC, item 15, in Column A. The bank would also report that sum divided by total assets from Schedule RC, item 12, and expressed as a percentage in Column B. As provided in the CBLR final rule, trading assets and trading liabilities would be added together, not netted, for purposes of this calculation. Also as discussed in the CBLR final rule, a bank would not meet the definition of a qualifying community banking organization for purposes of the CBLR framework if the percentage reported in Column B is greater than 5 percent.

In proposed items 34.a through 34.d, a CBLR bank would report information related to commitments, other off-balance sheet exposures, and sold credit derivatives.

In proposed item 34.a, a CBLR bank would report the unused portion of conditionally cancelable commitments. This amount would be the amount of all unused commitments less the amount of unconditionally cancelable commitments, as discussed in the planned CBLR final rule and defined in the agencies' capital rule.[22] This item would be calculated consistent with the sum of Schedule RC–R, Part II, items 18.a and 18.b, Column A.

In proposed item 34.b, a CBLR bank would report total securities lent and borrowed, which would be the sum of Schedule RC–L, items 6.a and 6.b.

In proposed item 34.c, a CBLR bank would report the sum of certain other off-balance sheet exposures and sold credit derivatives. Specifically, a CBLR bank would report the sum of self-liquidating, trade-related contingent items that arise from the movement of goods; transaction-related contingent items (performance bonds, bid bonds, warranties, and performance standby letters of credit); sold credit protection in the form of guarantees and credit derivatives; credit-enhancing representations and warranties; financial standby letters of credit; forward agreements that are not derivative contracts; and off-balance sheet securitizations. A CBLR bank would not include derivatives that are not sold credit derivatives, such as foreign exchange swaps and interest rate swaps, in proposed item 34.c.

In proposed item 34.d, a CBLR bank would report the sum of proposed items 34.a through 34.c in Column A. The bank would also report that sum divided by total assets from Schedule RC, item 12, and expressed as a percentage in Column B. As discussed in the planned CBLR final rule, a bank would not be eligible to opt into the CBLR framework if this percentage is greater than 25 percent.

In proposed item 35, a CBLR bank would report the total of unconditionally cancellable commitments, which would be calculated consistent with the instructions for existing Schedule RC–R, Part II, item 19. This item is not used specifically to calculate a bank's

[21] Under the CBLR final rule, the agencies have reserved the authority to disallow the use of the CBLR framework by a depository institution or depository institution holding company based on the risk profile of the banking organization. This authority is reserved under the general reservation of authority included in the capital rule, in which the CBLR framework would be codified. *See* 12 CFR 3.1(d) (OCC); 12 CFR 217.1(d) (Board); and 12 CFR 324.1(d) (FDIC). In addition, for purposes of the capital rule and section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) (Pub. L. 115–174, 132 Stat. 1296 (2018)), the agencies have reserved the authority to take action under other provisions of law, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law or regulation. *See* 12 CFR 3.1(b) (OCC); 12 CFR 217.1(b) (Board); and 12 CFR 324.1(b) (FDIC).

[22] *See* definition of ''unconditionally cancellable'' in 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

eligibility for the CBLR framework. However, the agencies are collecting this information to identify any bank using the CBLR framework that may have significant or excessive concentrations in unconditionally cancellable commitments that would warrant the agencies' use of the reservation of authority in their capital rule to direct an otherwise-eligible CBLR bank to report its regulatory capital using the generally applicable capital requirements.[23]

In proposed item 36, a CBLR bank would report the amount of investments in the capital instruments of an unconsolidated financial institution that would qualify as tier 2 capital. Since the CBLR framework does not have a total capital requirement, a CBLR bank is neither required to calculate tier 2 capital nor make any deductions that would be taken from tier 2 capital. Therefore, if a CBLR bank has investments in the capital instruments of an unconsolidated financial institution that would qualify as tier 2 capital of the CBLR bank under the generally applicable capital requirements (tier 2 qualifying instruments), and the CBLR bank's total investments in the capital of unconsolidated financial institutions exceed 25 percent of its CET1 capital, the CBLR bank is not required to deduct the tier 2 qualifying instruments. A CBLR bank is required to make a deduction from CET1 capital or tier 1 capital only if the sum of its investments in the capital of an unconsolidated financial institution is in a form that would qualify as CET1 capital or tier 1 capital instruments of the CBLR bank and the sum exceeds the 25 percent CET1 threshold. The agencies believe it is important to continue collecting information on the amount of investments in tier 2 qualifying instruments as excessive investments similarly could warrant the agencies' use of their reservation of authority.

In proposed item 37, a CBLR bank would be required to report its allocated transfer risk reserve (ATRR), as currently calculated and reported in Schedule RC–R, Part II, item 30. In proposed items 38.a through 38.c, a CBLR bank that has adopted Accounting Standards Update (ASU) No. 2016–13 on credit losses must report the amount of any allowances for credit losses on purchased credit-deteriorated loans and leases held for investment, held-to-maturity debt securities, and other financial assets measured at amortized cost, as currently calculated and reported in Schedule RC–R, Part II, Memorandum items 4.a through 4.c. The amount of the ATRR, if any, is necessary to calculate capital and surplus and corresponding limits in a number of the OCC's regulations, including investment securities limits (12 CFR part 1) and lending limits (12 CFR part 32). After an institution adopts ASU 2016–13, allowances for credit losses on purchased credit-deteriorated assets similarly would affect the calculation of these limits. While these limits apply directly to institutions supervised by the OCC, a number of federal or state laws may apply the OCC's calculation of certain limits to state-chartered institutions supervised by the FDIC or the Board. Therefore, the agencies are proposing to retain this information for all CBLR banks. As CBLR banks would not complete Schedule RC–R, Part II, this information would otherwise not be readily available for the agencies to calculate the relevant regulatory limits for these institutions.[24]

Because a CBLR bank would not be subject to the generally applicable capital requirements, a CBLR bank would not need to complete any of the items in Schedule RC–R, Part I, after proposed item 38, nor would the bank need to complete Schedule RC–R, Part II, Risk-Weighted Assets.

In connection with moving the leverage ratio calculations and inserting items for the CBLR qualifying criteria in Schedule RC–R, Part I, existing items 27 through 35 of Schedule RC–R, Part I, will be renumbered as items 39 through 47. Existing items 40 through 43 will be renumbered as items 48 through 51, while existing items 46 through 48 will be renumbered as items 52 through 54. For advanced approaches institutions filing the FFIEC 031 Call Report, existing items 45.a and 45.b for total leverage exposure and the supplementary leverage ratio, respectively, will be renumbered as items 55.a and 55.b.

As proposed in the October 2019 notice, a CBLR bank would indicate that it has elected to apply the CBLR framework by completing Schedule RC–R, Part I, items 32 through 38. Institutions not subject to the CBLR framework would be required to report all data items in Schedule RC–R, Part I, except for items 32 through 38.

3. Other Proposed Call Report Revisions Related to the CBLR

While not specifically part of the CBLR final rule, the agencies currently collect information in Call Report Schedule RC–C, Part I, ''Loans and Leases,'' Memorandum item 13, from institutions that have a significant amount of construction, land development, and other land loans with interest reserves in relation to their total regulatory capital as reported as of the previous calendar year-end report date. At present, total regulatory capital is defined as total capital reported on Schedule RC–R, Part I, item 35 (FFIEC 051) or item 35.a (FFIEC 031 or FFIEC 041). While CBLR banks would no longer report their total capital in Schedule RC–R, Part I, the agencies believe it is still important to collect this information from CBLR banks that have a significant amount of construction, land development, and other land loans with interest reserves. Therefore, effective March 31, 2021,[25] the agencies proposed to revise the reporting threshold for Schedule RC–C, Part I, Memorandum item 13, for all institutions to reference the sum of tier 1 capital as reported in Schedule RC–R, Part I, item 26, plus the allowance for loan and lease losses or the allowance for credit losses on loan and leases, as applicable, as reported in Schedule RC, item 4.c.

4. Comments Received and Final CBLR Rule Reporting Revisions

Two commenters addressed certain aspects of the proposed CBLR reporting revisions. Aspects of the proposed CBLR reporting revisions on which no comments were received, including the proposed change in the reporting threshold for Schedule RC–C, Part I, Memorandum item 13, would be implemented as proposed.

One commenter supported ''the proposed line item additions to RC–R, Part I reporting to support changes to the leverage ratio,'' but the other commenter recommended removing

[23] Other factors also may lead the agencies to determine that the risk profile of an otherwise-eligible CBLR bank would warrant the use of the reservation of authority.

[24] Institutions that are not CBLR banks would not complete proposed items 37 and 38.a through 38.c, but would continue to report any ATRR and any allowances for credit losses on purchased credit-deteriorated loans and leases held for investment, held-to-maturity debt securities, and other financial assets measured at amortized cost in Schedule RC–R, Part II.

[25] For report dates during 2020, the reporting threshold for Schedule RC–C, Part I, Memorandum item 13, would be the total capital an institution reported in Schedule RC–R, Part I, as of December 31, 2019, which will predate the initial reporting under the CBLR framework in Schedule RC–R. The first year-end report date under the CBLR framework would be December 31, 2020, which would be the report date to which a CBLR bank would refer in order to determine whether it would need to complete Schedule RC–C, Part I, Memorandum item 13, as of each quarter-end report date during 2021.

proposed items 35 through 38.c of Part I because the data to be reported are not qualifying criteria under the CBLR framework. Both commenters did not favor the proposal to move existing items 36 through 39 of Schedule RC–R, Part I, which are used to measure total assets for the leverage ratio, and existing item 44, ''Tier 1 leverage ratio,'' from their present locations in Part I of the schedule to an earlier position in Part I where all of the CBLR-related items would be reported and these five items would be renumbered as items 27 through 31. One of the commenters stated that, although this proposed change in the presentation of Part I of Schedule RC–R would not affect the results of individual items in Part I, the proposed new presentation could be confusing to end users of the schedule. The second commenter expressed concern about inserting the data items for the CBLR framework within existing Schedule RC–R, Part I, rather than in a separate version of the schedule as the agencies had originally proposed in April 2019, because the insertion of these data items was confusing and could lead to reporting errors. Thus, this commenter suggested that the agencies break the proposed revised structure of Part I of Schedule RC–R into three separate parts with existing Part II of Schedule RC–R becoming the fourth part of the schedule. In addition, this commenter noted that an institution that is eligible to opt into the CBLR framework may opt into and out of the framework at any time, and that there is a grace period for an institution that no longer meets the qualifying criteria for the CBLR framework. During the grace period, the institution continues to be treated as a CBLR bank. Because an institution's status, *i.e.,* as a CBLR bank or as subject to the generally applicable capital requirements, can change from quarter to quarter, the commenter recommended the addition of data items to Schedule RC–R for reporting the institution's status with respect to the CBLR framework.

The agencies have considered these comments and will retain proposed items 35 through 38.c for reporting by CBLR banks in Schedule RC–R, Part I, as proposed for the reasons cited in the October 2019 notice.[26] When unconditionally cancellable commitments or investments in the tier 2 capital instruments of unconsolidated financial institutions, as reported in proposed items 35 and 36, reach excessive levels, this may warrant the agencies' use of the reservation of authority in their capital rule to direct an otherwise-eligible CBLR bank to report its regulatory capital using the generally applicable capital requirements. The allocated transfer risk reserve and allowances for credit losses on purchased credit-deteriorated assets, which would be reported in proposed items 37 and 38.a through 38.c, currently exist in Part II of Schedule RC–R, which a CBLR bank would no longer complete. The agencies use the information reported in these data items in the calculation of regulatory limits on investment securities and lending where relevant.

The agencies also will retain the proposed movement of the data items related to the leverage ratio to a position immediately after the calculation of tier 1 capital (designated items 27 through 31 of Schedule RC–R, Part I, as it would be revised) as well as the placement of the proposed data items to be completed only by CBLR banks, including those within the grace period (designated items 32 through 38.c of Schedule RC–R, Part I, as it would be revised). Because all institutions are subject to a leverage ratio requirement, all institutions must calculate and report the ratio's numerator, which is tier 1 capital, and its denominator, which is based on average total assets. As a consequence, items 1 through 31 of Part I would be applicable to and completed by all institutions. Moving the leverage ratio data items as proposed would allow CBLR banks to avoid completing the remainder of Schedule RC–R after item 38.c of Part I, which the agencies believe will be less confusing for CBLR banks than having to complete the leverage ratio items in their current location in Part I of the schedule, which is after numerous items that will not be applicable to CBLR banks.

Furthermore, the agencies will modify the formatting of Schedule RC–R, Part I, to better distinguish the data items that should be completed only by CBLR banks and those that should be completed only by those institutions applying the generally applicable capital requirements. This will be accomplished by improving the captioning before Schedule RC–R, Part I, item 32, which is the first data item to completed only by CBLR banks, and between items 38.c, which is the final data item only for CBLR banks, and item 39, which is the first data item applicable only to other institutions subject to the generally applicable capital requirements. The portion of Schedule RC–R, Part I, applicable only to CBLR banks also will be marked by bordering. These modifications to the formatting of Part I should functionally achieve an outcome similar to the comment suggesting that Part I be split into Parts 1, 2, and 3 with existing Part II then renumbered as Part 4.

In addition, the agencies acknowledge that, under the CBLR final rule, an institution that is eligible to opt into the CBLR framework may choose to opt into or out of this framework at any time and for any reason. Accordingly, the agencies see merit in a commenter's recommendation that an institution should report its status as of the report date regarding the use of the CBLR framework. Therefore, the agencies propose to add a ''yes/no'' item 31.a to Schedule RC–R, Part I, after item 31, ''Leverage ratio,'' in which each institution would report whether it has a CBLR framework election in effect as of the quarter-end report date. An institution would answer ''yes'' if it qualifies for the CBLR framework (even if it is within the grace period) and has elected to adopt the framework as of that report date. Otherwise, the institution would answer ''no.'' Captioning after the ''yes/no'' response to item 31.a would indicate which of the subsequent data items in Schedule RC–R should be completed based on the response to item 31.a. This ''yes/no'' response should assist an institution in understanding which specific data items it should complete in the rest of Schedule RC–R. The response also should assist users of Schedule RC–R in understanding the regulatory capital regime an institution is following as of the report date. The agencies are not adopting a commenter's recommendation to add additional data items relating to use of the CBLR, for example by differentiating between banks that currently meet the CBLR qualifying criteria and those that are within the grace period, as the agencies do not need this additional level of detail in the Call Report.

The agencies believe these modifications to the format and structure of Part I of Schedule RC–R will limit the burden on reporting institutions and lessen possible confusion, including for users of Schedule RC–R and for those qualifying community institutions that elect to adopt the CBLR framework. Redlined drafts of Call Report Schedule RC–R in all three versions of the Call Report as it is proposed to be revised, with the modifications described in this Section II.C.4., will be available on the FFIEC's Reporting Forms web page.

D. Tailoring Rule

1. Background

On November 1, 2019, the agencies published a final rule to revise the

[26] *See* 84 FR 53234 (October 4, 2019).

criteria for determining the applicability of regulatory capital and liquidity requirements for large U.S. banking organizations and the U.S. intermediate holding companies of certain foreign banking organizations (tailoring final rule).[27]

Under the tailoring final rule, the most stringent set of standards (Category I) applies to U.S. global systemically important banks (GSIBs). The second set of standards (Category II) applies to banking organizations that are very large or have significant international activity, but are not GSIBs. Like Category I, this category generally includes standards that are based on standards that reflect agreements reached by the Basel Committee on Banking Supervision. The third set of standards (Category III) applies to banking organizations with $250 billion or more in total consolidated assets that do not meet the criteria for Category I or II. The third set of standards also applies to banking organizations with total consolidated assets of $100 billion or more, but less than $250 billion, that meet or exceed other specified risk-based indicators. The fourth set of standards (Category IV) applies to banking organizations with total consolidated assets of $100 billion or more that do not meet the thresholds for one of the other categories.

Under the tailoring final rule, depository institution subsidiaries generally are subject to the same category of standards that apply at the holding company level.[28]

Based on the proposed capital and liquidity requirements that would apply to institutions subject to Category I, II, III, or IV capital standards in the domestic interagency tailoring and foreign interagency tailoring NPRs, the agencies proposed in their October 2019 notice to amend certain regulatory reporting forms to clarify the reporting requirements for those institutions that would be subject to those proposed rules. Specifically, the agencies proposed changes to Call Report Schedule RC–R, Part I, Regulatory Capital Components and Ratios, and FFIEC 101 Schedule A, Advanced Approaches Regulatory Capital, to provide clarification for institutions subject to Category III capital standards.[29]

In addition, the agencies proposed in the October 2019 notice that all institutions subject to Category I, II, or III capital standards would be required to file the FFIEC 031 Call Report. While the agencies proposed to require all advanced approaches institutions to file the FFIEC 031 Call Report in connection with the capital simplifications rule (see Section II.B., above), the tailoring rules would narrow the scope of institutions calculating risk-weighted assets under the advanced approaches. In the October 2019 notice, the agencies stated that they expected the revision in the scope of advanced approaches institutions to have little, if any, impact on current institutions, as all institutions with total consolidated assets of $100 billion or more or with foreign offices already are required to file the FFIEC 031, which generally aligns with the standards for Category I, II, and III institutions. However, the agencies noted in the October 2019 notice that, under the domestic interagency tailoring and foreign interagency tailoring NPRs, institutions that are subsidiaries of institutions subject to Category I, II, or III capital standards also are considered Category I, II, or III institutions. The tailoring final rule maintains the application of the same category of capital standards to depository institution holding companies and their depository institution subsidiaries. Thus, the proposed change in scope for the FFIEC 031 under the October 2019 notice meant that depository institutions considered Category I, II, or III institutions, but not required to file the FFIEC 031 Call Report at that time, would have been required to begin filing the FFIEC 031.

The agencies noted that modifying the scope of the Call Report in this manner would enable them to streamline Schedule RC–R, Part I, of the FFIEC 041 report by removing data items that apply only to the limited number of institutions then considered advanced approaches institutions that were then also eligible to file the FFIEC 041 report and to any future institutions that would, absent this change in scope, be eligible to file the FFIEC 041 report.

2. Proposed Revisions to Call Report Schedule RC–R, Part I

In order to implement the clarifications for institutions subject to Category III capital standards, as discussed above, the agencies proposed to require all Category III institutions to file the FFIEC 031 Call Report and to revise the caption for Schedule RC–R, Part I, item 45, ''Advanced approaches institutions only: Supplementary leverage ratio information,'' on the FFIEC 031 Call Report. Specifically, the agencies proposed to clarify that item 45 (proposed to be renumbered as item 55) applies to ''advanced approaches and Category III institutions'' on the FFIEC 031 report form. Item 45 would be removed from the FFIEC 041 report form. The instructions for Schedule RC–R, Part I, item 45 (proposed to be renumbered as item 55), in the FFIEC 031–FFIEC 041 instruction book also would be revised in the same manner. The general instructions for Schedule RC–R, Part I, in the FFIEC 031–FFIEC 041 instruction book also would be clarified to indicate that Category III institutions are not required to calculate risk-weighted assets according to the advanced approaches rule, but are subject to the supplementary leverage ratio and countercyclical capital buffer.

3. Proposed Revisions to the FFIEC 101

To implement the clarification for institutions subject to Category III capital standards, the agencies proposed to revise the instructions for the scope of the FFIEC 101. Specifically, because Category III institutions are not required to calculate risk-weighted assets according to the advanced approaches rule, the FFIEC 101 instructions would be revised to clarify that top-tier Category III bank holding companies, savings and loan holding companies, and insured depository institutions, and all Category III U.S. intermediate holding companies, must complete FFIEC 101 Schedule A, SLR Tables 1 and 2, only and would not complete or file any other part of the FFIEC 101. In addition, any Category III banking organization that is a consolidated subsidiary of a top-tier Category III bank holding company, savings and loan holding company, U.S. intermediate holding company, or insured depository institution would not complete or file any part of the FFIEC 101. Instead, Category III subsidiary banking organizations that file Call Reports would report SLR data in Call Report Schedule RC–R, Part I, item 45 (proposed to be renumbered as item 55).

[27] 84 FR 59230 (November 1, 2019).

[28] However, standardized liquidity requirements apply only to depository institution subsidiaries with $10 billion or more in total consolidated assets under Categories I through III, and such requirements do not apply to depository institution subsidiaries under Category IV.

[29] In the October 2019 notice, the agencies stated that they do not believe reporting form or instructional clarifications are needed to reflect capital requirements that would apply to institutions subject to Category I, II, or IV capital standards under the domestic interagency tailoring and foreign interagency tailoring NPRs. With the issuance of the tailoring final rule, the agencies continue to believe no such reporting form or instructional clarifications are needed.

All Category IV institutions would not complete or file any part of the FFIEC 101.

4. Comments Received and Final Tailoring Rule Reporting Revisions

a. Call Report Revisions

Two commenters addressed the agencies' proposal to require all institutions subject to Category I, II, or III capital standards to file the FFIEC 031 Call Report. One commenter observed that institutions that are subsidiaries of Category I, II, and III institutions, and therefore also considered Category I, II, and III institutions, will experience increases in overall reporting burden if they currently file the FFIEC 041 Call Report, but now must file the FFIEC 031 Call Report. The other commenter explicitly stated that the agencies should not expand the scope of the FFIEC 031 to require subsidiaries of Category I, II, and III institutions that previously were eligible to file the FFIEC 041 Call Report to file the FFIEC 031 Call Report. This commenter recommended that the agencies confirm that subsidiary depository institutions that currently file the FFIEC 041 or FFIEC 051 Call Report should continue to do so rather than ''filing the more burdensome FFIEC 031.''

As previously discussed in Section II.B.3., the agencies have reviewed these comments and are modifying the proposed change in scope as it applies to Category III institutions not currently required to file the FFIEC 031 Call Report. Accordingly, Category III institutions that have less than $100 billion in total assets and have no foreign offices (as defined in the Call Report instructions) would be eligible to file the FFIEC 041 Call Report and would not be required to file the FFIEC 031. Such institutions also would not be eligible to file the FFIEC 051 Call Report. As previously mentioned, to accommodate this modification to the originally proposed change in scope for Category III institutions, the agencies will retain existing SLR information items 45.a and 45.b (proposed to be renumbered as items 55.a and 55.b), as well as existing item 46.b for the countercyclical capital buffer (proposed to be renumbered as item 56.b), in Schedule RC–R, Part I, in the FFIEC 041 Call Report rather than removing these three items from this report as had been proposed. However, the agencies would require all Category I and II institutions, including depository institution subsidiaries of Category I and II institutions, to file the FFIEC 031 Call Report as proposed. As advanced approaches institutions, depository institutions that are Category I and II institutions are not eligible to file the FFIEC 051 Call Report.

b. FFIEC 101 Revisions

Two commenters recommended that Category III institutions should not be required to file the FFIEC 101. Such institutions are not required to calculate risk-weighted assets according to the advanced approaches rule, but are subject to the supplementary leverage ratio (SLR). Thus, the only portions of the FFIEC 101 report applicable to Category III institutions are Supplementary Leverage Ratio Tables 1 and 2. However, one commenter noted that depository institution subsidiaries of Category III institutions, which are themselves considered Category III institutions, are not required to complete these two tables in the FFIEC 101 and instead report specified SLR data only in Call Report Schedule RC–R, Part I.

In support of their recommendation to eliminate SLR data from the FFIEC 101, these commenters asserted that holding companies that report detailed SLR information in the FFIEC 101 report duplicate information in the Board's FR Y–15.[30] However, the instructions for the FR Y–15 state that ''[i]f the banking organization files the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101) for the same reporting period, then''12 data items in Schedule A of the FR Y–15 ''will be populated automatically'' from the corresponding data items reported in FFIEC 101 SLR Table 2. Furthermore, the FR Y–15 does not collect data comparable to the data reported in FFIEC 101 SLR Table 1, ''Summary comparison of accounting assets and total leverage exposure.''

Both commenters also noted that Table 13 of the Pillar 3 disclosures[31] requires certain institutions to disclose the same SLR information as is reported in FFIEC 101 SLR Tables 1 and 2. These commenters also cited these Pillar 3 disclosures as a reason for eliminating the SLR Tables from the FFIEC 101. However, the agencies' capital rule provides that the management of an institution required to make the Pillar 3 public disclosures may provide all of the required disclosures in one place on its public website ''or may provide the disclosures in more than one public financial report or other regulatory reports,'' provided the institution ''publicly provides a summary table specifically indicating the location(s) of all such disclosures.''[32] Thus, an institution could satisfy the Table 13 disclosure requirement through the use of FFIEC 101 SLR Tables 1 and 2, the location of which would be provided in the institution's summary table.

Although the agencies recognize the existence of overlaps between the SLR information in the FR Y–15, Table 13 of the Pillar 3 disclosures, and SLR Tables 1 and 2 of the FFIEC 101, the latter serves, or can serve, as the source for some or all of the SLR information in the other two. Therefore, the agencies do not agree with the comments that SLR Tables 1 and 2 in the FFIEC 101 duplicate other available information and will retain these tables.

In addition, one commenter suggested that if the requirement to complete SLR Tables 1 and 2 is retained for top-tier Category III banking organizations, as proposed, ''a change to Line 2.20 Tier 1 capital for Category III firms to account for Tier 1 capital calculation differences would be appropriate.'' On the FFIEC 101 reporting form, the caption for Item 2.20 currently says, ''Tier 1 capital (from Schedule A, item 45).'' The agencies note that the existing instructions for Item 2.20 already state that an institution ''that does not complete Schedule A, except for the SLR disclosures, must use the corresponding item as reported on the institution's Schedule RC–R of the Call Report or Schedule HC–R of the FR Y–9C, as applicable.'' Thus, the Item 2.20 instructions already address the commenter's suggestion. However, the agencies will modify the caption for Item 2.20 to clarify the source for the amount of Tier 1 capital to be reported in this item.

E. Revisions to the Supplementary Leverage Ratio for Certain Central Bank Deposits of Custodial Banks

1. Background

On November 19, 2019, the agencies announced that they had finalized the proposed revisions to the SLR for certain central bank deposits of banking organizations predominantly engaged in custodial activities.[33] The final rule, which implements section 402 of the EGRRCPA, takes effect April 1, 2020.

In the October 2019 notice, the agencies proposed changes to the instructions for Call Report Schedule

[30] Banking Organization Systemic Risk Report (FR Y–15), OMB No. 3064–0352.

[31] *See* 12 CFR 3.173 (OCC); 12 CFR 217.173 (Board); 12 CFR 324.173 (FDIC).

[32] *See* 12 CFR 3.172(c)(1) (OCC); 12 CFR 217.172(c)(1) (Board); 12 CFR 324.172(c)(1) (FDIC).

[33] *See* the custodial bank SLR final rule attached to OCC News Release 2019–135, Board Press Release, and FDIC Press Release 109–2019, all of which are dated November 19, 2019.

RC–R and the addition of a new data item to both SLR Tables 1 and 2 in FFIEC 101 Schedule A that would implement the proposed changes to the agencies' capital rule.

2. Proposed Revisions to Call Report Schedule RC–R, Part I

In the October 2019 notice, the agencies proposed to modify the instructions for the calculation of the total leverage exposure to enable an institution that qualifies as a ''custodial banking organization'' to exclude deposits placed at a ''qualifying central bank'' from the total leverage exposure reported in Schedule RC–R, Part I, item 45.a (which would become item 54.a of Part I, as proposed above). The excluded deposits would be limited to the amount of deposit liabilities on the consolidated balance sheet of the custodial banking organization that are linked to fiduciary or custody and safekeeping accounts.

3. Proposed Revisions to FFIEC 101 Schedule A

In the October 2019 notice, the agencies also proposed to revise the total leverage exposure calculation that would be reported on the FFIEC 101 Schedule A through the addition of a new data item for the qualifying central bank deduction to the calculations of the total leverage exposure in SLR Tables 1 and 2 of this schedule. The new reporting item would be placed between existing data items 1.7 and 1.8 in SLR Table 1 and between data items 2.2 and 2.3 in SLR Table 2.

4. Final Reporting Revisions

The agencies received no comments on the proposed changes to Call Report Schedule RC–R, Part I, and FFIEC 101 Schedule A for the SLR for custodial banks and will implement the changes as proposed.

F. Standardized Approach for Counterparty Credit Risk on Derivative Contracts

1. Background

On November 19, 2019, the agencies announced that they had adopted a final rule implementing a new approach for calculating the exposure amount of derivative contracts under the capital rule: The standardized approach for counterparty credit risk (SA–CCR final rule).[34] The SA–CCR final rule takes effect April 1, 2020 (*i.e.,* for the Call Report and the FFIEC 101 for the June 30, 2020, report date) with a mandatory compliance date of January 1, 2022 (*i.e.,* for the Call Report and the FFIEC 101 for the March 31, 2022, report date).

The SA–CCR final rule replaces the current exposure methodology (CEM) with SA–CCR in the capital rule for advanced approaches institutions. The final rule requires banking organizations subject to Category I and II standards (Category I and II banking organizations) in the agencies' tailoring final rule,[35] discussed in Section II.D. above, to use SA–CCR to calculate their standardized total risk-weighted assets and permits non-advanced approaches banking organizations the option of using SA–CCR in place of CEM to calculate the exposure amount of their noncleared and cleared derivative contracts. Category I and II banking organizations would have to choose either SA–CCR or the internal models methodology (IMM) to calculate the exposure amount of their noncleared and cleared derivative contracts in connection with calculating their risk-based capital under the advanced approaches. The SA–CCR final rule provides for the eventual elimination of the current methods for Category I and II banking organizations to determine the risk-weighted asset amount for their default fund contributions to a central counterparty (CCP) or a qualifying central counterparty (QCCP) and implements a new and simpler method that would be based on the banking organization's pro-rata share of the CCP's and QCCP's default fund. However, the final rule allows banking organizations that elect to use SA–CCR to continue to use method 1 and method 2 under CEM to calculate the risk-weighted asset amount for default fund contributions until January 1, 2022.

The SA–CCR final rule also requires Category I and Category II banking organizations to use SA–CCR to determine the exposure amount of derivative contracts for purposes of calculating total leverage exposure for the supplementary leverage ratio. If a Category III banking organization chooses to use SA–CCR to calculate its total risk-weighted assets, it must use SA–CCR to determine the exposure amount of derivative contracts for its total leverage exposure. Where a banking organization has the option to choose among the approaches applicable to such banking organization under the capital rule, it must use the same approach for all purposes.

Furthermore, the final rule allows a clearing member banking organization to recognize the counterparty credit risk-reducing effect of client collateral in replacement cost and potential future exposure (PFE) for purposes of calculating total leverage exposure under certain circumstances. In particular, this treatment applies to a clearing member banking organization's exposure from its client-facing derivative transactions. For such exposures, a clearing member banking organization would use SA–CCR, as applied for risk-based capital purposes, which permits recognition of both cash and non-cash forms of margin in the form of financial collateral received from a client to offset the replacement cost and PFE components for client-facing derivative transactions.

In the October 2019 notice, the agencies proposed to revise the instructions for Call Report Schedule RC–R, Part II, as well as for SLR Table 2 in FFIEC 101 Schedule A, to implement the changes to the calculation of the exposure amount of derivative contracts under the agencies' capital rule.

Additionally, the SA–CCR final rule notes that the FDIC is unable to incorporate the SA–CCR methodology into the deposit insurance assessment pricing methodology for highly complex institutions[36] upon the effective date of this rule, but will consider options for addressing the use of SA–CCR in the deposit insurance system as derivative exposure data reported using SA–CCR becomes available. In the meantime, certain clarifications would be made to the instructions for reporting counterparty exposures in Schedule RC–O, Memorandum items 14 and 15, of the FFIEC 031 and the FFIEC 041 Call Reports, requiring highly complex institutions to continue to calculate derivative exposures using CEM, but without any reduction for collateral other than cash collateral that is all or part of variation margin and that satisfies certain requirements.[37] Similarly, certain clarifications would be made to the instructions for Schedule RC–O, Memorandum items 14 and 15, in the FFIEC 031 and the FFIEC 041 Call Reports requiring highly complex institutions to continue to report the exposure amount associated with securities financing transactions, including cleared transactions that are

[34] *See* the SA–CCR final rule attached to OCC News Release 2019–136, Board Press Release, and FDIC Press Release 110–2019, all of which are dated November 19, 2019.

[35] 84 FR 59231 (November 1, 2019).

[36] *See* 12 CFR 327.8(g).

[37] *See* 12 CFR 3.10(c)(4)(ii)(C)(1)(ii) and (iii) and 3.10(c)(4)(ii)(C)(3)–(7) (OCC); 12 CFR 217.10(c)(4)(ii)(C)(1)(ii) and (iii) and 217.10(c)(4)(ii)(C)(3)–(7) (Board); and 12 CFR 324.10(c)(4)(ii)(C)(1)(ii) and (iii) and 324.10(c)(4)(ii)(C)(3)–(7) (FDIC) (as amended under the SA–CCR final rule).

securities financing transactions, using the standardized approach.[38]

2. Proposed Revisions to Call Report Schedule RC–R, Part II

A banking organization that applies the generally applicable capital requirements must report the notional amount and regulatory capital exposure amount of its derivatives exposures in Schedule RC–R, Part II. In the October 2019 notice, the agencies proposed to revise the instructions for Schedule RC–R, Part II, to be consistent with SA–CCR. Generally, the proposed revisions to the reporting of derivatives elements in Schedule RC–R, Part II, are driven by the treatment of cleared derivatives' variation margin (settled-to-market versus collateralized-to-market), netting provisions impacting the calculations of notional and exposure amounts, and attributions of derivatives to cleared versus noncleared derivatives. The General Instructions for Schedule RC–R, Part II, and the instructions for Schedule RC–R, Part II, items 20, 21, and Memorandum items 1 through 3 would be revised.

3. Proposed Revisions to FFIEC 101 Schedule A, SLR Table 2

In connection with their calculation of the supplementary leverage ratio, Category I, II, and III banking organizations must report the exposure amount of their derivatives in SLR Table 2 of FFIEC 101 Schedule A. In the October 2019 notice, the agencies proposed to revise the instructions for SLR Table 2 to be consistent with SA–CCR. Institutions that continue to use the CEM would use the current FFIEC 101 Schedule A instructions to complete SLR Table 2.

4. Comments Received and Instructions for Reporting Derivatives

The agencies did not receive comments specifically addressing their proposals to revise the instructions for Schedule RC–R, Part II, and for FFIEC 101 Schedule A, SLR Table 2, consistent with the SA–CCR final rule. However, two commenters submitted similar questions and requests for clarifications related to certain derivatives reporting issues. In Schedule RC–R, Part II, Memorandum item 3, institutions report the notional principal amounts of centrally cleared derivative contracts by remaining maturity. Commenters sought clarification as to whether, for purposes of reporting derivatives referred to as settled-to-market contracts in Memorandum item 3, the remaining maturity of such derivatives should be the remaining maturity used to determine the conversion factor for the calculation of the PFE of these contracts or the contractual remaining maturity of these contracts. The derivatives information reported in Memorandum items 1 through 3 of Schedule RC–R, Part II, is collected to assist the agencies in understanding, and assessing the reasonableness of, the credit equivalent amounts of the over-the-counter derivatives and the centrally cleared derivatives reported in Schedule RC–R, Part II, items 20 and 21, column B. Accordingly, when reporting settled-to-market centrally cleared derivative contracts in Memorandum item 3, the remaining maturity used to determine the applicable conversion factor should be the basis for reporting. The agencies will clarify the instructions for Memorandum item 3 to address the reporting of settled-to-market contracts.

Both commenters stated that the Call Report instructions do not explain whether institutions should report notional amounts in Schedule RC–L, Derivatives and Off-Balance Sheet Items, and Schedule RC–R, Part II, Risk-Weighted Assets, for derivatives that have matured, but have associated unsettled receivables or payables that are reported as assets or liabilities, respectively, on the balance sheet as of the quarter-end report date. In seeking clarification of the reporting requirements for such situations, the commenters recommended that notional amounts not be reported for derivatives that have matured. The agencies agree and will clarify the Call Report instructions to so indicate.

For purposes of reporting notional amounts in the Call Report, one commenter recommended that the agencies clarify whether the notional amount as defined in U.S. generally accepted accounting principles (GAAP)[39] or under the SA–CCR final rule should be used when an institution must report the notional amount of derivative contracts in Schedule RC–R, Regulatory Capital, and elsewhere in the Call Report, such as Schedule RC–L. The agencies believe that the SA–CCR notional amount should be reported in Schedule RC–R only when an institution uses SA–CCR to calculate its exposure amounts when the institution determines its standardized total risk-weighted assets. When an institution uses CEM to calculate exposure amounts for its derivative contracts, the notional amounts to be reported in Schedule RC–R should be based on the definition in U.S. GAAP. All notional amounts reported in Schedule RC–L should be based on the U.S. GAAP notional amount. The agencies will revise the instructions for Schedules RC–L and RC–R in this manner.

Both commenters addressed the reporting of the fair value of collateral held against over-the-counter (OTC) derivative exposures by type of collateral and type of derivative counterparty in Schedule RC–L, item 16.b, and questioned whether this information is meaningful. One commenter requested clarification of the purpose for collecting this information while the other recommended that the agencies no longer collect this information. The data items for reporting the fair value of collateral are applicable to institutions with total assets of $10 billion or more. In general, the agencies use this information in their oversight and supervision of banks engaging in OTC derivative activities. The breakdown of the fair value of collateral posted for OTC derivative exposures in item 16.b provides the agencies with important insights into the extent to which collateral is used as part of the credit risk management practices associated with derivative credit exposures to different types of counterparties and changes over time in the nature and extent of the collateral protection. As a result of the agencies' review of Schedule RC–L in 2016 during their most recent statutorily mandated review of existing Call Report data items,[40] the agencies reduced the level of detail required to be reported on the fair value of collateral posted for OTC derivative exposures in item 16.b effective June 30, 2018. The agencies' use of the information reported in Schedule RC–L, item 16.b, will be reviewed again before the end of 2022 as part of their next statutorily mandated review.

G. High Volatility Commercial Real Estate (HVCRE) Land Development Loans

1. Background

On December 13, 2019, the agencies published a final rule that conforms the HVCRE exposure definition in section 2 of the capital rule[41] to the statutory definition of an HVCRE ADC loan[42] and clarifies the capital treatment for loans that finance the development of land

[38] *See* 12 CFR 3.37(b) or (c) (OCC); 12 CFR 217.37(b) or (c) (Board); and 12 CFR 324.37(b) or (c) (FDIC) (as amended under the SA–CCR final rule).

[39] *See* Accounting Standards Codification Section 815–10–20.

[40] This review is mandated by section 604 of the Financial Services Regulatory Relief Act of 2006 (12 U.S.C. 1817(a)(11)).

[41] *See* 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); and 12 CFR 324.2 (FDIC).

[42] See Section 214 of the EGRRCPA.

under the revised HVCRE exposure definition (HVCRE final rule).[43] This final rule takes effect April 1, 2020.

2. Proposed Revisions to Call Report Schedule RC–R, Part II

The agencies' adoption of the HVCRE final rule supersedes the July 6, 2018, interagency statement.[44] In relevant part, this statement advised institutions that, when determining which loans should be subject to a heightened risk weight, until the agencies take further action institutions may choose to continue to apply the current regulatory definition of HVCRE exposure, or they may choose to apply the heightened risk weight only to those loans they reasonably believe meet the statutory definition of HVCRE ADC loan. Institutions will be required to apply the HVCRE exposure definition in the final rule beginning with the Call Report for June 30, 2020. Therefore, the agencies will make conforming revisions to the instructions for Schedule RC–R, Part II, items 4.b and 5.b, in all versions of the Call Report effective as of that report date. No revisions to the Call Report forms are necessary.

3. Proposed Revisions to FFIEC 101 Schedule G

The changes to the HVCRE exposure definition discussed above would also affect the instructions for Schedule G—Wholesale Exposure in the FFIEC 101. Therefore, the agencies also will make conforming revisions to the FFIEC 101 instructions to align with the new HVCRE exposure definition in the final rule effective as of the June 30, 2020, report date.

H. Operating Lease Liabilities

In February 2016, the Financial Accounting Standards Board (FASB) issued ASU No. 2016–02, ''Leases,'' which added Topic 842, Leases, to the Accounting Standards Codification (ASC). Once ASU 2016–02 is effective for an institution, the ASU's accounting requirements, as amended by certain subsequent ASUs, supersede ASC Topic 840, Leases.

The most significant change that ASC Topic 842 makes to the previous lease accounting requirements is to lessee accounting. Under the lease accounting standards in ASC Topic 840, lessees recognize lease assets and lease liabilities on the balance sheet for capital leases, but do not recognize operating leases on the balance sheet. The lessee accounting model under Topic 842 retains the distinction between operating leases and capital leases, which the new standard labels finance leases. However, the new standard requires lessees to record a right-of-use (ROU) asset and a lease liability on the balance sheet for operating leases. (For finance leases, a lessee's lease asset also is designated an ROU asset.) In general, the new standard permits a lessee to make an accounting policy election to exempt leases with a term of one year or less at their commencement date from on-balance sheet recognition.

For institutions that are public business entities, as defined under U.S. GAAP, Topic 842 is currently in effect. For institutions that are not public business entities, the FASB recently amended the effective date of the new standard so that Topic 842 will now take effect for fiscal years beginning after December 15, 2020, and interim reporting periods within fiscal years beginning after December 15, 2021.[45] Early application of the new standard is permitted for all institutions.

The Call Report Supplemental Instructions for March 2019[46] stated that a lessee should report lease liabilities for operating leases and finance leases, including lease liabilities recorded upon adoption of the ASU, in Schedule RC–M, items 5.b, ''Other borrowings,'' and 10.b, ''Amount of 'Other borrowings' that are secured,'' which is consistent with the current Call Report instructions for reporting a lessee's obligations under capital leases under ASC Topic 840. In response to this instructional guidance, the agencies received questions from institutions concerning the reporting of a bank lessee's lease liabilities for operating leases. These institutions indicated that reporting operating lease liabilities as other liabilities instead of other borrowings would better align the reporting of the single noninterest expense item for operating leases in the income statement (which is the presentation required by ASC Topic 842) with their balance sheet classification and would be consistent with how these institutions report operating lease liabilities internally.

The agencies considered the views expressed by these institutions and proposed in the October 2019 notice to require that operating lease liabilities be reported on the Call Report balance sheet in Schedule RC, item 20, ''Other liabilities.'' In Schedule RC–G, Other Liabilities, operating lease liabilities would be reported in item 4, ''All other liabilities.'' In subitems of Schedule RC–G, item 4, institutions must itemize and describe any components of this item in amounts greater than $100,000 that exceed 25 percent of the amount reported in item 4. Because of the expected prevalence of operating lease liabilities, the agencies also proposed to add a new subitem with the preprinted caption ''Operating lease liabilities'' to item 4 to facilitate the reporting of these liabilities when their amount exceeds the reporting threshold for itemizing and describing components of ''All other liabilities.'' These changes would take effect as of the March 31, 2020, report date.

The agencies received no comments on these proposed revisions for operating lease liabilities and will implement them as proposed.

I. Reporting Home Equity Lines of Credit That Convert From Revolving to Non-Revolving Status

1. Proposed Instructional Clarification

Institutions report the amount outstanding under revolving, open-end lines of credit secured by 1–4 family residential properties (commonly known as home equity lines of credit or HELOCs) in item 1.c.(1) of Schedule RC–C, Part I, Loans and Leases. The amounts of closed-end loans secured by 1–4 family residential properties are reported in Schedule RC–C, Part I, item 1.c.(2)(a) or (b), depending on whether the loan is a first or a junior lien.[47]

A HELOC is a line of credit secured by a lien on a 1–4 family residential property that generally provides a draw period followed by a repayment period. During the draw period, a borrower has revolving access to unused amounts under a specified line of credit. During the repayment period, the borrower can no longer draw on the line of credit, and the outstanding principal is either due immediately in a balloon payment or repaid over the remaining loan term through monthly payments. Because the Call Report instructions do not address the reporting treatment for a home equity line of credit when it reaches its end-of-draw period and converts from

[43] 84 FR 68019 (December 13, 2019).

[44] Board, FDIC, and OCC, *Interagency statement regarding the impact of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180706a1.pdf.*

[45] See FASB ASU 2019–10, Financial Instruments—Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842): Effective Dates.

[46] *https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_FFIEC051_suppinst_201903.pdf.*

[47] Institutions report additional information on open-end and closed-end loans secured by 1–4 family residential properties in certain other Call Report schedules in accordance with the loan category definitions in Schedule RC–C, Part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b).

revolving to non-revolving status, the agencies have found diversity in how these credits are reported in Schedule RC–C, Part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b), and in other Call Report items that use the definitions of these three loan categories.

In September 2015, to address this absence of instructional guidance and promote consistency in reporting, the agencies proposed to clarify the instructions for reporting loans secured by 1–4 family residential properties by specifying that after a revolving open-end line of credit has converted to non-revolving closed-end status, the loan should be reported as closed-end in Schedule RC–C, Part I, item 1.c.(2)(a) or (b), as appropriate.[48] As discussed in a subsequent notice,[49] the agencies received a number of comments that raised concerns with the proposal. In particular, some commenters stated that reclassifying HELOCs after the draw period could raise operational challenges for institutions' loan systems that would require additional time to implement. Based on the feedback received, the agencies did not proceed with their proposed instructional clarification at that time.

The agencies continue to believe that it is important to collect accurate data on loans secured by 1–4 family residential properties in the Call Report. Consistent classification of HELOCs based on the status of the draw period is particularly important for the agencies' safety and soundness monitoring. Due to the structure of HELOCs discussed above, borrowers generally are not required to make principal repayments during the draw period, which may create a financial shock for borrowers when they must make a balloon payment or begin regular monthly repayments after the draw period. With some institutions reporting HELOCs past the draw period as revolving, this increases the amounts outstanding, charge-offs, recoveries, past dues, and nonaccruals reported in the open-end category relative to the amounts reported by institutions that treat HELOCs past the draw period as closed-end, which makes the data less useful for agency comparisons and safety and soundness monitoring. In addition, in ASU No. 2019–04,[50] the FASB amended ASC Subtopic 326–20 on credit losses to require that, when presenting credit quality disclosures in notes to financial statements prepared in accordance with U.S. GAAP, an entity must separately disclose line-of-credit arrangements that are converted to term loans from line-of-credit arrangements that remain in revolving status. The agencies further stated in the October 2019 notice that they had determined that there would be little or no impact to the regulatory capital calculations, FDIC deposit insurance assessments, or other regulatory reporting requirements as a result of this proposed clarification, which were other concerns previously raised by commenters.

Therefore, in the October 2019 notice, the agencies re-proposed to clarify the Call Report instructions for Schedule RC–C, Part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b), to address continuing diversity in reporting practices by stating that revolving, open-end lines of credit secured by 1–4 family residential properties that have converted to non-revolving closed-end status should be reported as closed-end loans. The effect of this clarification would extend to the instructions for numerous data items elsewhere in the Call Report that reference the Schedule RC–C, Part I, loan category definitions for open-end and closed-end loans secured by 1–4 family residential properties and were identified in the October 2019 notice. That notice also identified a limited number of Call Report data items to which this instructional clarification would not be applied.

To address prior comments regarding the time needed for any systems changes, the agencies proposed that compliance with the clarified instructions would not be required until the March 31, 2021, report date. The October 2019 notice further proposed that institutions not currently reporting in accordance with the clarified instructions would be permitted, but not required, to report in accordance with the clarified instructions before that date.

2. Comments Received and Final Reporting Revisions

Three commenters opposed the agencies' proposal to require that HELOCs that have converted to non-revolving closed-end status should be reported as closed-end loans. Commenters cited the numerous data items in multiple Call Report schedules that would be affected by this proposed instructional clarification and the reconfiguration of systems that would need to be undertaken as well as a definitional conflict between the Call Report instructions as the agencies proposed to clarify them and the instructions for the Board's FR Y–14M report filed by holding companies with total consolidated assets of $100 billion or more.[51] In addition, one commenter stated that the proposed Call Report instructional clarification may lead to inconsistencies between the reporting of HELOCs in open-end and closed-end status in the Call Report and disclosures of HELOCs made in filings with the Securities and Exchange Commission under the federal securities laws. Another commenter cited differences in the risk profiles of loans underwritten as HELOCs and those underwritten as closed-end loans at origination and indicated that the proposed instructional clarification could distort performance trends for loans secured by 1–4 family residential properties as HELOCs migrate between the open-end and closed-end loan categories in the Call Report. Two of the commenters opposing the proposed instructional clarification instead recommended the creation of a memorandum item in the Call Report loan schedule (Schedule RC–C, Part I) to identify for supervisory purposes the amount of HELOCs that have converted to non-revolving closed-end status. The other commenter suggested segregating closed-end HELOCs using a separate loan category code, which may also imply separate reporting and disclosure of such HELOCs.

One commenter also requested that the agencies clarify the reporting treatment for ''drawdowns of a HELOC Flex product that contain 'lock-out' features,'' which was described as the borrower's exercise of an option to convert a draw on the line of credit to ''a fixed rate interest structure with defined payments and term.''

After considering the comments received, the agencies will not implement the proposed clarification to the instructions for Schedule RC–C, Part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b) that would result in revolving, open-end lines of credit secured by 1–4 family residential properties that have converted to non-revolving closed-end status being reported as closed-end loans. In light of the guidance in the instructions for the Board's FR Y–14M report that directs reporting entities to continue to report HELOCs that are no longer revolving credits in the Home Equity schedule, the agencies propose to adopt this treatment for Call Report purposes. However, recognizing the existing diversity in practice in which some institutions report HELOCs that have converted from revolving to non-revolving status as closed-end loans in

[48] *See* 80 FR 56539 (September 18, 2015).

[49] *See* 81 FR 45357 (July 13, 2016).

[50] ASU No. 2019–04, ''Codification Improvements to Topic 326, Financial Instruments—Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments,'' issued in April 2019.

[51] Capital Assessments and Stress Testing Report (FR Y–14M), OMB Number 7100–0341.

the Call Report while other institutions continue to report such HELOCs as open-end loans, the agencies propose that institutions report all HELOCs that convert to closed-end status on or after January 1, 2021, as open-end loans in Schedule RC–C, Part I, item 1.c.(1). An institution that currently reports HELOCs that have converted to non-revolving closed-end status as open-end loans in Schedule RC–C, Part I, item 1.c.(1), should not change its reporting practice for these loans and should continue to report these loans in item 1.c.(1) regardless of their conversion date. An institution that currently reports HELOCs that convert to non-revolving closed-end status as closed-end loans in Schedule RC–C, Part I, item 1.c.(2)(a) or 1.c.(2)(b), as appropriate, may continue to report HELOCs that convert on or before December 31, 2020, as closed-end loans in Call Reports for report dates after that date. Alternatively, the institution may choose to begin reporting some or all of these closed-end HELOCs as open-end loans in item 1.c.(1) as of the March 31, 2020, or any subsequent report date, provided this reporting treatment is consistently applied. With respect to HELOC Flex products, the proposed reporting treatment described above would mean that amounts drawn on a HELOC during its draw period that a borrower converts to a closed-end amount before the end of this period also should be reported as open-end loans in Schedule RC–C, Part I, item 1.c.(1), subject to the transition guidance above.

The agencies also agree with commenters' suggestion to create a memorandum item in Schedule RC–C, Part I, in which institutions would report the amount of HELOCs that have converted to non-revolving closed-end status that are included in item 1.c.(1), ''Revolving, open-end loans secured by 1–4 family residential properties and extended under lines of credit.'' This new Memorandum item 16 in Schedule RC–C, Part I, would enable the agencies to monitor the proportion of an institution's home equity credits in revolving and non-revolving status and changes therein and assess whether changes in this proportion in relation to changes in past due and nonaccrual home equity credits and charge-offs and recoveries of such credits warrant supervisory follow-up. Memorandum item 16 would be collected quarterly in the FFIEC 031 and the FFIEC 041 Call Reports and semiannually as of June 30 and December 31 in the FFIEC 051 Call Report. To provide time needed for any systems changes, the agencies propose to implement this new memorandum item as of the March 31, 2021, report date in the FFIEC 031 and the FFIEC 041 Call Reports and as of the June 30, 2021, report date in the FFIEC 051 Call Report.

III. Timing

As stated in their October 2019 notice, the agencies plan to make the capital-related reporting changes described in Sections II.B. through II.G. effective the same quarters as the effective dates of the various final capital rules discussed in this notice. Thus, the reporting revisions to the Call Report and the FFIEC 101, as applicable, would take effect March 31, 2020, for the capital simplifications rule, the community bank leverage ratio rule, and the tailoring final rule. In this regard, the filing of the FFIEC 031 Call Report by all institutions that are advanced approaches institutions under the tailoring final rule and the filing of the FFIEC 031 or FFIEC 041 Call Report by institutions considered Category III institutions under this rule would take effect as of March 31, 2020. Non-advanced approaches institutions may elect to wait to adopt the capital simplifications rule for reporting purposes until the June 30, 2020, report date. The reporting revisions to the Call Report and the FFIEC 101, as applicable, would take effect June 30, 2020, for the custodial bank supplementary leverage ratio final rule, the standardized approach for counterparty credit risk on derivative contracts final rule, and the high volatility commercial real estate exposures final rule. However, the mandatory compliance date for reporting in accordance with the standardized approach for counterparty credit risk final rule is the March 31, 2022, report date.

In addition, the reporting of operating lease liabilities as ''All other liabilities'' in Call Report Schedule RC–G would take effect March 31, 2020, and the change in the reporting of construction, land development, and other land loans with interest reserves in Call Report Schedule RC–C, Part I, would take effect March 31, 2021. The requirement to continue reporting HELOCs that convert to closed-end status as open-end loans in Schedule RC–C, Part I, would apply to those HELOCs that convert on or after January 1, 2021, with pre-2021 conversions subject to the transition guidance described in Section II.I. above; new Memorandum item 16 in Schedule RC–C, Part I, for HELOCs in non-revolving closed-end status that are reported as open-end loans would take effect March 31, 2021, in the FFIEC 031 and the FFIEC 041 Call Reports and June 30, 2021, in the FFIEC 051 Call Report.

The specific wording of the captions for the new or revised Call Report data items discussed in this notice and the numbering of these data items should be regarded as preliminary.

IV. Request for Comment

Public comment is requested on all aspects of this joint notice. Comment is specifically invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

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

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

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

Comments submitted in response to this joint notice will be shared among the agencies.

Dated: January 21, 2020.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, January 21, 2020.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on January 21, 2020.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2020–01292 Filed 1–24–20; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of the Registration of Money Services Businesses Regulation and FinCEN Form 107

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, to a currently approved information collection regarding registration of money services businesses regulations and FinCEN Form 107—Registration of Money Services Business (''RMSB''). Money services businesses (''MSBs'') must register with FinCEN using FinCEN Form 107, renew their registration every two years, and maintain a list of their agents. This request for comments is made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome and must be received on or before March 27, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2019–0008 and the Office of Management and Budget (''OMB'') control number 1506–0013.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2019–0008 and OMB control number 1506–0013.

Please submit comments by one method only. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at 800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

FinCEN exercises regulatory functions under the Currency and Financial Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of 2001 and other legislation. This legislative framework is commonly referred to as the Bank Secrecy Act (''BSA'').[1] The Secretary of the Treasury has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations.[2] Pursuant to this authority, FinCEN may issue regulations requiring financial institutions to keep records and file reports that ''have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.'' [3]

Under 31 U.S.C. 5330 and its implementing regulation (31 CFR 1022.380), MSBs [4] must file an initial registration form with FinCEN, renew their registration every two years, re-register under certain circumstances, and maintain a list of their agents.

Registration

Each MSB, with a few exceptions, must register with the FinCEN. The information required by 31 U.S.C 5330 and any other information required by FinCEN Form 107 must be reported in the manner and to the extent required by the form.[5] The registration form for the initial registration period must be filed on or before the end of the 180-day period beginning on the day following the date the business is established. MSBs must renew their registration every two years, on or before December 31. MSBs must re-register with FinCEN not later than 180 days after the following: change in ownership, transfer of 10 percent voting or equity interest, or 50 percent increase in agents.[6] MSBs must maintain a copy of any registration form filed under 31 CFR 1022.380 at a location in the United States for a period of five years.

Maintenance of an Agent List

A person that is an MSB solely because that person serves as an agent of another MSB is not required to register.[7] However, MSBs are required to prepare and maintain a list of their agents.[8] The list must be revised each January 1, for the immediately preceding 12-month period. The list is not filed with the registration form, but must be maintained at the location in the United States, reported on the registration form. Upon request, MSBs must make the list of agents available to FinCEN, any appropriate law enforcement agency, or the Internal Revenue Service for its delegated examination authority.

The information collected and retained under the regulations addressed in this notice assists Federal, state, and local law enforcement, as well as regulatory authorities, in the identification, investigation, and prosecution of money laundering and other matters. The collection of information is mandatory.

II. Paperwork Reduction Act (''PRA'') [9]

Title: Registration of Money Services Businesses (31 CFR 1022.380).

OMB Number: 1506–0013.

Form Number: FinCEN Form 107—Registration of Money Services Business (RMSB).

Abstract: FinCEN is issuing this notice to renew the OMB control number for the Registration of Money Services Businesses regulation and FinCEN Form 107 (RMSB).

Type of Review: Renewal without change of a currently approved information collection.

Affected public: Business or other for-profit institutions.

Initial Registration

Frequency: As required.

Estimated Burden per Respondent: FinCEN estimates that the hourly burden of filing and maintaining a copy of the initial RMSB form is 1 hour and 10 minutes. (1 hour to fill out the form and file it, and 10 minutes to save the form electronically and print out a copy to maintain). FinCEN stipulates that the information required to be included on the form is basic information MSBs need to maintain to conduct business. The e-filing system prompts MSBs to save the registration form after submission.

Estimated Number of Respondents: 3,478 MSBs.[10]

Estimated Total Annual Burden Hours: 4,058 hours.[11]

Registration Renewal

Frequency: Every two years.

Estimated Burden per Respondent: FinCEN estimates that the hourly burden of filing and maintaining a copy of the renewal of the RMSB form is 40 minutes (30 minutes to revise the form and file it, and 10 minutes to save the form electronically and print out a copy to maintain). FinCEN stipulates that the information required to be included on

[1] The BSA, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto, with implementing regulations at 31 CFR Chapter X. *See* 31 CFR 1010.100(e).

[2] Treasury Order 180–01 (Jul. 1, 2014).

[3] 31 U.S.C. 5311.

[4] *See* 31 CFR 1010.100(ff).

[5] *See* Registration of Money Services Business (RMSB) Electronic Filing Instructions. Release Date July 2014—Version 1.0. *https://www.fincen.gov/sites/default/files/shared/FinCENRMSB_ElectronicFilingInstructions.pdf* .

[6] *See* 31 CFR 1022.380(b)(4).

[7] *See* 31 CFR 1022.380(a)(3).

[8] *See* 31 CFR 1022.380(d).

[9] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

[10] FinCEN looked at the number of initial RMSBs filed in each of the calendar years 2015 through 2019. The average number of initial filings for the period of five years is 3,478.

[11] 3,478 MSBs multiplied by 70 minutes and converted to hours is 4,058 hours.

the form is basic information MSBs need to maintain to conduct business. In addition, FinCEN's e-filing system allows MSBs to open a previously filed RMSB form and the electronic form is pre-populated with the information from the prior filing. MSBs can amend Part I by selecting item 1b (renewal) and submit the form. MSBs can update any information required on the form prior to submitting the form electronically. The e-filing system prompts MSBs to save the registration form after submission.

Estimated Number of Respondents: 8,678 MSBs.[12]

Estimated Total Annual Burden Hours: 5,785 hours.[13]

Re-Registration

Frequency: As required.

Estimated Burden per Respondent: FinCEN estimates that the hourly burden of filing and maintaining a copy of the re-registration of the RMSB form is 40 minutes (30 minutes to revise the form and file it, and 10 minutes to save the form electronically and print out a copy to maintain). FinCEN stipulates that the information required to be included on the form is basic information MSBs need to maintain to conduct business. In addition, FinCEN's e-filing system allows MSBs to open a previously filed RMSB form and the electronic form is pre-populated with the information from the prior filing. MSBs can amend Part I by selecting item 1d (re-registration) and selecting the appropriate response in item 2. MSBs can amend the applicable information required on the form and submit it electronically. The e-filing system prompts MSBs to save the registration form after submission.

Estimated Number of Respondents: 225 MSBs.[14]

Estimated Total Annual Burden Hours: 150 hours.[15]

Maintenance of Agent List

Frequency: Annually.

Estimated Burden: FinCEN estimates that the hourly burden of drafting an agent list and revising it annually is 30 minutes per MSB. FinCEN stipulates that the information required to be included on an agent list is basic information MSBs need to maintain to conduct business. FinCEN does not require the MSB to maintain the list in any particular format; therefore, the MSB can leverage its business records to create and revise the list.

Estimated Number of Respondents: 24,027.[16]

Estimated Total Annual Burden Hours: 12,014 hours.[17]

Grand Total Annual Burden Hours for this Information Collection: 22,007 hours.[18]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Jamal El-Hindi,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2020–01240 Filed 1–24–20; 8:45 am]

BILLING CODE 4810–02–P

[12] FinCEN looked at the number of RMSB renewals filed in each of the calendar years 2015 through 2019. The average number of renewals for the period of five years is 8,678.

[13] 8,678 MSBs multiplied by 40 minutes and converted to hours equals 5,785 hours.

[14] FinCEN looked at the number of RMSBs re-registered in each of the calendar years 2015 through 2019. The average number of re-registrations for the period of five years is 225.

[15] 225 MSBs multiplied by 40 minutes and converted to hours is 150 hours.

[16] FinCEN looked at the total number of active MSB registration forms as of December 1 for each of the calendar years 2015 through 2019. This includes active registration forms for initial filings, renewals, and re-registrations. The average number of MSBs registered on December 1 for the period of five years is 24,027.

[17] 24,027 MSBs multiplied by 30 minutes and converted to hours is 12,014 hours.

[18] The grand total annual burden hours for this information collection represents the total annual burden hours to file initial RMSBs, renewals, and re-registrations, and to maintain agent lists (4,058 + 5,785 + 150 + 12,014 = 22,007).

FEDERAL REGISTER

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Part II

Commodity Futures Trading Commission

17 CFR Parts 1, 39, and 140

Derivatives Clearing Organization General Provisions and Core Principles; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 39, and 140

RIN 3038–AE66

Derivatives Clearing Organization General Provisions and Core Principles

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending certain regulations applicable to registered derivatives clearing organizations (DCOs). The amendments address certain risk management and reporting obligations, clarify the meaning of certain provisions, simplify processes for registration and reporting, and codify existing staff relief and guidance, among other things. In addition, the Commission is adopting technical amendments to certain provisions, including certain delegation provisions, in other parts of its regulations.

DATES: *Effective date:* The effective date for this final rule is February 26, 2020.

Compliance date: DCOs must comply with the amendments to the rules by January 27, 2021.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Deputy Director, 202–418–5096, *edonovan@cftc.gov;* Parisa Abadi, Associate Director, 202–418–6620, *pabadi@cftc.gov;* Eileen R. Chotiner, Senior Compliance Analyst, 202–418–5467, *echotiner@cftc.gov;* Brian Baum, Special Counsel, 202–418–5654, *bbaum@cftc.gov;* August A. Imholtz III, Special Counsel, 202–418–5140, *aimholtz@cftc.gov;* Abigail S. Knauff, Special Counsel, 202–418–5123, *aknauff@cftc.gov;* Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; Joe Opron, Special Counsel, 312–596–0653, *jopron@cftc.gov;* Division of Clearing and Risk, Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, IL 60661.

SUPPLEMENTARY INFORMATION:

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I. Background

Section 5b(c)(2) of the Commodity Exchange Act (CEA) sets forth core principles with which a DCO must comply in order to be registered and to maintain registration as a DCO (DCO Core Principles),[1] and part 39 of the Commission's regulations implement the DCO Core Principles. Subpart C of part 39 establishes additional standards for compliance with the DCO Core Principles for those DCOs that have been designated as systemically important (SIDCOs) by the Financial Stability Oversight Council in accordance with Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[2] The subpart C regulations are consistent with the Principles for Financial Market Infrastructures (PFMIs), published by the Committee on Payments and Market Infrastructures (CPMI) and the Technical Committee of the International Organization of Securities Commissions (IOSCO).[3] Other DCOs may elect to opt-in to the subpart C requirements (subpart C DCOs) in order to achieve status as a qualifying central counterparty (QCCP).[4]

Since the part 39 regulations were adopted, Commission staff has worked with DCOs to address questions regarding interpretation and implementation of the requirements established in the regulations. In May 2019, the Commission proposed certain changes to its part 39 regulations (Proposal)[5] in order to enhance certain risk management and reporting obligations, clarify the meaning of certain provisions, simplify processes for registration and reporting, and codify staff relief and guidance granted since the regulations were first adopted. The Commission also proposed a few new requirements with respect to default procedures and event-specific reporting.

The Commission invited commenters to provide data and analysis regarding any aspect of the proposed rulemaking and received a total of 14 substantive comment letters in response.[6] After

[1] 7 U.S.C. 7a–1.

[2] *See* Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010).

[3] *See* CPMI–IOSCO, Principles for Financial Market Infrastructures (Apr. 2012), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf.*

[4] In July 2012, the Basel Committee on Banking Supervision, the international body that sets standards for the regulation of banks, published the ''Capital Requirements for Bank Exposures to Central Counterparties'' (Basel CCP Capital Requirements), which describes standards for capital charges arising from bank exposures to central counterparties (CCPs) related to over-the-counter derivatives, exchange-traded derivatives, and securities financing transactions. The Basel CCP Capital Requirements create financial incentives for banks, including their subsidiaries and affiliates, to clear financial derivatives with CCPs that are prudentially supervised in a jurisdiction where the relevant regulator has adopted rules or regulations that are consistent with the standards set forth in the PFMIs. Specifically, the Basel CCP Capital Requirements introduce new capital charges based on counterparty risk for banks conducting financial derivatives transactions through a CCP. These incentives include (1) lower capital charges for exposures arising from derivatives cleared through a QCCP, and (2) significantly higher capital charges for exposures arising from derivatives cleared through non-qualifying CCPs. A QCCP is defined as an entity that (i) is licensed to operate as a CCP and is permitted by the appropriate regulator to operate as such, and (ii) is prudentially supervised in a jurisdiction where the relevant regulator has established and publicly indicated that it applies to the CCP, on an ongoing basis, domestic rules and regulations that are consistent with the PFMIs. The failure of a CCP to achieve QCCP status could result in significant costs to its bank customers.

[5] *See* Derivatives Clearing Organization General Provisions and Core Principles, 84 FR 22226 (May 16, 2019).

[6] The Commission received comment letters submitted by the following: Chris Barnard; Cboe Futures Exchange, LLC (CBOE); CME Group, Inc.

considering the comments, the Commission is largely adopting the rules as proposed, although there are a number of proposed changes that the Commission has determined to either revise or decline to adopt. The Commission believes that the rules it is adopting herein will provide greater clarity and transparency for DCOs and DCO applicants and lead to more effective DCO compliance and risk management generally.

In the discussion below, the Commission highlights topics of particular interest to commenters and discusses comment letters that are representative of the views expressed on those topics. The discussion does not explicitly respond to every comment submitted; rather, it addresses the most significant issues raised by the proposed rulemaking and analyzes those issues in the context of specific comments.

II. Amendments to Part 1—General Regulations Under the Commodity Exchange Act

The Commission is adopting as proposed two amendments in part 1 of its regulations in order to remove inapplicable provisions and to clarify when certain requirements do not apply.

A. Written Acknowledgment From Depositories—§ 1.20

Regulation 1.20(d)(1) requires a futures commission merchant (FCM) to obtain from each depository with which the FCM deposits futures customer funds, a written acknowledgment that meets certain requirements set forth in § 1.20(d)(3) through (6). Regulation 1.20(d)(1) further provides, however, that an FCM is not required to obtain a written acknowledgment from a DCO that has adopted rules that provide for the segregation of customer funds in accordance with all relevant provisions of the CEA and the Commission's rules and orders thereunder. The Commission proposed to amend § 1.20(d) to clarify that the requirements listed in § 1.20(d)(3) through (6) do not apply to a DCO, or to an FCM that clears through that DCO, if the DCO has adopted rules that provide for the segregation of customer funds. The Commission also proposed to amend § 1.20(d)(7) and (8) to explicitly account for FCMs that deposit customer funds with a DCO and thus are not required to obtain a written acknowledgment letter.

ICE, FIA, and ISDA supported the proposed changes, with FIA and ISDA noting that clarifying the applicability of § 1.20(d)(3) through (6) avoids redundant information-sharing arrangements.

B. Governance and Conflicts of Interest—§§ 1.59, 1.63, and 1.69

In 2011, the Commission removed and replaced § 39.2, which previously had exempted DCOs from all Commission regulations except for those specified therein (§ 39.2 exemption).[7] The Commission noted that removal of the § 39.2 exemption would subject DCOs to three existing regulations (§§ 1.59 (activities of self-regulatory organization employees, governing board members, committee members, and consultants); 1.63 (service on self-regulatory organization governing boards or committees by persons with disciplinary histories); and 1.69 (voting by interested members of self-regulatory organization governing boards and various committees)) that were expected to be superseded by other regulations the Commission had proposed.[8]

However, the Commission did not adopt those superseding regulations, and §§ 1.59, 1.63, and 1.69 became applicable to DCOs with the removal of the § 39.2 exemption. Therefore, the Commission proposed to restore DCOs' exemption from §§ 1.59, 1.63, and 1.69 by removing ''clearing organization'' from the definition of ''self-regulatory organization'' in each of those regulations. The Commission also proposed to amend § 1.64 to remove language that the amendments to the other provisions would render unnecessary. The Commission did not receive any comments on the proposed changes to §§ 1.59, 1.63, 1.64, and 1.69.

III. Amendments to Part 39—Subpart A—General Provisions Applicable to DCOs

A. Definitions—§ 39.2

Regulation 39.2 sets forth definitions applicable to terms used in part 39 of the Commission's regulations. After § 39.2 was adopted, the Commission adopted definitions for some of the same terms that apply in other Commission regulations. The Commission is adopting changes to five definitions in § 39.2 in order to maintain consistency with terms defined elsewhere in Commission regulations and to provide clarity with respect to the use of these terms.

1. Business Day

The Commission is removing § 39.19(b)(3), which defines ''business day,'' and moving the definition of ''business day'' to § 39.2 to make clear that it applies wherever the term is used in part 39. The Commission is also clarifying that the term ''Federal holiday'' in the ''business day'' definition refers to the schedule of U.S. federal holidays established under 5 U.S.C. 6103, and adding ''any holiday on which a [DCO] and its domestic financial markets are closed'' rather than ''foreign holiday,'' as originally proposed, to the list of exceptions to the definition of ''business day.''

The Commission received two comments on the proposed changes to the definition of ''business day.'' CME suggested substituting ''market holiday'' for ''foreign holiday'' in the definition of ''business day'' to also recognize days that are not Federal holidays when U.S. markets are closed. ICE supported the Commission defining ''foreign holiday'' and adding the term to the list of exceptions to the definition of ''business day,'' but also noted potential conflicts between the proposed definition of ''business day'' in § 39.2 and the definition of ''business day'' in §§ 1.3 and 39.19(b)(3).

The Commission agrees that any day on which markets are closed should not be considered a business day, and therefore is adopting the proposed definition of ''business day'' with the substitution of ''any holiday on which a [DCO] and its domestic financial markets are closed'' for ''foreign holiday,'' to encompass both foreign and U.S. market holidays.

In proposing to define ''business day'' in § 39.2, the Commission also proposed to remove the definition in § 39.19(b)(3), to avoid any conflict between those provisions. The Commission is removing the definition of ''business day'' from § 39.19(b)(3). The Commission recognizes that the definition of ''business day'' in § 39.2 differs slightly from the definition of ''business day'' in § 1.3, but notes that the definition in § 39.2 is meant specifically for application to part 39.

(CME); Eurex Clearing AG (Eurex); Futures Industry Association (FIA) and International Swaps and Derivatives Association (ISDA); Intercontinental Exchange, Inc. (ICE); LCH Group (LCH); Managed Funds Association (MFA); Minneapolis Grain Exchange, Inc. (MGEX); Nodal Clear, LLC (Nodal); North American Derivatives Exchange, Inc. (Nadex); The Options Clearing Corporation (OCC); Paolo Saguato, of the George Mason University Antonin Scalia Law School; and Securities Industry and Financial Markets Association's Asset Management Group (SIFMA AMG). All comments referred to herein are available on the Commission's website, at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=2985*.

[7] *See* Risk Management Requirements for Derivatives Clearing Organizations, 76 FR 3698, 3714 (Jan. 20, 2011) (proposed rule). The current § 39.2 sets forth definitions of terms used in part 39.

[8] *Id.*

2. Customer, and Customer Account or Customer Origin

The Commission is removing the definition of ''customer'' and modifying the definition of ''customer account or customer origin'' in § 39.2 because those terms were defined in § 1.3 after § 39.2 was adopted.

ICE commented that, for DCOs organized outside of the United States, references to customer accounts under the proposed definitions do not distinguish appropriately between customer accounts carried by FCM clearing members and customer accounts carried by non-FCM clearing members, which may be subject to segregation and other requirements under non-U.S. law rather than under the CEA. ICE therefore suggested that the Commission clarify the application of the definitions to non-U.S. DCOs. In response to ICE's comment, the Commission notes that ''customer'' is defined in § 1.3 to mean ''any person who uses a [FCM] . . . .''

3. Enterprise Risk Management

The Commission is adopting as proposed the definition of ''enterprise risk management'' because the term is used in § 39.10(d), which is discussed below. The Commission did not receive any comments on the proposed definition.

4. Fully Collateralized Position

The Commission is adopting the definition of ''fully collateralized position'' in conjunction with proposed exceptions from several part 39 regulations for DCOs that clear fully collateralized positions, as discussed below. Nadex requested clarification of the meaning of the word ''counterparty'' in the definition of ''fully collateralized,'' and suggested replacing the word with ''party'' because ''counterparty'' implies that the DCO need only hold sufficient funds to cover the maximum possible loss that the counterparty may sustain, but to be fully collateralized the DCO must hold sufficient funds to cover the maximum possible loss of each party. In response to Nadex's comment, the Commission is including ''party,'' in addition to ''counterparty,'' in the definition of ''fully collateralized position'' to make clear that the definition is intended to include each party to a contract.

5. Key Personnel

The Commission is adding ''chief information security officer'' (CISO) to the list of positions identified in the definition of ''key personnel'' in § 39.2. Nadex requested clarification that it is sufficient for a staff member to be assigned the responsibilities of a CISO in addition to other responsibilities of their role. Nadex also requested guidance confirming that the CISO may be employed by the DCO or by an affiliate, and that, with respect to a DCO that is also a designated contract market (DCM), an individual may fulfill the role of CISO for both the DCM and DCO.

The Commission confirms that a DCO staff member may be assigned the responsibilities of a CISO in addition to other responsibilities of their role; the CISO may be employed by the DCO or by an affiliate; and, for a DCO that is also a DCM, an individual may fulfill the role of CISO for both the DCM and DCO.

B. Procedures for Registration—§ 39.3

1. Application Procedures—§ 39.3(a)

The Commission is adopting several changes to its procedures for registration as a DCO generally as proposed. These changes include: Revisions to § 39.3(a)(1) to improve the clarity and consistency of the text; revisions to Form DCO to correspond to other proposed revisions to the part 39 regulations; providing greater flexibility in § 39.3(a)(3) for DCO applicants submitting supplemental information; clarifying references in § 39.3(a)(5) to the portion of the Form DCO cover sheet and other application materials that will be made public; and, in new § 39.3(a)(6), permitting the Commission to extend the 180-day review period for DCO applications for any period of time to which the applicant agrees in writing. The Commission did not receive any comments on these proposed changes.

2. Stay of Application Review—§ 39.3(b)

The Commission is adopting as proposed the change to § 39.3(b)(2) to correct inaccurate language. In § 39.3(b)(2), which is the Commission's delegation of authority to the Director of the Division of Clearing and Risk to stay an application for DCO registration that is materially incomplete, the Commission is adopting a change to replace the inaccurate ''designation'' with ''registration.'' The Commission did not receive any comments on this change.

3. Request To Amend an Order of Registration—§ 39.3(a)(2), § 39.(a)(4), and § 39.3(d)

The Commission is adopting as proposed three changes to procedures in § 39.3(a)(2) for a registered DCO requesting an amended order of registration, to reflect current Commission practice. The rule will no longer require use of Form DCO to request an amended order of registration under § 39.3(a)(2), and an applicant will only need to file amended exhibits and other information when filing a Form DCO to update a pending application under § 39.3(a)(4). The Commission also is adopting new § 39.3(d) to establish a separate process for such requests.

ICE supported the proposal to eliminate using Form DCO to request an amended registration order, and stated that it believes the modification to § 39.3(a)(2) will help streamline the process for a DCO to file a request for an amended order.

4. Dormant Registration—§ 39.3(e)

Regulation § 39.3(d) establishes the procedure for a dormant DCO to reinstate its registration before it can begin ''listing or relisting'' products for clearing. The Commission is adopting as proposed changes to § 39.3(d), renumbered as § 39.3(e), to correct inaccurate language. Specifically, the Commission is adopting an amendment to replace ''listing or relisting'' with ''accepting'' to more accurately describe a DCO's activities. The Commission did not receive any comments on these proposed changes.

5. Vacation of Registration—§ 39.3(f)

The Commission is adopting as proposed changes to § 39.3(e), renumbered as § 39.3(f), to codify requirements for a DCO requesting vacation of its registration, and provide greater transparency to any DCO that is considering vacating its registration.[9] The amendments renumber current § 39.3(e) as § 39.3(f)(1) and add provisions under § 39.3(f)(1) regarding procedures for a DCO seeking to vacate its registration. The Commission is also adopting § 39.3(f)(2) to specify that the requirement in section 7 of the CEA that the Commission must ''forthwith send a copy'' of the notice that was filed with the Commission requesting vacation and the order of vacation to all other registered entities will be met by posting the required documents on the Commission's website. The Commission did not receive any comments on the proposed changes.

6. Request for Transfer of Registration and Open Interest—§ 39.3(g)

The Commission is adopting changes to § 39.3(f), renumbered as § 39.3(g), to simplify the requirements for a DCO to request a transfer of open interest and to separate the process from the procedures used to report a change to a

[9] The Commission is also making a technical change to § 39.3(f), to remove the term ''registered'' from ''registered [DCO],'' for consistency with other provisions in part 39.

DCO's corporate structure or ownership. The Commission proposed changes regarding procedures that a DCO must follow to request the transfer of its DCO registration and positions comprising open interest for clearing and settlement, in anticipation of a corporate change. The changes simplify the requirements for requesting a transfer of open interest and remove references to transfers of registration and requirements regarding corporate changes, so that § 39.3(g) would only apply to instances in which a DCO requests to transfer its open interest. Changes to the DCO's ownership would continue to be addressed under § 39.19(c)(4)(viii), renumbered as § 39.19(c)(4)(ix). In light of a comment from ICE discussed below, the Commission is further modifying § 39.3(g) to account for a transfer of foreign futures positions by a DCO to a clearing organization permitted to clear for a registered foreign board of trade pursuant to § 48.7.

Under the amendments to § 39.3(g), a DCO seeking to transfer its open interest will be required to submit rules for Commission approval pursuant to § 40.5,[10] rather than submitting a request for an order at least three months prior to the anticipated transfer. Regulation 39.3(g) also specifies certain information that the DCO would be required to include in its submission pursuant to § 40.5.

CME and ICE generally supported the proposed changes to § 39.3(g) regarding requests to transfer open interest. CME noted that a DCO cannot unilaterally transfer to another DCO open interest associated with contracts that are subject to the rules of a DCM, as those transfers must be authorized by the DCM through rule amendment or otherwise. CME referred to procedures under § 38.3(d) for a DCM to transfer open interest associated with contracts listed on a DCM to another DCM, in connection with a change of registration. The Commission agrees that where a DCO is requesting transfer of open interest under § 39.3(g) for contracts listed on a DCM, the DCM also would be subject to applicable Commission regulations, including part 38.

CME and ICE also supported use of the rule approval process under § 40.5 for submission of requests to transfer open interest. ICE suggested that it may be appropriate for a transfer to take effect pursuant to a self-certification under § 40.6 where the transfer does not raise any particular novel issues or concerns. ICE further requested that the Commission clarify that it may, in appropriate circumstances, take action on a transfer request in less than 45 days, both in circumstances that do not raise particular concerns and in exigent or distressed circumstances in which the full period may not be necessary or feasible. The Commission declines to adopt ICE's suggestion to permit a transfer of open interest to be made pursuant to § 40.6 and is adopting the requirement to submit such requests under § 40.5 as proposed. The Commission only has ten business days to review rules submitted pursuant to § 40.6, which the Commission believes is not sufficient time to review rules related to transfers of open interest. The Commission reviews transfers of open interest to ensure that clearing members have sufficient notice of the transfer, because there may be clearing members of the transferring DCO that are not members of the receiving DCO. Such clearing members may need time to become members of the receiving DCO or to close out their positions, and if they are FCMs that clear for customers, to transfer their customers to other FCMs if necessary. The Commission also reviews the transfer plans (typically there is a transition agreement between the DCOs) to make sure that the associated risks will be adequately managed. The Commission confirms, however, that under § 40.5(g), it has the ability to expedite its approval of a request where appropriate.

ICE also suggested clarification of procedures for transfers between a registered DCO and a clearing organization that is not a registered DCO (such as a foreign clearing organization that is either an exempt DCO or otherwise not subject to DCO registration based on its activities). As the Commission noted in the Proposal, under the existing regulatory framework, all futures positions and U.S. customer swap positions must be cleared by a registered DCO, while proprietary swap positions of U.S. persons may be cleared by a registered or exempt DCO.[11] However, the proposed rule failed to contemplate a transfer of foreign futures positions by a DCO to a clearing organization permitted to clear for a registered foreign board of trade pursuant to § 48.7. As noted above, the Commission is modifying the final rule to broaden its applicability to account for such a transfer.

C. Procedures for Implementing DCO Rules and Clearing New Products

The Commission is adopting two non-substantive changes to its procedures for implementing DCO rules and clearing new products in § 39.4, to remove or correct certain references. The Commission did not receive any comments on the proposed amendments to § 39.4 and is adopting them as proposed.

1. Request for Approval of Rules—§ 39.4(a)

Regulation 39.4(a) specifies that an applicant for registration or a registered DCO may request, pursuant to the procedures set forth in § 40.5, that the Commission approve any or all of its rules prior to their implementation. In practice, the Commission's review of applications for DCO registration includes review of the applicant's rules, which are required to be submitted as Exhibit A–2 to Form DCO. The Commission's issuance of an order of registration as a DCO constitutes an approval of the applicant's rules that were submitted as part of the application. Accordingly, the Commission is deleting the reference in § 39.4(a) to an applicant for registration, as it is unnecessary for an applicant to separately request approval of its rules.

2. Portfolio Margining—§ 39.4(e)

Regulation 39.4(e) establishes certain procedural requirements that apply to a DCO seeking approval for a futures account portfolio margining program. Under § 39.4(e), a DCO seeking to provide a portfolio margining program under which securities would be held in a futures account is required to petition the Commission for an order ''under section 4d of the [CEA].'' To conform terminology to other provisions in part 39 which distinguish between futures accounts subject to section 4d(a) of the CEA and cleared swaps accounts subject to section 4d(f) of the CEA, the Commission is substituting ''section 4d(a)'' for ''section 4d'' in § 39.4(e).

IV. Amendments to Part 39—Subpart B—Compliance With Core Principles

A. Fully Collateralized Positions

The Commission is amending certain regulations in part 39 to address fully collateralized positions, which do not pose the full range of risks that the regulations are meant to address. As discussed in the Proposal, fully collateralized positions do not expose DCOs to many of the risks that traditionally margined products do, as

[10] The Commission reiterates that, as noted in the Proposal, SIDCOs should consider whether the facts and circumstances of the approval sought pursuant to a § 40.5 filing also obligate a SIDCO to file a § 40.10 submission.

[11] *See* Derivatives Clearing Organization General Provisions and Core Principles, 84 FR at 22230, n. 19.

full collateralization prevents a DCO from being exposed to credit risk stemming from the inability of a clearing member or customer of a clearing member to meet a margin call or a call for additional capital.[12] This renders certain provisions of part 39 inapplicable or unnecessary. As a result, the Division of Clearing and Risk has granted relief from certain provisions of part 39 to DCOs that clear fully collateralized positions.[13] The Commission is amending certain regulations consistent with that relief.[14]

The amendments are based on an assessment of how the DCO Core Principles and part 39 apply to fully collateralized positions, as well as the relief previously granted to DCOs that clear such positions. The Commission believes the amendments will not negatively impact prudent risk management at any DCO, regardless of the types of products cleared. The amendments to each provision are discussed in this section, whereas specific comments are addressed in conjunction with the discussion of those provisions further below.[15]

1. Definition of ''Fully Collateralized Positions''—§ 39.2

As discussed above, the Commission is adopting a definition of ''fully collateralized position'' as a contract cleared by a DCO that requires the DCO to hold, at all times, funds in the form of the required payment sufficient to cover the maximum possible loss that a party or counterparty could incur upon liquidation or expiration of the contract.

2. Computation of Financial Resources Requirement—§ 39.11(c)(1)

Regulation 39.11(a)(1) requires a DCO to maintain financial resources sufficient to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions. Regulation 39.11(c)(1)[16] requires a DCO to perform monthly stress testing in order to make a reasonable calculation of the financial resources it would need in the event of such a default. The Commission is amending § 39.11(c)(1)(i) to clarify that a DCO does not have to perform monthly stress tests on fully collateralized positions. For fully collateralized positions, a DCO holds its maximum possible loss on each contract at all times and does not face the risk of a clearing member default. The monthly stress tests required by § 39.11(c)(1)(i) are therefore unnecessary for fully collateralized positions.

3. Liquidity of Financial Resources—§ 39.11(e)(1)(ii)

Regulation 39.11(e)(1)(ii) requires that the financial resources allocated by a DCO to meet the requirements of § 39.11(a)(1) (*i.e.,* its default resources) be sufficiently liquid to enable the DCO to fulfill its obligations during a one-day settlement cycle. The Commission is amending § 39.11(e)(1)(iv) to clarify that DCOs do not need to include fully collateralized positions in the calculation required thereunder. The specific amount of liquid resources a DCO must hold is based on the historical settlement pays of its clearing members. A DCO maintains sufficient liquidity for fully collateralized positions by requiring clearing members to post the full potential loss of a position in the form of the potential obligation. Requiring collateral to be in the form of the potential obligation eliminates the risk that the DCO will not have sufficient liquidity to meet its obligations and the need for daily mark-to-market settlements. Further, if a DCO were to complete the calculation required by § 39.11(e)(1)(ii), the amount would not change from day to day as the DCO operates a fully collateralized model. As a result, the calculation required in § 39.11(e)(1)(ii) is inapplicable to fully collateralized positions.

4. Periodic Reporting of Participant Eligibility—§ 39.12(a)(5)(i) and (a)(5)(i)(B)

Regulation 39.12(a)(5)(i) requires a DCO to require its clearing members to provide the DCO with periodic financial reports that allow the DCO to assess whether participation requirements are being met on an ongoing basis. Regulation 39.12(a)(5)(i)(B)[17] requires a DCO to make these reports available to the Commission at the Commission's request.[18] The Commission is adding new § 39.12(a)(5)(v) to exclude non-FCM clearing members that only clear fully collateralized positions from the financial reporting requirements in § 39.12(a)(5)(i) and (a)(5)(i)(B). The Commission's participant eligibility requirements in § 39.12(a) are intended to ensure that DCO participants maintain sufficient financial resources and operational capacity to meet the obligations arising from clearing at a DCO.[19] Clearing members that only clear fully collateralized positions present no credit or default risk to the DCO because their full potential loss is already held by the DCO. Thus, periodic financial reports from non-FCM clearing members that only clear fully collateralized positions do not provide any risk management benefit to a DCO.

5. Large Trader Stress Tests—§ 39.13(h)(3)

Regulation 39.13(h)(3) requires a DCO to conduct stress testing on a daily basis with respect to each large trader who poses significant risk to a clearing member or the DCO, and at least on a weekly basis with respect to each clearing member account, by house origin and by each customer origin. The Commission is adding new § 39.13(h)(3)(iii) to exclude clearing member accounts that hold only fully collateralized positions from the stress testing requirements in § 39.13(h)(3)(i) and (ii). As discussed above, DCOs hold, at all times, the full potential loss of fully collateralized positions cleared by the DCO, and a DCO does not face the risk of default from accounts that only hold fully collateralized positions. As a result, such stress tests would not provide DCOs new information on accounts that only clear fully collateralized positions.

6. Default Rules and Procedures—§ 39.16(e)

Regulation 39.16(a) requires a DCO to have rules and procedures designed to allow for the efficient, fair, and safe management of events during which clearing members become insolvent or otherwise default on their obligations to the DCO. Regulation 39.16(b) and (c)

[12] *See id.* at 22245.

[13] *See* CFTC Letter No. 14–04 (Jan. 16, 2014) (granting exemptive relief to Nadex); CFTC Letter No. 17–35 (July 24, 2017) (granting exemptive relief to LedgerX).

[14] The Division of Clearing and Risk also issued interpretive guidance to Nadex for other provisions in part 39. CFTC Letter No. 14–05 (Jan. 16, 2014). The interpretive guidance may be relied on by third parties, and is not impacted by this rulemaking.

[15] To the extent there were comments on the changes to regulations in part 39 that address DCOs that clear fully collateralized positions, the Commission has addressed these comments throughout. To the extent there were no comments, the Commission is adopting the changes as proposed.

[16] This paragraph is being renumbered as § 39.11(c)(1)(i) due to revisions discussed elsewhere in this rulemaking.

[17] This paragraph is being renumbered as § 39.12(a)(5)(iii) due to revisions discussed elsewhere in this rulemaking.

[18] Regulation 39.12(a)(5)(i)(B) allows DCOs to either require clearing members to make the reports available to the Commission or to provide the reports to the Commission directly.

[19] *See* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69352 (Nov. 8, 2011).

require, among other things, a DCO to maintain a written default management plan and procedures that would permit the DCO to take timely action to contain losses and liquidity pressures in the event of a default. In response to a request from Nadex,[20] the Commission is adopting new § 39.16(e) to provide that a DCO may satisfy the requirements of paragraphs (a), (b), and (c) of § 39.16 by having rules that permit it to clear only fully collateralized positions. This rule was not included in the Proposal because relief had been provided through a staff interpretative letter, as discussed below, but the Commission believes it is appropriate to include it in the final rule because it is consistent with other exceptions for fully collateralized positions adopted herein.

7. Daily Reporting—§ 39.19(c)(1)(i)

Regulation 39.19(c)(1)(i) requires a DCO to submit to the Commission a daily report containing information on initial margin, daily variation margin payments, other daily cash flows, and end-of-day positions. The Commission is amending § 39.19(c)(1)(i) such that the enumerated daily reporting is not required with respect to fully collateralized positions. Because fully collateralized positions do not pose a credit risk to the DCO or other participants, the Commission does not need daily reporting of this information with respect to fully collateralized positions.

B. Compliance With Core Principles—§ 39.10

1. Chief Compliance Officer—§ 39.10(c)

The Commission is adopting several amendments to § 39.10(c) to permit greater flexibility in the reporting requirements applicable to the Chief Compliance Officer (CCO) for DCOs engaged in substantial activities not related to clearing. These amendments are intended to make the process of preparing the CCO's annual report more efficient, to improve clarity and consistency of the regulations, and to require that the CCO's annual report describe the process by which the report is provided to the board of directors or senior officer so that compliance with existing regulations is evident outside the context of an examination of the DCO's board of directors' meeting minutes or other records. Unless stated otherwise below, the Commission did not receive any comments on the proposed amendments to § 39.10(c) and is adopting them as proposed.

The Commission is amending § 39.10(c)(1)(ii) to permit a DCO's CCO to report to the senior officer responsible for the DCO's clearing activities if the DCO engages in substantial activities not related to clearing (for example, if the DCO is also a DCM). The Commission is also amending § 39.10(c)(4)(i) to permit the CCO to submit the annual report to the same individual (or to the board of directors) for internal review. CME supported these proposed amendments, noting that the senior officer responsible for the DCO's clearing activities is most familiar with the day-to-day operations of the DCO and its personnel and is therefore generally best positioned to ensure that the compliance program implemented by the CCO is appropriately designed to ensure compliance with the CEA and Commission regulations.

The Commission is amending § 39.10(c)(3)(i) to permit the CCO's annual report to incorporate by reference the parts of its most recent CCO annual report containing descriptions of the DCO's written policies and procedures, to the extent that such policies and procedures have not materially changed since they were most recently described in a previously submitted CCO annual report submitted within the five-year period prior to the date of the CCO annual report containing such incorporation by reference. CME strongly supported these proposed revisions, noting that they reduce the requirement to provide duplicative information contained in previous reports and thus reduce the administrative burden on both the DCO's compliance staff and Commission staff. CME also commented that the five-year timeframe for re-introducing materially unchanged policies is appropriate.

The Commission is amending § 39.10(c)(3)(ii)(A), which requires the CCO to prepare an annual report that reviews each ''core principle and applicable Commission regulation,'' and with respect to each, identifies the compliance policies and procedures that are designed to ensure compliance ''with the core principle,'' to change the latter language to ''with each core principle and applicable regulation.'' The Commission is also amending § 39.10(c)(3)(ii) to clarify that, for SIDCOs and subpart C DCOs, this includes the Commission's regulations in subpart C of part 39. In addition, the regulation now requires that the compliance policies and procedures be identified ''by name, rule number, or other identifier.''

The Commission is amending § 39.10(c)(4)(i) to require that the CCO's annual report describe the process by which it was submitted to the board of directors or the senior officer. In response to a comment described below, rather than requiring that the CCO's annual report include the date on which it was submitted to the board of directors or the senior officer, the Commission is further amending § 39.10(c)(4)(i) to require that it be accompanied by a cover letter, notice, or other document that specifies the date of submission. Lastly, the Commission is amending § 39.10(c)(4)(ii) to remove the requirement that the annual report be submitted concurrently with the DCO's fiscal year-end audited financial statement to be consistent with a change to § 39.19(c)(3)(iv) explained below.

CME stated that including within the annual report the date on which the annual report was submitted to the board of directors or the senior officer, per the proposed amendments to § 39.10(c)(4)(i), is problematic because the report would need to be prepared and distributed ''well in advance'' of a board or committee meeting or other intended date. CME noted that a change of meeting date or agenda could render the date included in the report inaccurate. CME therefore recommended that the CCO's annual report include the intended date of submission, but that a cover sheet be added to the report after the meeting that either confirms that the date within the report is correct or provides an alternative date specifying when the report was actually provided. The Commission agrees that the revisions, as proposed, could cause the report to be inaccurate in the event of a delay or other scheduling change. In light of CME's comments, the Commission is not including in § 39.10(c)(4)(i) the proposed requirement that the CCO's annual report include the date of submission and is replacing it with a requirement that the annual report be accompanied by a cover letter, notice, or other document that specifies the date of submission.

Nadex suggested that the Commission consider conforming the language of the CCO's duties and annual report requirements in § 39.10 with that of § 3.3, which pertains to the CCOs of FCMs, swap dealers, and major swap participants. The Commission is not adopting this change, because recent amendments to § 3.3 were largely intended to more closely harmonize these requirements with corresponding rules of the Securities and Exchange Commission (SEC) for CCOs of security-based swap dealers and major security-

[20] *See* discussion *infra* section IV.G.3.

based swap participants, and are not applicable to DCOs. However, the Commission may consider this in a future rulemaking.

2. Enterprise Risk Management—§ 39.10(d)

The Commission is adopting new § 39.10(d), which requires a DCO to have a program of enterprise risk management and to identify as its enterprise risk officer an appropriate individual that exercises the full responsibility and authority to manage the DCO's enterprise risk management function.

ICE was generally supportive of § 39.10(d) as proposed, and CME agreed with several aspects of the proposal. MGEX recognized the value that an enterprise risk management program provides in ensuring the integrity of DCOs and the financial markets and agreed that a DCO should assess and manage the broad array of risks identified in the Proposal. MGEX requested that the Commission grant a longer time period for compliance to allow DCOs adequate time to implement the program, given the extensive nature of an enterprise risk management program and the work that will be involved in developing such a program. The Commission is giving DCOs one year to comply with the amendments to the regulations.

The Commission did not receive any comments specifically on §§ 39.10(d)(1), (d)(2), or (d)(3), and is finalizing these paragraphs as proposed.

The Commission received several responses to a request for comment regarding whether the enterprise risk officer should be required to report directly to the board of directors of the organization for which the enterprise risk officer is responsible for managing the risks. OCC stated that, generally, the enterprise risk officer should report directly to the board of directors, or to an appropriate committee of the board of directors, but also commented that a DCO should have the discretion to determine whether the enterprise risk officer should report directly to the board of directors, a committee of the board, or the senior officer responsible for a DCO's clearing activities. CME commented that the enterprise risk officer should have access to the board of directors and its relevant committees and should provide regular reports to the board or its relevant committees, but did not believe it is necessary for the enterprise risk officer to have a direct administrative reporting relationship to the board or its committees. Nadex stated that the enterprise risk officer should not report to the DCO's board of directors because the purpose of a board of directors is to provide oversight and strategic guidance to the organization, not management of specific individuals within the organization. Nadex suggested that the enterprise risk officer provide reports to the board but could report to the DCO's chief executive officer, chief risk officer, or other appropriate officer of the DCO or a parent company.

In light of the comments, the Commission has concluded that a DCO should have the discretion to determine whether its enterprise risk officer will report directly to the board of directors, to an appropriate committee of the board of directors, or to the senior officer responsible for the DCO's clearing activities. Regardless of the formal reporting relationship, however, the Commission believes that the enterprise risk officer should have access to the board of directors to ensure that the board receives reports and information from the enterprise risk officer. The Commission is therefore finalizing proposed § 39.10(d)(4) with additional language requiring such access.

The Commission also requested comment as to whether a DCO's chief risk officer should be permitted to also serve as its enterprise risk officer, and commenters generally were supportive. Nadex noted that the two positions ''do not have conflicting purposes.'' OCC noted that a chief risk officer is typically the individual with the greatest authority, independence, resources, expertise, and access to relevant information necessary to fulfill the responsibilities of managing the DCO's enterprise risk management function. CME commented that whether a DCO's chief risk officer should also be permitted to serve as the overall organization's enterprise risk officer depends on the organizational structure related to the DCO and the structure of the broader corporate group, while Nodal stated that a DCO should have ''complete discretion'' to identify the appropriate person to serve as the enterprise risk officer, including whether that person may also be the DCO's chief risk officer. MGEX noted that, due to existing chief risk officer responsibilities of administering similar risk management programs, the chief risk officer may be the most adept individual to manage an enterprise-wide risk management framework. MGEX further argued that allowing the same person to fill both roles would also prevent fragmenting risk management oversight responsibilities while being less time-consuming and less costly for smaller DCOs, adding that it would be ''effectively impossible'' for smaller DCOs to have a fully independent employee or officer, thereby furthering the need for flexibility in who can fulfill such role. LCH recommended that the role of the enterprise risk officer be included in the role and responsibilities of the chief risk officer to reduce duplication of responsibilities and benefit from efficiencies that can be derived from combining ''these related roles.''

In response to the comments, the Commission believes that a DCO should generally have the discretion to allow the DCO's enterprise risk officer and its chief risk officer to be the same individual and, therefore, is finalizing the regulation as proposed, without adding language prohibiting this practice. However, the Commission notes that § 39.10(d)(4), as finalized, requires the enterprise risk officer to have, among other things, the independence and resources necessary to fulfill the responsibilities of the position. The Commission believes that, for larger, more complex DCOs, it may be challenging to meet this requirement if one individual performs the functions of both roles.

In response to a request for clarification from Nadex, the Commission confirms that the regulations, as finalized, do not require that an individual be assigned the title of ''Enterprise Risk Officer.'' It is sufficient that the DCO be able to identify the individual assigned the responsibilities of the position and that the other applicable requirements are satisfied.

Lastly, when the Commission adopted the requirement in § 39.13(c) that a DCO have a chief risk officer, it stated that, given the importance of the risk management function and the comprehensive nature of the responsibilities of a DCO's CCO under § 39.10, the Commission expected that a DCO's chief risk officer and its CCO would be two different individuals.[21] Commission staff noted this in a subsequent interpretation regarding the application of certain part 39 requirements to fully collateralized DCOs.[22] However, the Commission recognizes that, due to the limited risk profile of DCOs that clear only fully collateralized positions, it would be possible for a single individual to be both the CCO and the chief risk officer of such a DCO if the individual possesses the qualifications for both roles.

[21] 76 FR 69334, 69363 (Nov. 8, 2011).

[22] CFTC Letter No. 14–05 (Jan. 16, 2014).

C. Financial Resources—§ 39.11

The Commission is adopting various changes to § 39.11 to make the language more closely match that of Core Principle B, address inconsistencies in how DCOs treat excess collateral on deposit when conducting stress tests, ensure that customer funds are properly accounted for when a DCO is calculating its largest financial exposure, require DCOs to provide certain information to aid the Commission's review of their financial statements, and to clarify or conform a number of provisions. Unless stated otherwise below, the Commission did not receive any comments on the proposed amendments to § 39.11 and is adopting them as proposed.

1. Calculation of Largest Financial Exposure and Stress Tests—§ 39.11(a)(1), (b)(1), (c)(1), and (c)(2)

The Commission is revising the language in § 39.11(a) to make it more consistent with Core Principle B.

Regulation 39.11(a)(1) requires a DCO to maintain financial resources sufficient to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions. The Commission is deleting § 39.11(b)(1)(i), which permits margin to be used to satisfy the requirements of § 39.11(a)(1), because the required initial margin amount on deposit for the clearing member will be applied before determining the largest financial exposure for the DCO in extreme but plausible market conditions. Therefore, the margin would not be available to also cover the exposure.

OCC supported the removal of § 39.11(b)(1)(i), under the assumption that a DCO could also net other margin it requires a clearing member to have on deposit when calculating its largest financial exposure. OCC requested that, if the Commission does not believe that a DCO should net such additional required margin on deposit, the Commission interpret such additional required margin on deposit as ''[a]ny other financial resource deemed acceptable by the Commission'' under current § 39.11(b)(1)(vi), proposed to be renumbered § 39.11(b)(1)(v).

The Commission is adopting additional minimum requirements that a DCO will have to follow in determining its financial exposure in accordance with § 39.11(c)(1). In particular, the Commission is adding § 39.11(c)(2)(i)(A) to require a DCO to calculate its largest financial exposure net of the clearing member's required initial margin amount on deposit. In response to questions and requests for clarification from OCC, ICE, FIA, and ISDA, the regulation specifies that this required margin includes any add-ons, such as concentration charges and liquidity charges, and only required margin (including add-ons) may be considered. In other words, the DCO is not permitted to take into account excess collateral on deposit. Additionally, the Commission is adopting § 39.11(c)(2)(ii) to require that when stress tests produce losses in both customer and house accounts, a DCO must combine the customer and house stress test losses of each clearing member using the same stress test scenario. New § 39.11(c)(2)(iii) allows a DCO to net gains in the house account with losses in the customer account, if permitted by its rules, but explicitly prohibits a DCO from netting losses in the house account with gains in the customer account. New § 39.11(c)(2)(iv), as modified to address comments, allows a DCO, with respect to a clearing member's cleared swaps customer account, to net customer gains against customer losses only to the extent permitted by the DCO's rules. In light of the comments, the Commission confirms that the purpose of § 39.11(c)(2)(iv) is to confirm that, while all customer positions must be included in calculating largest net exposure, netting between such positions must be done in a manner consistent with what is permitted by the DCO's rules. The Commission is also specifying that the requirements of § 39.11(c) do not apply to fully collateralized positions.

A number of commenters supported proposed § 39.11(c)(2)(i)(A). For example, SIFMA AMG stated that the various proposed revisions to § 39.11(c)(2) would require DCOs to make more prudent assumptions when calculating default fund requirements, improve the process of sizing the financial resources package, and standardize assumptions and enable customers to make apples-to-apples comparisons between DCOs. Mr. Barnard stated that proposed § 39.11(c)(2)(i)(A) would prudently focus a DCO's analysis on the resources that would actually be available to it during times of stress, further enhance the financial soundness of DCOs, and improve protection for market participants and the public. He also noted that the proposal is consistent with the PFMIs, which provide that central counterparties should not use collateral beyond the margin requirement for purposes of calculating their available resources,[23] and should increase efficiencies for industry while more prudently managing financial risk.

2. Assessments—§ 39.11(d)(2)

The Commission is amending § 39.11(d)(2)(iv) by replacing the phrase ''those obligations'' with ''the total amount required under paragraph (a)(1) of this section.'' The Commission did not receive any comments on this change.

The Commission did receive other comments on assessments. SIFMA AMG stated that the Commission should not allow DCOs to count unfunded liabilities, such as assessments, towards ''cover one'' and ''cover two'' calculations because they are highly likely to be unreliable during times of stress. Similarly, FIA and ISDA requested that the Commission amend § 39.11(d)(2) to prohibit the use of assessments because assessments are unfunded resources. Because the Commission had only proposed the clarifying change to § 39.11(d)(2)(iv) noted above and had not proposed to prohibit assessments entirely, the Commission would need to consider this in a separate proposal.

Lastly, ICE questioned the impact on § 39.11(d)(2)(iv) of the Commission's clarification of how a DCO must calculate its largest financial exposure under § 39.11(a)(1). In response, the Commission is further amending § 39.11(d)(2)(iv) to clarify that the value of the assessments may be determined by using the largest financial exposure in extreme but plausible market conditions prior to netting against required initial margin on deposit.

3. Liquidity of Financial Resources—§ 39.11(e)

Regulation 39.11(e)(1)(ii) requires that the financial resources allocated by a DCO to meet the requirements of § 39.11(a)(1) (*i.e.,* its default resources) be sufficiently liquid to enable the DCO to fulfill its obligations as a central counterparty during a one-day settlement cycle. The Commission is adopting an amendment to change references to ''daily settlement pay'' in § 39.11(e)(1)(ii) to ''daily settlement variation pay'' in order to clarify that additional calls for initial margin should not be included in the calculation. It also is adopting clarifying changes to the text of § 39.11(e)(1)(iii) and (e)(2), and adding § 39.11(e)(1)(iv) to provide that a DCO is not subject to

[23] *See* CPMI–IOSCO, Principles for Financial Market Infrastructures (Apr. 2012), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf.*

§ 39.11(e)(1)(ii) for fully collateralized positions.

Regulation 39.11(e)(1)(ii) further requires that those resources include cash, U.S. Treasury obligations, or high quality, liquid, general obligations of a sovereign nation (*i.e.,* cash or cash equivalents), in an amount greater than or equal to the average of its clearing members' average pays over the last fiscal quarter. If that amount is less than what a DCO needs to fulfill its obligations during a one-day settlement cycle, § 39.11(e)(1)(iii) permits a DCO to take into account a committed line of credit for the purpose of meeting the remainder of the requirement. The Commission is adopting new § 39.11(e)(3) to clarify that a committed line of credit or similar facility is a permitted default resource up to the amount provided for in § 39.11(e)(1)(ii), but that it may not be counted twice to meet the requirements of both § 39.11(e)(1)(ii) and § 39.11(e)(2). FIA and ISDA supported proposed § 39.11(e)(3) because it explicitly states the Commission's intention for a DCO to use a committed line of credit or similar facility under these circumstances.

4. Reporting Requirements—§ 39.11(f)

Regulation 39.11(f) sets forth reporting requirements for DCOs concerning the financial resources they are required to maintain pursuant to § 39.11(a). After § 39.11(f) was adopted, the Commission adopted §§ 39.33(a) and 39.39(d), which set forth financial resources requirements for SIDCOs and subpart C DCOs, and financial resources requirements for the recovery and wind-down plans of SIDCOs and subpart C DCOs, respectively. The Commission is amending several provisions of § 39.11(f) by adding the words ''and §§ 39.33(a) and 39.39(d), if applicable,'' to clarify that financial resources reporting by SIDCOs and subpart C DCOs should encompass all financial resources requirements applicable to them under part 39.

5. Financial Statements—§ 39.11(f)(1)(ii)

The Commission is amending § 39.11(f)(1)(ii) to require a DCO to file with the Commission each fiscal quarter, or at any time upon Commission request, a financial statement of the DCO, including the balance sheet, income statement, and statement of cash flows. Prior to this amendment, the regulation permitted the DCO to file the financial statement of the DCO or its parent company. Some DCOs that are part of a complex corporate structure file the financial statements of their parent companies, which makes it difficult to accurately assess the financial strength of the DCO.

The amendment to § 39.11(f)(1)(ii) also requires a DCO to prepare its financial statement in accordance with U.S. generally accepted accounting principles (U.S. GAAP), except that a DCO that is incorporated or organized under the laws of any foreign country may prepare its financial statement in accordance with either U.S. GAAP or the International Financial Reporting Standards issued by the International Accounting Standards Board (IFRS).

However, in response to comments, the Commission is not adopting the proposed amendments to § 39.11(f)(1)(ii) and § 39.11(f)(2)(i) that would have required the balance sheet to identify any assets allocated to satisfy the requirements of § 39.11(a)(1) or § 39.11(a)(2) as held for that purpose.

MGEX requested clarification regarding the application of the proposed revisions to § 39.11(f)(1)(ii) on an entity that is a DCO and also has non-DCO operations. MGEX noted that it is both a DCO and a DCM, and its financial statements show revenue and expenses from all sources and activities, not just those pertaining to MGEX's activities as a DCO. The Commission confirms that the revisions are intended to address the case of a DCO that is a separate legal entity from its parent company, in which case the Commission would expect to receive financial statements for the DCO disaggregated from that of its parent. In the case of a DCO with revenue and expenses from non-DCO activity, such as if the same legal entity were also a DCM, the Commission would not require or expect the entity to separate its clearing-related and non-clearing-related financial information in its financial statements.

MGEX further suggested that the proposed revisions to § 39.11(f)(1)(ii) requiring that the financial statement provided be that of the DCO and not the parent company should only apply to DCOs that are part of a complex corporate structure, and not to simple parent/subsidiary structures. MGEX stated that compiling and submitting separate financial statements for a simple parent/subsidiary structure would result in increased expenses while providing no material benefit. The Commission is declining to adopt this suggestion because the Commission believes there is value in understanding the financial condition of a DCO separate from that of its parent company, as separate legal entities should be able to prepare separate financial statements, and because there is no bright line distinguishing between simple and complex corporate structures.

SIFMA AMG suggested that the Commission require DCOs to prepare quarterly and annual reports as required by § 39.11(f) in accordance with U.S. GAAP. Eurex and LCH supported the proposal in § 39.11(f)(1)(ii) to allow non-U.S. DCOs to use either U.S. GAAP or IFRS. LCH also recommended that the CFTC allow non-U.S. DCOs to report in currencies other than the U.S. dollar, stating that this would allow the quarterly reports to align with the reporting currency of the entity's audited year-end financial statements and would simplify the reconciliation process proposed in § 39.11(f)(2). The Commission is declining LCH's suggestion because if a DCO were to report in currencies other than the U.S. dollar, Commission staff would need to convert the currencies to U.S. dollars to properly analyze the reports, which would require staff to make decisions about exchange rates. To the extent that a DCO that does business in a foreign currency must make conversions to U.S. dollars as part of preparing its financial statements, it is more appropriate to permit the DCO to determine the exchange rate it uses as long as the information is presented with sufficient clarity to allow Commission staff to evaluate the reasonableness of the decision.

CME supported the proposal in § 39.11(f)(1)(ii) and § 39.11(f)(2)(i) to identify assets required to meet the resource requirements of § 39.11(a)(1) and (2). However, CME stated that the balance sheet may not be the most appropriate financial statement to identify assets satisfying these requirements. CME noted certain requirements of U.S. GAAP that may preclude a company from including this information on its balance sheet. Eurex noted similar issues for financial statements prepared in accordance with IFRS. Given these concerns, the Commission is not adopting the proposed changes in this regard. However, the Commission encourages DCOs to identify the assets required to meet the resource requirements of § 39.11(a)(1) and (2) to the extent that they can, given applicable accounting standards. The Commission notes that providing such information would facilitate its review of DCOs' financial statements and potentially reduce the burden on DCOs to respond to staff inquiries regarding their financial statements and compliance with § 39.11(a)(1) and (2).

6. Timing of Financial Statements—§ 39.11(f)(1)(iv)

The Commission is amending § 39.11(f)(1)(iv) to incorporate the language of current § 39.11(f)(4), which requires a DCO to submit its quarterly report no later than 17 business days after the end of the DCO's fiscal quarter (or at a later time as permitted by the Commission in its discretion in response to a DCO's request for an extension).

The amendment does not incorporate changes suggested by commenters, described below, because the reporting dates currently in effect are the same as those for FCMs under the Commission's regulations. The Commission believes that DCOs should be aligned with FCMs rather than DCMs because FCMs, unlike DCMs, hold initial margin and default funds and collect variation margin, which clearly and directly relate to the financial resources available to DCOs. In addition, the timing of the fourth quarter report allows Commission staff to verify the accuracy of a DCO's quarterly financial reports; numerous differences between that report and the year-end report may signal that the DCO has deficient processes and procedures pertaining to preparation of financial statements.

CME recommended that, for the first three quarters of the fiscal year, the due dates for submitting the DCO quarterly financial resource reports be aligned with the due dates for a DCM's submission of financial resource reports pursuant to § 38.1101(f)(4), which requires the reports to be filed no later than 40 calendar days after the end of the DCM's first three fiscal quarters. CME also recommended that the due date to submit a DCO's financial resource report for the fourth quarter of the fiscal year be aligned with the due date for submitting audited year-end financial statements pursuant to current § 39.19(c)(3)(iv) and proposed § 39.11(f)(2)(ii), which is not more than 90 days after the end of the DCO's fiscal year end. CME argued that the proposed requirement in § 39.11(f)(2)(iii)(A) for a DCO to submit a reconciliation where material differences exist between the balance sheet in the audited year-end financial statement with the balance sheet in the DCO's financial statement for the last quarter of the fiscal year, discussed below, would be unnecessary if the Commission harmonized the submission due date for a DCO's financial resources report for the last quarter of the fiscal year with the submission due date for the audited year-end financial statements.

7. Reconciliation—§ 39.11(f)(2)(iii)(A)

The Commission is amending § 39.11(f)(2)(iii)(A) to require a DCO to annually submit a reconciliation, including appropriate explanations, of its balance sheet in the audited year-end financial statement with the balance sheet in the DCO's financial statement for the last quarter of the fiscal year when material differences exist or, if no material differences exist, a statement so indicating. LCH recommended defining ''material'' as 10 percent of either the (1) six-month liquidity test, or (2) 12-month capital cost-based financial resources test. The Commission believes that DCOs should retain reasonable discretion to define ''material'' for these purposes and therefore declines to include this suggestion.

8. Documentation Requirements—§ 39.11(f)(3)

Regulation 39.11(f)(3) requires a DCO to provide to the Commission certain documentation related to its quarterly financial reporting.[24] The Commission has determined that requiring this documentation each quarter is unnecessary where there is no change from the prior submission. Therefore, the Commission is revising § 39.11(f)(3) to clarify that a DCO must send the documentation to the Commission required under current subparagraphs (i) and (ii) (proposed to be renumbered as subparagraphs (i)(A) and (i)(B)) only upon the DCO's first submission under § 39.11(f)(1) and in the event of any change thereafter.

The Commission also is renumbering § 39.11(f)(3)(iii), which concerns providing copies of agreements establishing or amending a credit facility, insurance coverage, or other arrangement, as § 39.11(f)(3)(ii), and adding language specifying that copies of the agreements should evidence or support the DCO's ability to meet applicable financial resources and liquidity resources requirements.

9. Certification—§ 39.11(f)(4)

After § 39.11 was adopted, the Division of Clearing and Risk advised DCOs that the quarterly financial report required under paragraph (f) should be accompanied by a certification as to the accuracy of the report signed by the person responsible for the accuracy and completeness of the report.[25] The Commission is codifying the staff guidance by amending § 39.11(f)(4) to require the certification because the Commission believes that requiring the person responsible to certify as to the accuracy of the report encourages that person to review the report more carefully and therefore reduces the likelihood of inaccuracies in the report.

D. Participant and Product Eligibility—§ 39.12

Regulation 39.12 implements Core Principle C, which requires a DCO to establish admission and continuing eligibility standards for its members, as well as standards for determining the eligibility of agreements, contracts, or transactions submitted to the DCO for clearing. Several provisions in § 39.12 require a DCO to ''adopt'' or ''establish'' rules. The Commission is amending those provisions to require a DCO to ''have'' rules.[26] In addition, the Commission is amending § 39.12(b)(2), which requires a DCO to adopt rules providing that all swaps with the same terms and conditions are economically equivalent within the DCO, so that it explicitly applies only to those DCOs that clear swaps.

The Commission did not receive any comments on the proposed changes to § 39.12, and is adopting the changes as proposed.

E. Risk Management—§ 39.13

The Commission is adopting several changes to § 39.13, which sets out risk management requirements for DCOs. Unless stated otherwise below, the Commission did not receive any comments on the proposed amendments to § 39.13 and is adopting them as proposed.

1. Risk Management Framework—§ 39.13(b)

Regulation 39.13(b) requires a DCO to establish and maintain written policies, procedures, and controls, approved by its board of directors, which establish an appropriate risk management framework. The introductory heading to this provision states that it is a ''[d]ocumentation requirement.'' The Commission is replacing ''[d]ocumentation requirement'' with ''[r]isk management framework'' and the words ''establish and maintain'' with ''have and implement'' to make it clear that a DCO is not only required to have a documented risk management framework but to put it into action.

[24] The documentation explains (1) the methodology used to compute financial resources requirements, and (2) the basis for the DCO's determinations regarding valuation and liquidity requirements.

[25] Memorandum to All Registered DCOs from Ananda Radhakrishnan, Director, Division of Clearing and Risk, June 7, 2012.

[26] The Commission also proposed to renumber paragraphs (i)(A), (i)(B), and (ii) of § 39.12(a)(5) as paragraphs (ii), (iii), and (iv), respectively.

2. Limitation of Exposure to Potential Default Losses—§ 39.13(f)

Regulation 39.13(f) requires that a DCO, ''through margin requirements and other risk control mechanisms, shall limit its exposure to potential losses from defaults by its clearing members to ensure that'' the DCO's operations would not be disrupted and non-defaulting clearing members would not be exposed to unanticipated or uncontrollable losses. Recognizing that a DCO cannot ensure protection from that which it cannot anticipate, the Commission is revising § 39.13(f) to require a DCO to ''limit its exposure to potential losses from defaults by clearing members through margin requirements and other risk control mechanisms reasonably designed to ensure that . . . .''

The Commission had proposed to change ''to ensure that'' to ''to minimize the risk that.'' However, in this instance, the Commission has decided to adopt language suggested by commenters because the Commission believes that it better articulates the DCO's obligations. ICE supported replacing ''ensure'' with ''minimize the risk'' in § 39.13(f) and making conforming changes. However, FIA and ISDA expressed concern that the change, if interpreted to alter a DCO's existing obligations, would increase the potential for non-defaulting clearing members to be exposed to uncapped liability. FIA and ISDA suggested revising the language to instead require a DCO to ''limit its exposure to potential losses from defaults by clearing members through margin requirements and other risk control mechanisms *reasonably designed to* ensure that . . . .'' In response to a comment from FIA and ISDA, the Commission notes that this change clarifies, but does not alter, a DCO's existing obligations under this provision.

3. Margin Requirements—§ 39.13(g)

a. Methodology and Coverage—§ 39.13(g)(2)

Regulation 39.13(g)(2)(i) requires that a DCO have initial margin requirements that are commensurate with the risks of each product and portfolio. The Commission is amending § 39.13(g)(2)(i) to delete the statement in the existing regulation that such risks ''includ[e] but are not limited to jump-to-default risk or similar jump risk.'' The Commission had proposed to amend the regulation to keep this statement and add a statement that such risks also include ''concentration of positions.'' However, upon considering comments on the proposal, the Commission is concerned that including and adding to a list of examples of types of risks might be interpreted to mean that a DCO does not have to consider risks not mentioned. The Commission reiterates that a DCO should consider a range of risks, including, for example, jump-to-default risk, concentration risk, correlation risk, and other risks associated with the particular products and portfolios it clears. However, the Commission further notes that DCOs have discretion with respect to how they identify, label, and address such risks; therefore, the Commission is declining to define such terms.

LCH commented in support of the proposed revisions to § 39.13(g)(2)(i). However, although FIA and ISDA agreed that a DCO should consider concentration risk when establishing initial margin requirements, they requested that the Commission define this term in a re-proposed rule. FIA and ISDA further suggested that concentration risk could be defined to include positions that cannot be closed in a two-day period. Alternatively, they suggested that concentration risk could be more broadly defined. FIA and ISDA recommended that initial margin should cover concentration risk over the period that it would take to liquidate a defaulting participant's positions, and that initial margin requirements should consider the concentration risk of open positions relative to product liquidity and percentage of open interest. FIA and ISDA also recommended that a DCO's initial margin requirements evaluate concentration risk at an account level. Finally, FIA and ISDA requested that the Commission require in a re-proposal that a DCO consider other risk factors, such as correlation and pro-cyclicality, when determining its initial margin requirements. However, as explained above, the Commission has determined that including in § 39.13(g)(2)(i) a list of examples of types of risks might be interpreted to mean that a DCO does not have to consider risks not mentioned. Instead, a DCO should consider a range of risks based on the particular products and portfolios it clears, and it has discretion in how it identifies and addresses such risks.

b. Independent Validation—§ 39.13(g)(3)

Regulation 39.13(g)(3) requires that a DCO's systems for generating initial margin requirements, including its theoretical models, be reviewed and validated by a qualified and independent party on a regular basis. The provision further provides that the validation may be conducted by independent contractors or employees of the DCO, as long as they are not responsible for the development or operation of the systems and models being tested. The Commission is adopting proposed amendments to this provision to specify that ''on a regular basis'' means annually and to also permit employees of an affiliate of the DCO to conduct the validations, as long as the affiliate's employees are not responsible for the development or operation of the systems and models being tested. In addition, the Commission is further modifying § 39.13(g)(3) to specify that, where no material changes have been made to a DCO's margin model, previous validations can be reviewed and affirmed as part of the annual review process, as recommended by several commenters. The Commission is adopting this change because it agrees with commenters that it is unnecessarily burdensome to require DCOs to revalidate models that have not changed since the previous validation.

ICE expressed support for permitting employees of an affiliate of the DCO to conduct initial margin model validations. LCH also supported the proposed changes to § 39.13(g)(3). Nodal argued that requiring annual validations of a DCO's systems for generation of initial margin requirements, even for theoretical models, is unnecessary because theoretical models do not change from year to year. Nodal added that annual validations would present an undue burden for certain DCOs due to the significant cost and time involved in obtaining an independent validation. Nodal requested that, if the Commission requires annual validations as proposed, it exclude theoretical models from the annual validation requirement to the extent that they have not materially changed since the prior independent validation. CME commented that, in revising § 39.13(g)(3), the Commission should consider the provisions of the Bank Holding Company Supervision Manual, which allows banks to take varying approaches to model validations from year to year.[27] In particular, CME stated that, in some cases where no material changes have occurred, the manual suggests that previous validations could be reviewed and affirmed as part of the annual review process.

FIA and ISDA supported the proposal to replace the requirement to review and validate margin models on a ''regular basis'' with a requirement to do so ''on

[27] Board of Governors of the Federal Reserve System, Division of Supervision and Regulation, *Bank Holding Company Supervision Manual—Model Risk Management,* Section 2126.0.5 (Feb. 2019), available at *https://www.federalreserve.gov/publications/files/bhc.pdf.*

an annual basis.'' They also supported allowing a DCO to exercise discretion concerning the extent of the annual validation process depending, for example, on whether material changes have been made to the margin model since the prior validation, and cited to the Bank Holding Company Supervision Manual as well.

FIA and ISDA also requested that the Commission withdraw the proposal to allow employees of an affiliate of a DCO to conduct an initial margin model validation and instead require in a re-proposed rule that a qualified and independent third party must conduct the initial margin model validation. FIA and ISDA argued that employees who validate an initial margin model used by more than one affiliated DCO may fail to analyze whether a single model is appropriate for different products cleared by different affiliated DCOs. FIA and ISDA further suggested that the Commission re-propose several adjustments to a DCO's initial margin model validation process to increase transparency. The Commission believes it is appropriate to permit a DCO's employees or employees of an affiliate of the DCO to conduct the validations, provided they are not responsible for development or operation of the systems and models being tested. Since § 39.13(g)(3) has been in place, the Commission has not encountered any issues with employees of a DCO conducting the validations; therefore, the Commission believes it is appropriate to permit employees of an affiliate of the DCO to conduct the validations.

c. Spreads and Portfolio Margins—§ 39.13(g)(4)

To be consistent with other Commission regulations, the Commission is amending § 39.13(g)(4) to substitute the phrase ''conceptual basis'' for the phrase ''theoretical basis'' in the discussion of spread margin. LCH supported the proposed changes.

d. Back Tests—§ 39.13(g)(7)

The Commission is adopting new § 39.13(g)(7)(iii) to clarify that, in conducting back tests of initial margin requirements, a DCO should compare portfolio losses only to those components of initial margin that capture changes in market risk factors.

LCH supported the proposed changes to § 39.13(g)(7)(iii). ICE agreed that portfolio back testing of the statistical performance of the core margin model should be solely based upon market risk factors that can be directly measured and tested. However, ICE commented that, when performing back testing to assess whether the DCO has collected sufficient margin to meet its coverage requirement, the DCO should include all of the margin model's charges and add-ons, ''in other words, all of the margin resources available to mitigate the risk of the position (excluding any voluntary excess posted by a clearing member).'' In contrast, although SIFMA AMG agreed that clarification is necessary in this regard, it suggested that margin add-ons, which it noted are outside of the model framework, should not be included when back testing a margin model. SIFMA AMG stated that excluding the impact of these and other similar add-ons will reduce the likelihood of misrepresenting the actual margin coverage produced by a DCO's models, as their inclusion may result in margin breaches going undetected. In addition, SIFMA AMG stated that margin add-ons are often calculated at the sole discretion of the DCO and are not readily replicable by market participants. SIFMA AMG further stated that DCOs should disclose these back-testing results at the contract level, rather than the account level, to increase transparency and facilitate enhanced risk monitoring by all market participants.

In response to the comments, the Commission notes that comparing portfolio losses only to components of initial margin that capture changes in market risk factors reduces the likelihood of misrepresenting the actual margin coverage produced by a DCO's models, as the inclusion of other components may result in margin breaches going undetected.

e. Gross Customer Margin—§ 39.13(g)(8)(i)

Regulation 39.13(g)(8)(i) requires a DCO to collect initial margin on a gross basis for each clearing member's customer account(s). The Commission is revising § 39.13(g)(8)(i) to clarify that initial margin must be collected on a gross basis only at the end-of-day settlement cycle.

OCC supported the proposed changes. The Commission also received two comments specific to its statement in the Proposal that, notwithstanding the proposed change to the rule text, a DCO should also collect customer initial margin from its clearing members on a gross basis during any intraday settlement cycle in which the DCO collects customer initial margin if the DCO is able to calculate the margin accurately.[28] LCH stated that it supports the intraday collection of customer initial margin on a gross basis because it supports the risk management function of a DCO. By contrast, FIA and ISDA argued that the Commission should not encourage a DCO to collect gross customer initial margin during an intraday settlement cycle because it would create significant operational problems.

In response to the comment from FIA and ISDA, the Commission reiterates that it recommends that a DCO should collect customer initial margin from its clearing members on a gross basis during any intraday settlement cycle in which the DCO collects customer initial margin, but only if it is able to calculate the margin accurately. The Commission further reiterates that it would not expect a DCO to collect customer initial margin on an intraday basis if it would create significant operational problems for the DCO or its clearing members.

Furthermore, the Commission is adopting amendments to § 39.13(g)(8)(i)(B) to require a DCO to have rules that require its clearing members to provide reports to the DCO each day setting forth end-of-day gross positions of each individual customer account within each customer origin of the clearing member. The Commission is requiring that the daily reports specify positions of ''each individual customer account'' instead of ''each beneficial owner,'' as originally proposed, to be consistent with the information that DCOs must report to the Commission pursuant to § 39.19(c)(1), as discussed below.

OCC commented that the proposed changes to § 39.13(g)(8)(i)(B) would introduce a significant shift in the burden to maintain customer-level records from FCMs and introducing brokers to a DCO. OCC stated that virtually every FCM clears through multiple DCOs, so requiring a DCO to collect and report this customer-level information to the Commission does not in fact allow the Commission to appropriately understand the risks associated with individual customers without further aggregating the data that various DCOs receive from an individual FCM. OCC represented that it and its clearing members would need to make significant operational changes to obtain this information and report it daily, and OCC would need to make corresponding rule changes.

MGEX noted that while FCMs know and have a relationship with their customers, clearing members do not necessarily have such a relationship with the customers of FCMs for which they clear. Therefore, a rule requiring clearing members to report customer level information is impractical, and

[28] *See* Derivatives Clearing Organization General Provisions and Core Principles, 84 FR 22236.

attempting to apply this requirement at the FCM level would similarly be problematic, as certain FCMs with omnibus accounts may not have a relationship with the clearing member's DCO.

ICE supported the transparency associated with reporting of additional customer level information, but noted that the Commission should further consider the costs to clearing members and DCOs of developing new operational systems and procedures that the proposal would necessitate, and consider ways to phase in any new requirements to allow for the necessary development of new operational systems and procedures, at both the DCO and clearing member levels. ICE commented that DCOs and market participants should also have the opportunity to consider whether the changes could affect other longstanding practices, such as the treatment by DCOs of the risk in the customer account on a net basis, and encouraged the Commission to work with and consult the industry as a whole to implement any changes to current practices.

f. Customer Initial Margin Requirements—§ 39.13(g)(8)(ii)

Regulation 39.13(g)(8)(ii) provides that a DCO must require its clearing members to collect customer initial margin from their customers, ''for non-hedge positions, at a level that is greater than 100 percent of the [DCO]'s initial margin requirements with respect to each product and swap portfolio.'' Shortly after this provision was first adopted, the Commission became aware that it was being interpreted by DCOs in a way that would have significantly increased margin requirements for customers in a way that the Commission did not intend. This was addressed at the time through an interpretative letter issued by the Division of Clearing and Risk that accurately reflected the Commission's original intent.[29] The Commission is now amending the provision, consistent with the staff interpretation, to permit DCOs to establish customer initial margin requirements based on the type of customer account and by applying prudential standards that result in FCMs collecting customer initial margin at levels commensurate with the risk presented by each customer account.

The Commission received three comments in support of the proposed changes to § 39.13(g)(8)(ii) and one comment in opposition. OCC supported the proposed changes and stated, in response to a specific request for comment from the Commission, that further clarification on what would be considered ''commensurate with the risk presented'' is unnecessary. ICE supported the proposed changes to § 39.13(g)(8)(ii) giving DCOs discretion in determining the percentage by which customer initial margin requirements must exceed the DCO's clearing initial margin requirements. CME supported codification of the staff interpretation but was concerned that the proposed changes to § 39.13(g)(8)(ii) would shift the burden of determining the appropriate level of additional customer margin from FCM clearing members to DCOs. As a result, CME requested that § 39.13(g)(8)(ii) be further amended to state that ''the [DCO] shall have reasonable discretion in determining clearing initial margin requirements for products or portfolios and whether and by how much customer initial margin requirements for categories of customers determined to have heightened risk profiles by their clearing members must exceed, at a minimum, the [DCO]'s clearing initial margin requirements by a standardized amount.'' The Commission is adopting similar revisions, in order to confirm that the changes to § 39.13(g)(8)(ii) are not intended to shift the burden of determining the appropriate level of additional customer margin from clearing members to the DCO.

FIA and ISDA commented that the proposed change to customer initial margin requirements may impose an operationally impractical regime for clearing members to collect initial margin from customers, arguing that the proposed amendments would give DCOs too much discretion and encourage DCOs to apply differing measures to assess additional margin. FIA and ISDA believe that clearing members would benefit from a common approach to additional margin among DCOs. FIA and ISDA recommended that, regardless of whether the Commission adopts the proposed change, it should codify earlier no-action relief which clarifies that the initial margin requirements in § 39.13(g)(8)(ii) do not apply to security futures positions.

With respect to the applicability of § 39.13(g)(8)(ii) to security futures positions, the Commission notes that the interpretative guidance provided in CFTC Letter No. 12–08 is still in effect. The Commission further notes that it has received similar comments in connection with a recently proposed joint rulemaking issued by the Commission and the SEC on this topic, and believes that it is more appropriate to consider whether or not to codify this relief as part of that rulemaking.[30]

g. Haircuts—§ 39.13(g)(12)

Regulation 39.13(g)(12) requires a DCO to apply ''haircuts'' to the assets that it accepts in satisfaction of initial margin obligations, and to evaluate the appropriateness of the haircuts on at least a quarterly basis. Regulation 39.11(d)(1) requires a DCO to evaluate on a monthly basis its haircuts for assets that are used to meet the DCO's financial resources obligations set forth in § 39.11(a) (*i.e.,* its ''cover one'' default resources). The Commission is amending § 39.13(g)(12) to align it with § 39.11(d)(1) by requiring that a DCO evaluate the appropriateness of the haircuts that it applies to assets accepted in satisfaction of initial margin obligations on a monthly basis. Given that initial margin is held for risk management purposes, and the value of these assets may change frequently, the Commission believes it is appropriate to assess haircuts more frequently.

The Commission received one comment in support of the proposal and one comment in opposition. FIA and ISDA stated that the proposed change is appropriate given the frequent changes in the value of assets held for initial margin. LCH disagreed with the proposed change, stating that, in normal market conditions, haircuts do not significantly change, or may not change at all, from month to month. LCH suggested that haircut reviews continue to be required on a quarterly basis, but that the Commission enhance § 39.13(g)(12) by mandating that DCOs review haircuts more frequently in the event of specific scenarios, such as breach of back testing or high market volatility, which would affect the valuation and liquidity of eligible collateral.

4. Other Risk Control Mechanisms—§ 39.13(h)

a. Risk Limits—§ 39.13(h)(1)

Regulation 39.13(h)(1)(i) requires a DCO to impose risk limits on each clearing member, by house origin and by each customer origin, in order to prevent a clearing member from carrying positions for which the risk exposure exceeds a specified threshold relative to the clearing member's and/or the DCO's financial resources. The Commission proposed to amend the provision to specify that risk limits

[29] CFTC Letter No. 12–08 (Sept. 14, 2012); see also Letter from Lisa Dunsky, Executive Director and Associate General Counsel, Chicago Mercantile Exchange Inc., to Ananda Radhakrishnan, Director, Division of Clearing and Risk (Aug. 29, 2012).

[30] Customer Margin Rules Relating to Security Futures, 84 FR 36434 (July 26, 2019).

should also be imposed to address positions that may be difficult to liquidate.

The Commission has determined not to adopt the proposed changes to § 39.13(h)(1) at this time, but will continue to consider this issue further. The Commission remains concerned about positions that may be difficult to liquidate, particularly concentrated positions. As the Commission mentioned in the Proposal, recent events, including a significant loss from a default at a central counterparty outside of the Commission's jurisdiction, highlight the importance of addressing such positions. However, the Commission believes that DCOs should address difficult-to-liquidate positions using the DCO's margin methodology and consider whether and what other measures may be appropriate.

OCC opposed the proposed change, in favor of addressing difficult-to-liquidate positions through a DCO's margin methodology. OCC argued that margin requirements can more effectively account for the liquidity risk associated with specific positions held by specific clearing members, because margin requirements can be tailored to the risks and particular attributes of each relevant product, portfolio, and market. The margin requirements can then serve as one input a DCO uses in determining the appropriate risk limits. FIA and ISDA noted that the proposed imposition of hard risk limits on positions that may be difficult to liquidate would be a significant departure from current risk management practices for clearing members. FIA and ISDA suggested that the Commission should withdraw the proposed change to § 39.13(h)(1)(i) and consult with DCOs and clearing members about how to best risk-manage positions that are difficult to liquidate. LCH agreed that DCOs should have procedures in place to address clearing members with large positions that may be difficult to liquidate in the event of a default. However, LCH suggested that, rather than setting bright-line limits on the maximum size of such positions, the Commission should require DCOs to have measures in place, such as margin add-ons, to address concentration risk. LCH stated that this would be an appropriate approach because the mitigants against concentration risk of certain positions in any one clearing member would be built into the DCO's risk model. LCH further indicated that setting and maintaining such hard limits may result in market fragmentation or artificial limits that are not risk related and may inadvertently create disincentives to clearing.

b. Clearing Members' Risk Management Policies and Procedures—§ 39.13(h)(5)

Regulation 39.13(h)(5)(ii) requires a DCO to, on a periodic basis, review the risk management policies, procedures, and practices of each of its clearing members, which address the risks that such clearing members may pose to the DCO, and to document such reviews. The Commission is adopting an amendment to this regulation to clarify that DCOs should, having conducted such reviews, ''take appropriate actions to address concerns identified in such reviews,'' and that the documentation of the reviews should include ''the basis for determining what action was appropriate to take.''

The Commission received one comment in support of the proposal and two comments in opposition. LCH supported the proposed changes regarding clearing member risk management policies and procedures. FIA and ISDA stated that the proposed change that would require a DCO to take appropriate actions to address concerns resulting from a review of a clearing member's risk management policies and procedures is unnecessary. ICE opposed requiring DCOs to supervise or impose changes in the risk management policies of clearing members, and commented that any such requirement would be more appropriate at the designated self-regulatory organization (DSRO) level, rather than the DCO level.

In response to ICE's suggestion that clearing member risk reviews should be conducted by a DSRO, the Commission notes that not all clearing members are subject to the supervision of a DSRO. The Commission disagrees with FIA and ISDA's comment that requiring a DCO to take appropriate actions to address concerns resulting from a review of a clearing member's risk management policies and procedures is unnecessary. As the Commission stated in the Proposal, absent such follow-up, the reviews would lack purpose.

5. Cross-Margining—§ 39.13(i)

The Commission is codifying its existing practices for evaluating cross-margining programs in new § 39.13(i), which requires a DCO that seeks to implement or modify a cross-margining program with one or more other clearing organizations to submit rules for Commission approval pursuant to § 40.5. However, the Commission is not adopting the proposed requirement that a DCO provide, at a minimum, specific information needed to facilitate the Commission's review of the rule filing. Rather, the Commission is requiring that a DCO submit information sufficient for the Commission to understand the risks that would be posed by the program and the means by which the DCO would address and mitigate those risks. The Commission believes that leaving it to the discretion of the DCO to determine what information to provide, yet giving the Commission the ability to request any additional information it may need to conduct its review of a cross-margining program, is appropriate given that cross-margining programs can vary greatly, depending on the products, participants, and clearing organizations involved. The Commission notes, however, there may be instances where a cross-margining program would require approval beyond the § 40.5 submission. For example, a cross-margining program between a registered DCO and a clearing organization that is not registered with the Commission may require relief from section 4d of the CEA for FCM customers to be eligible to participate.

The Commission received one comment in support of the proposal and one comment in opposition. FIA and ISDA supported the proposal, stating that it would increase transparency and improve the ability of clearing members to manage the risks associated with positions subject to cross-margining. They recommended that the Commission consider including in its evaluation the credit and liquidity risk management, settlement, and default management-related principles identified in the PFMIs. In addition, FIA and ISDA suggested that the Commission should require DCOs participating in a cross-margining arrangement to consult with their respective clearing members.

OCC opposed the proposal to require a DCO to provide specific types of information, arguing that it would reduce the Commission's flexibility to determine what types of information are necessary for it to review in specific circumstances. OCC suggested that a DCO should not be required to provide each of the specified types of information when it is requesting the Commission's approval to update an existing cross-margining program, where analyzing factors unrelated to the change for which it is requesting approval would create an unnecessary burden. OCC suggested that instead the Commission should issue guidance on what information it may require in its review of a cross-margining program. OCC further requested that, should the Commission nonetheless choose to require specific types of information in proposed § 39.13(i), the information should only be required when the Commission reviews a new cross-

margining program and not when the Commission reviews changes to an existing cross-margining program. OCC also suggested that DCOs should be able to submit a cross-margining program under either § 40.5 or § 40.6(a), and requested that the Commission only apply the § 40.5 review process to a new cross-margining program.

In response to FIA and ISDA's comment on consulting with clearing members, the Commission notes that § 40.5(a)(8) requires a DCO to provide a brief explanation of any substantive opposing views expressed by its members that were not incorporated into the rule, or a statement that no such opposing views were expressed. The Commission recognizes that § 40.5(a)(8) does not require consultation with clearing members. Because the Commission did not propose this requirement, it cannot adopt it at this time but may consider it in conjunction with a future rulemaking.

The Commission considered OCC's recommendation that a DCO be able to submit cross-margining rules pursuant to § 40.6,[31] but has determined to adopt the requirement to submit such rules under § 40.5 as proposed to give the Commission sufficient time to consider those rules. The Commission confirms, however, that it may expedite the rule approval process under § 40.5(g) where appropriate.

F. Treatment of Funds—§ 39.15

The Commission is adopting as proposed amendments to § 39.15, which concerns a DCO's treatment of clearing member and customer funds. Regulation 39.15(b)(2)(ii) is being amended to permit a DCO to file rules for Commission approval pursuant to § 40.5, rather than request a Commission order, to allow the DCO and its clearing members to commingle cleared swaps, foreign futures, or foreign options with futures and options in an account subject to the requirements of section 4d(a) of the CEA (*i.e.,* the futures account). This is consistent with the existing requirements for commingling futures with cleared swaps in the cleared swaps customer account pursuant to § 39.15(b)(2)(i) (which is also being amended to permit foreign futures and foreign options to be held in the account). When § 39.15(b)(2)(ii) was first promulgated, the Commission, in reference to its decision to require an order rather than a rule approval to commingle cleared swaps with futures in a futures account, stated ''at this time, it is appropriate to provide these additional procedural protections before exposing futures customers to the risks of swaps that may be commingled in a futures account.'' [32] The Commission, however, acknowledged that ''as the Commission and the industry gain more experience with cleared swaps, the Commission may revisit this issue in the future.'' [33] The Commission now believes that a request for a rule approval that complies with § 40.5 will provide the Commission with sufficient means to determine whether customer funds held in a futures account will be adequately protected if cleared swaps, foreign futures, or foreign options are also held in the account.

The Commission is also amending § 39.15(d) to require the ''prompt,'' but not necessarily simultaneous, transfer of a customer's positions and related funds from one clearing member to another clearing member ''as necessary.'' The Commission had proposed this change because, although a DCO may transfer positions from one clearing member to another, the DCO does not generally transfer funds.

ICE generally supported the proposed amendments to § 39.15, including allowing commingling of swaps in a futures account pursuant to rules submitted under § 40.5 rather than pursuant to a separate Commission order under section 4d of the CEA. LCH, FIA, and ISDA supported the proposed amendment to § 39.15(d) to require the prompt, but not necessarily simultaneous, transfer of a customer's positions and related funds. FIA and ISDA noted that clearing members transfer positions before related collateral is transferred under current market practice. LCH noted that proposed § 39.15(d) reflects how funds are transferred, especially where there is third-party involvement and the simultaneous transfer of funds may not be possible.

The Commission did not receive any comments on the proposed technical changes to § 39.15(b)(2)(iii) and (e) and is adopting those changes as proposed.

G. Default Rules and Procedures—§ 39.16

1. Default Management Plan—§ 39.16(b)

Regulation 39.16(b) requires a DCO to have a default management plan and, among other things, test the plan at least on an annual basis. The Commission is adopting an amendment to § 39.16(b), as further modified in response to a comment from FIA and ISDA, to require that the DCO include clearing members and participants in a test of its default management plan on at least an annual basis to the extent the plan relies on their participation. The Commission continues to believe, as noted in the Proposal, that a DCO should ensure that a sufficient portion of its clearing membership participates in such testing.

OCC supported the proposed change but stated that a DCO should have broad discretion to determine whether a ''sufficient portion'' of its clearing membership is participating. OCC noted that the number of clearing members that participate in a default management test is not necessarily indicative of whether a DCO's default management plan has been tested effectively, and that other factors must also be considered.

FIA and ISDA generally supported the proposed change but recommended that the rule refer to clearing members and ''participants'' so that, if a DCO's rules allow non-clearing members to participate in an auction of a defaulting clearing member's positions, a sufficient portion of such participants should be required to participate in the testing of the DCO's default management plan. FIA and ISDA further suggested that participation in testing should be tied to asset classes so that only clearing members that carry positions, or participants that trade, in a particular asset class are required to participate in tests of a DCO's default management plan for that particular asset class. Lastly, FIA and ISDA recommended that DCOs should be required to coordinate the testing of their respective default management plans so that the requirement to participate in testing of the plan does not place an undue burden on clearing members.

Nodal commented that the requirement to include clearing members in a test of a DCO's default management plan is not necessary for a DCO that does not rely exclusively on clearing member auctions. Nodal requested that the Commission limit the application of the proposed rule, if adopted, to those DCOs that primarily rely on a clearing member auction process in their default management

[31] The Commission has approved prior cross-margining arrangements pursuant to its rule approval process or by Commission order. *See* Derivatives Clearing Organization General Provisions and Core Principles, 84 FR 22238, n. 51 (discussing prior cross-margining arrangements approved by the Commission). In the discussion in the Proposal of prior cross-margining arrangements approved by the Commission, the Commission referenced certain orders that were amended to incorporate the provisions of Appendix B, Framework 1 to the Commission's part 190 regulations. The Commission notes that Framework 1 would no longer apply in this context, as cross-margining arrangements would be approved pursuant to § 40.5 rather than by Commission order.

[32] Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69392.

[33] *Id.*

plans, rather than applying it to all DCOs.

As to FIA and ISDA's suggestion that participation in testing should be tied to asset classes, the Commission believes that this decision is in the DCO's discretion. Lastly, as to FIA and ISDA's recommendation that DCOs should be required to coordinate the testing of their respective default management plans, the Commission encourages DCOs to coordinate the testing of their default management plans to the extent possible to avoid placing an undue burden on clearing members and participants.

2. Default Procedures—§ 39.16(c)

a. Default Committee—§ 39.16(c)(1)

Regulation 39.16(c) requires a DCO to adopt procedures that would permit the DCO to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a default by one of its clearing members. The Commission proposed to amend § 39.16(c)(1) to require a DCO to have a default committee that would be convened in the event of a default involving substantial or complex positions to help identify market issues with any action the DCO is considering. The default committee would be required to include clearing members and could include other participants to help the DCO efficiently manage the house or customer positions of the defaulting clearing member. In light of the strong divergence in the views expressed in the comments received on this proposal, the Commission has determined not to adopt the proposed changes to § 39.16(c)(1) at this time. The Commission wishes to give industry stakeholders some time to come closer to consensus on this issue.

Some comments generally supported the proposal. MFA supported the proposal to allow non-clearing members to participate in a DCO's default committee. MFA noted, however, that the proposal permits but does not require customer participation, and requested that the Commission affirmatively mandate customer involvement. MFA understands that DCOs already have the authority to voluntarily include customers in their default committees, but that they have chosen not to do so.

FIA and ISDA generally supported the proposed requirement that a DCO have a standing default committee. They recommended, however, that, absent exigent circumstances, the default committee convene whenever a material default occurs, not only when a default involving substantial or complex positions occurs. FIA and ISDA also supported the proposed requirement that the default committee include clearing members, but they recommended that clearing members be allowed to voluntarily participate on default management committees.

Mr. Saguato supported the proposal to have clearing member and customer participation on a DCO's default committee. Mr. Saguato suggested that the Commission explore the costs and benefits of further increasing and formalizing the role of clearing members and their customers in the default process, as Mr. Saguato believes clearing members should have a primary role in setting default procedures. Furthermore, SIFMA AMG agreed that DCOs should have a standing committee to address all defaults.

Other comments opposed the proposal. ICE did not believe that requiring the use of a default committee that includes clearing members and other participants is advisable. ICE noted that it is not clear what criteria would be used to determine whether a default scenario is ''complex'' or ''substantial,'' or who would make the determination. ICE commented that it is not feasible for these and other considerations to be addressed in a rule, which therefore weighs against mandating the use of a default committee.

MGEX urged the Commission to permit a DCO's pre-existing risk or risk management committee to also serve as the default committee. MGEX indicated that allowing this type of dual-purpose committee would offer smaller entities with less complex product offerings a more immediate and efficient implementation, while avoiding the potential difficulty in finding sufficient clearing member interests to fill two separate committees.

CME commented that the proposal to require a default committee and clearing member participation on that committee risks unnecessarily prolonging and overcomplicating the default management process. CME also stated that a DCO's default management plan should account for the risks from substantial and/or complex portfolios, and these types of portfolios should be addressed in the design and testing phases of a DCO's default management plan and its day-to-day risk management. Lastly, CME noted that providing information on a defaulted clearing member's portfolio to the clearing members on the DCO's default committee, independent of their participation in subsequent liquidation or auction processes, increases the risk of information leakage and disadvantageous pricing.

Nodal commented that requiring a DCO to have a default committee that includes clearing members or other participants is not likely to assist in efficiently managing the positions of the defaulting member; instead, it would add unnecessary complexity to what is already an efficient process. Nodal further stated that having clearing members on a default committee could create the potential for conflicts for any clearing member or participant selected, as well as introduce an element of self-interest or potential gaming within the decision-making of the default procedure and response. Finally, OCC commented that ''substantial or complex positions'' should not include exchange-traded products.

b. Declaration of Default—§ 39.16(c)(2)(ii)

The Commission is adopting an amendment to § 39.16(c)(2)(ii) to require that a DCO have default procedures that include public notice on the DCO's website of a declaration of default. However, the final rule differs from the proposal in that it does not require ''immediate'' public notice of a default. Instead, the final rule is silent on the timing of the notice. The Commission believes that a DCO should provide public notice as quickly as possible, taking into account the potential negative impact that it might have on the DCO's ability to manage the default.

The Commission had requested comment as to whether the timing of the announcement would potentially impact the market or the DCO's ability to manage the default. SIFMA AMG agreed with the proposal to require a DCO's default procedures to include immediate public notice on the DCO's website of a declaration of default. CME recommended that the Commission permit DCOs to exercise discretion on the timing of a public notice of a declaration of default where such notification could negatively impact the ability of the DCO to manage the default. CME noted that mandatory immediate public notification runs the risk of causing disadvantageous pricing for liquidation or auctions, which could increase the costs to the DCO of managing the clearing member default, and if losses are incurred, could ultimately increase the risk of mutualizing losses among its clearing members.

Mr. Saguato commented that requiring immediate public notice of a declaration of default is unnecessary and potentially counterproductive to an effective default management process

and should not be adopted as proposed. Mr. Saguato further stated that markets should be notified only at the completion of the default management process, to avoid the risk of spillovers.

OCC suggested that the Commission consider whether ''prompt'' public notice on the DCO's website would be more appropriate for consistency with the timing of other activities a DCO must perform pursuant to its default management plan and the responsibility of a clearing member to provide the DCO with prompt notice if it becomes insolvent. OCC noted that requiring immediate public notice may result in a DCO notifying the public of a default before the DCO has complete information about the default, which may trigger market panic before the DCO is able to understand the circumstances giving rise to the default and the market impact.

Eurex opposed the requirement to provide immediate public notice, arguing that it could adversely affect the DCO's ability to manage a default and may interfere with the DCO's existing notification practices with respect to porting, for example. Nodal, FIA, and ISDA noted that the timing of an announcement of a default could potentially affect the market and the ability of the DCO, clearing members, and customers to manage the risks and consequences of the default. Therefore, Eurex, Nodal, FIA, and ISDA recommended that the Commission allow a DCO to have flexibility in the manner and timing of these notices. MGEX generally agreed that public notice of a default is vital for promoting the integrity and stability of financial markets, but suggested that the Commission give DCOs discretion with respect to the timing of posting such notice, which would allow the DCO to consider the nature of the default and any circumstances warranting flexibility.

ICE commented that, depending on the facts and circumstances of a default, an immediate announcement could potentially impact the market and the DCO's ability to manage the default. ICE therefore suggested that DCOs should be required to provide public notice of a default ''as soon as practicable under the circumstances.''

c. Allocation of Defaulting Clearing Member's Positions—§ 39.16(c)(2)(iii)(C)

Regulation 39.16(c)(2)(iii)(C) requires any allocation of a defaulting clearing member's positions to be proportional to the size of the participating or accepting clearing member's positions in the same product class at the DCO. The Commission is adopting an amendment to this provision to provide that the DCO shall not require a clearing member to bid for a portion of, or accept an allocation of, the defaulting clearing member's positions that is not proportional to the size of the bidding or accepting clearing member's positions in the same product class at the DCO. This amendment is intended to clarify that a clearing member that wishes to voluntarily bid for or accept more than its proportional share should be allowed to do so, provided that the clearing member has the ability to manage the risk of the new positions. It also clarifies that the provision applies to both auctions and allocations.

The Commission had proposed to further amend § 39.16(c)(2)(iii)(C) to provide that the size of the participating or accepting clearing member's positions in the same product class at the DCO should be measured by the clearing initial margin requirement for those positions. The Commission requested comment as to whether the Commission should require DCOs to take into consideration other indicators of active participation in a market, such as open interest, volume, and/or other criteria. All of the commenters opposed the proposed change, arguing that there are many factors that should be taken into consideration. The Commission found the comments persuasive and therefore is not adopting the proposed change.

CME commented that initial margin required as the basis for determining limits on potential bidding and allocation requirements under proposed § 39.16(c)(2)(iii)(C) may offer a poor approximation for the risk management capacity, capital availability, and credit quality of a clearing member. CME suggested that a given clearing member's initial margin requirements at the time of a clearing member default are a function of the size and directionality of the clearing member's portfolio, the variance of which over time creates an arbitrary standard by which to limit the ability of a DCO to require a clearing member to bid on a defaulter's portfolio. Therefore, CME suggested that, to the extent a limit on forced bidding or allocations is imposed, it should be based on a clearing member's risk management capacity, capital sufficiency, and credit quality, not solely its initial margin requirement.

ICE disagreed that mandatory bidding, or other auction terms, should be set by regulation; rather, they should be left to the DCO to determine in its rules and procedures, subject to regulatory oversight. ICE noted that there is no single approach to determining the level of a mandatory bid, or other relevant terms of participation.

In response to the Commission's request for comment as to whether it should require DCOs to take into consideration other indicators of active participation in a market, MGEX observed that DCOs already have ample tools to handle these situations, such as security deposits and various forms of margin, which take different risk factors into consideration. OCC stated that the amount of initial margin a clearing member holds at a DCO for a given product or product class is not always a good indicator of that member's qualification to bid on or accept an allocation of certain products or product classes. OCC argued that a DCO should be given discretion to consider several criteria, including a clearing member's initial margin for a given product or product class, open interest, volume, and risk management capabilities.

3. Fully Collateralized Positions—§ 39.16(e)

In response to a request from Nadex, the Commission is adopting new § 39.16(e) to provide that a DCO may satisfy the requirements of paragraphs (a), (b), and (c) of § 39.16 (which relate to a DCO's default management plan and procedures) by having rules that permit it to clear only fully collateralized positions. This rule was not included in the Proposal, but the Commission believes it is appropriate to include it in the final rule because it is consistent with other exceptions for fully collateralized positions adopted herein.

Nadex requested that the Commission further amend § 39.16 to indicate that the requirements thereof do not apply to DCOs that clear only fully collateralized contracts. Nadex noted that in 2014, in response to its request for interpretative relief, the Division of Clearing and Risk issued an interpretative letter stating that Nadex's fully collateralized requirements satisfy the requirements of § 39.16.[34] The letter indicated that, because Nadex requires 100 percent of the funds necessary to fully collateralize a clearing member's positions to be on deposit with Nadex before the trade is executed, Nadex has eliminated the potential for a clearing member default.

H. Rule Enforcement—§ 39.17

Regulation 39.17(a)(1) requires a DCO to maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and the resolution of disputes. The Commission is adopting an amendment

[34] *See* CFTC Letter No. 14–05 (Jan. 16, 2014).

to § 39.17(a)(1), as proposed, to explicitly state that that this applies to both the DCO's and its members' compliance with the DCO's rules.

Regulation 39.17(b) permits a DCO's board of directors to delegate its responsibility for compliance with the requirements of § 39.17(a) to the DCO's risk management committee. The Commission is amending § 39.17(b) by replacing ''risk management committee'' with ''an appropriate committee.''

FIA and ISDA supported the proposed amendments on the assumption that the Commission does not seek to impose any new obligations on clearing members. ICE also supported the proposed amendments and suggested that the Commission should consider permitting a DCO's board to broaden the delegation of this responsibility to the president of the DCO or an equivalent officer.

The Commission confirms that it is not seeking to impose any new obligations on clearing members. Rather, the purpose of the amendment is to remind DCOs of their obligation to comply with their own rules as well as enforce them against their clearing members. The Commission, however, declines to adopt ICE's suggestion regarding the scope of permissible delegation at this time; the Commission may consider it in a future proposal where comment could be sought.

I. Reporting—§ 39.19

Regulation 39.19 implements Core Principle J, which requires that each DCO provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the DCO. The Commission is amending § 39.19 to clarify certain existing requirements, and also to adopt multiple new reporting requirements. These changes to § 39.19 will enhance the Commission's ability to conduct effective and efficient oversight of DCO compliance with the DCO Core Principles and Commission regulations. The Commission received comments on a number of the proposed changes to § 39.19. As further detailed below, the Commission modified several of the proposed requirements in response to comments. Unless stated otherwise below, the Commission did not receive any comments on the proposed amendments to § 39.19 and is adopting them as proposed.

1. General—§ 39.19(a)

The Commission is revising the text of § 39.19(a) to match the text of Core Principle J. The revisions are not meant to alter the meaning of the provision.

2. Submission of Reports—§ 39.19(b)

Regulation 39.19(b)(1) requires a DCO to submit the information required by the section to the Commission electronically and in a format and manner specified by the Commission, unless otherwise specified by the Commission or its designee. To simplify the text while retaining the originally-intended flexibility, the Commission is deleting the phrase ''[u]nless otherwise specified by the Commission or its designee'' and the term ''electronically.'' The Commission is also adding new § 39.19(b)(2) to require that when making a submission pursuant to the section, an employee of a DCO must certify that he or she is duly authorized to make such a submission on behalf of the DCO. This provision codifies existing practices with respect to the use of the CFTC Portal for submissions pursuant to § 39.19. Finally, the Commission is removing existing § 39.19(b)(3) and moving the definition of ''business day'' to § 39.2, as discussed above. Existing § 39.19(b)(2) is renumbered as § 39.19(b)(3). The Commission continues to believe, as noted in the Proposal, that it is appropriate to codify existing practices with respect to the use of the CFTC Portal for submissions pursuant to § 39.19.

ICE opposed the proposal to codify the certification requirement in § 39.19(b)(2). ICE asserted that the requirement is unnecessary because it is extraordinarily unlikely that unauthorized submissions are being made by DCO personnel. ICE further argued that this requirement creates an unnecessary compliance burden. Nadex requested clarification regarding this requirement, asking whether a DCO would be required to maintain separate documentation that identifies the employees authorized to make submissions on behalf of the DCO. Nadex also requested clarification regarding which DCO employees have the authority to authorize other employees to make submissions for the DCO. Lastly, Nadex requested clarification as to whether the certification should be included in the text of the submission or if it will appear in the CFTC Portal in the form of a confirmation statement.

In response to ICE's comment, the Commission notes that, although they are not common, unauthorized submissions have occurred. In response to Nadex's questions, the Commission notes that DCOs have discretion to determine who is authorized to make submissions on their behalf and, under the rule, they would not be required to maintain separate documentation that identifies the employees authorized to make submissions on behalf of the DCO. With respect to the location of the certification, the Commission will incorporate the certification into the section of the portal form where users certify as to the accuracy and completeness of the submission. Completing this section of the portal form will satisfy the certification requirements of § 39.19(b)(2).

3. Daily Reporting of Information—§ 39.19(c)(1)(i)

Regulation 39.19(c)(1)(i) requires a DCO to report to the Commission on a daily basis margin, cash flow, and position information for each clearing member, by house origin and by each customer origin. The Commission is amending § 39.19(c)(1)(i) to require a DCO to also report margin, cash flow, and position information by individual customer account. This is information that DCOs currently provide in accordance with the Part 39 Reporting Guidebook,[35] which requests that DCOs provide clearing members' customer information, but also ''acknowledges that customer level information may not be available to all DCOs.'' [36] Additionally, the Commission is specifying ''individual customer account,'' as individual customers may have multiple accounts, which should be reported separately. The amendments will also require DCOs provide any legal entity identifiers and internally-generated identifiers within each customer origin for each clearing member, to the extent that the DCO has this information. Lastly, the amendments to § 39.19(c)(1)(i)(D) specify that, with respect to end-of-day positions, DCOs must report the positions themselves (*i.e.,* the long and short positions) as well as risk

[35] The U.S. Commodity Futures Trading Commission Part 39 Reporting Requirements for Derivatives Clearing Organizations, Guidebook for Daily Reports, v.0.9.2, Dec. 2017 (Part 39 Reporting Guidebook) provides instructions and technical specifications for daily reporting under § 39.19(c)(1)(i).

[36] Part 39 Reporting Guidebook, Section 2.1.2.2, Client Account Information, p. 5.

sensitivities [37] and valuation data [38] that the DCO generates, creates, or calculates in connection with managing the risks associated with such positions.

The final rule differs from the proposal in order to clarify that subparagraph (D) does not require a DCO to calculate risk sensitivities on the Commission's behalf. Rather, the rule requires a DCO only to report the risk sensitivities and valuation data for end-of-day positions that the DCO generates, creates, or calculates in connection with managing the risks associated with those end-of-day positions. The final rule is also modified to provide that a DCO is required to provide any legal entity identifiers and internally-generated identifiers for each individual customer account only if the DCO has this information associated with an account.

The Commission notes that the changes to § 39.19(c)(1)(i) to require reporting of information ''by each individual customer account'' are meant to reflect the information that DCOs currently report, to varying degrees, as explained above. The Commission notes that the requirement to report information ''by each individual customer account'' does not require a DCO to mandate that its clearing members look through an omnibus account that the clearing member carries for another registrant to ascertain the customers of that registrant. Similarly, in addition to providing for reporting by individual customer account, the daily reporting specifications have for several years included fields for reporting certain risk sensitivities, as well as reporting unique customer identifiers or legal entity identifiers. Ultimately, the changes to § 39.19(c)(1)(i) are not intended to require DCOs to report any information that they do not currently have, or do not currently report, subject to any operational or technological limitations that have been discussed with Commission staff. When Commission staff determines in the future that additional information regarding risk sensitivities and valuation data is needed, staff will engage with the DCOs, consistent with past practice, to facilitate efficient and effective reporting of this data.

Several commenters appeared to have adopted the view that the proposed amendment to § 39.19(c)(1)(i) to include individual customer account information would be a significant departure from existing requirements, when in fact this change is not intended to meaningfully alter the existing reporting structure, except to the extent that, as clarified below, the information that DCOs already are providing to the Commission is now subject to a mandatory reporting requirement. MGEX, ICE, and OCC opposed the proposed amendments to § 39.19(c)(1)(i) to require DCOs to report the required information by individual customer account. MGEX stated that reporting margin and cash flows by individual customer account is problematic because some DCOs currently do not calculate variation margin by individual customer account, and therefore, are not in a position to provide that data. MGEX stated that this is also problematic to the extent that the proposal would require a DCO to impose rules on non-clearing member FCMs that clear through an omnibus account at a clearing member FCM, where the DCO does not have a direct relationship with the non-clearing member FCM. Lastly, MGEX stated that complying with this proposed requirement would require a significant undertaking by DCOs. MGEX maintained that the current daily reporting structure strikes an appropriate balance between providing the Commission with sufficient information without being overly burdensome.

ICE asserted that, given that the Commission has not previously required DCOs to report individual customer information for futures positions, and given the substantial time and resources that DCOs will need to expend related to such reporting, the Commission should consult with industry further before adopting the proposed changes.

OCC asserted that if the Commission wishes to obtain information regarding individual customers, the Commission should amend the regulations governing FCMs and introducing brokers (IBs), rather than obtaining that information from DCOs. OCC also stated that clearing members may not have individual customer account information; for example, when clearing members receive omnibus position data from IBs, which do not include individual customer positions. OCC also suggested that the Commission would face practical challenges in connecting individual customer data from multiple sources—various FCMs and IBs—across DCOs. OCC further stated that, while those DCOs that clear swaps already report on a daily basis certain individual customer-level information for swap transactions, a DCO such as OCC that does not clear swap transactions does not currently have the infrastructure necessary to collect and report customer-level information daily.

Additionally, OCC opposed the specific requirement that DCOs calculate risk sensitivities on the Commission's behalf. OCC argued that risk sensitivities may be calculated in a variety of ways depending on the assumptions underlying the calculations and, under the proposal, the Commission would have the raw data necessary to calculate risk sensitivities based on its own assumptions and inputs. With respect to the proposed requirement to report risk sensitivities and valuation data, ICE requested that the Commission clarify what information should be reported, on what basis, and with what parameters.

Alternatively, OCC suggested that the Commission establish an effective date for these requirements that adequately accounts for the changes to systems, rules, and procedures that DCOs will need to make to comply with the requirements. OCC also requested that the Commission clarify how it would expect a DCO to calculate cash flows and valuation data, and clarify the format in which such information must be submitted. With respect to ''cash flows'' specifically, OCC requested that the Commission clarify whether ''cash flows'' include customer-level initial margin, mark-to-market value changes, changes in collateral value, or other components.

OCC requested that the Commission clarify that, although proposed § 39.19(c)(1)(i)(D) would require a DCO to provide any legal entity identifiers and internally-generated identifiers for individual customer accounts, this requirement does not require a DCO to obtain from its clearing members a legal entity identifier for each customer, and does not require a DCO to independently validate this information. CME suggested that proposed § 39.19(c)(1)(i) be modified to require that DCOs have rules that require clearing members to report individual customer account information to the DCO, using legal entity identifiers to identify the customers, and that the provision also specifically require that DCOs report customer information by

[37] Risk-sensitivities are different measures of the impact of changes in underlying factors on the value of the positions. For example, an interest rate delta describes the theoretical profit or loss (P&L) that results from a one basis point increase in a currency's interest rate curve. A delta ladder describes a series of sensitivities for different maturity points (tenors) where each ''rung'' represents an increasing maturity point or tenor along the zero rate curve term structure. In the context of options, examples of risk sensitivities would be the different Greeks—for example, delta, gamma, vega, and theta.

[38] Valuation data refer to variables and inputs that reflect current market conditions, as well as expectations for the future. In the case of credit default swaps, valuation models rely on, for example, risk neutral default probabilities of swaps, forward credit spreads for different maturities. For interest rate swaps, valuation models require discount factors.

''each individual account carried for a customer.'' CME asserted that requiring legal entity identifiers will allow DCOs to aggregate customer exposures across clearing members, and will allow the Commission to use the reporting information to aggregate those exposures across DCOs.

FIA and ISDA expressed concern regarding the burdens that proposed § 39.19(c)(1) may impose on clearing members. Specifically, FIA and ISDA stated that the large trader position reporting requirements and the ownership-and-control reporting requirements are based upon account control, while the proposed daily reporting requirements are based upon account ownership. FIA and ISDA stated that if clearing members will be required to provide new information to the DCO so that the DCO can comply with the new daily reporting requirement for individual customer accounts, then the Commission should conduct a cost-benefit analysis of this requirement as it pertains to clearing members and provide clearing members an opportunity to comment on the proposed requirement.

ICE suggested that the Commission further modify § 39.19(c)(1)(i) to move the reporting deadline from 10:00 a.m. to 12:00 p.m. ICE asserted that the current deadline provides insufficient time for operational processes related to data finalization. ICE also asserted that complying with the 10:00 a.m. deadline would become more difficult if the additional reporting requirements discussed above are added. LCH requested that the Commission delay the compliance date for these changes until after the Commission has updated its Part 39 Reporting Guidebook to clarify the specific information to be reported in relation to individual customer accounts.

4. Daily Reporting on Securities Positions—§ 39.19(c)(1)(ii)(C)

The Commission is adopting the changes to § 39.19(c)(1)(ii)(C) as proposed. Regulation 39.19(c)(1)(i) requires DCOs to submit certain information to the Commission on a daily basis, *e.g.,* initial margin requirements, initial margin on deposit, daily variation margin, other daily cash flows such as option premiums, and end-of day positions. Paragraph (c)(1)(ii)(C) instructs DCOs to provide the required information for all securities positions that are held in a customer account subject to section 4d of the CEA or are subject to a cross-margining agreement. To avoid ambiguity and more precisely articulate the scope of paragraph (c)(1)(ii)(C), the Commission is inserting subparagraph numbering between the clauses in paragraph (c)(1)(ii)(C) which relate to securities positions held in a customer account or subject to a cross-margining agreement. The Commission did not receive any comments on this proposed change. In response to a request for clarification from CME, the Commission confirms that, where both participants in a cross-margining program are DCOs, the DCO clearing the securities positions must provide the securities position information.

5. Quarterly Reporting—§ 39.19(c)(2)

The Commission is adopting the changes to § 39.19(c)(2) as proposed. Regulation 39.19(c)(2) requires a DCO to submit to the Commission the financial resources report required by § 39.11(f). The Commission adopted § 39.19(c)(2) so that each DCO reporting requirement would be included in § 39.19. The Commission is revising the text of § 39.19(c)(2) to be more consistent with the text of § 39.11(f); *i.e.,* a DCO must provide to the Commission each fiscal quarter, or at any time upon Commission request, a report of the DCO's financial resources as required by § 39.11(f)(1). The Commission did not receive any comments on this proposed change.

6. Audited Year-End Financial Statements—§ 39.19(c)(3)(ii)

The Commission is adopting the changes to § 39.19(c)(3)(ii) as proposed. Regulation 39.19(c)(3)(ii) requires a DCO to file with the Commission its audited year-end financial statements or, if there are no financial statements available for the DCO, the consolidated audited year-end financial statements of the DCO's parent company. Consistent with the goal of centralizing DCO reporting obligations in § 39.19, the purpose of this provision is to include in § 39.19 the requirement in § 39.11(f)(2) that DCOs submit audited year-end financial statements to the Commission. The Commission did not receive any substantive comments on § 39.19(c)(3)(ii).

7. Time of Report—§ 39.19(c)(3)(iv)

The Commission is adopting the changes to § 39.19(c)(3)(iv) as proposed. Regulation 39.19(c)(3)(iv) requires a DCO to submit concurrently to the Commission all reports required by paragraph (c)(3) within 90 days after the end of the DCO's fiscal year and only permits the Commission to provide an extension of time if it determines that a DCO's failure to submit the report on time ''could not be avoided without unreasonable effort or expense.'' The Commission is eliminating this requirement to provide itself with the flexibility to grant extensions of time under additional circumstances when appropriate. Additionally, the Commission is removing the requirement that reports be submitted concurrently, which will provide DCOs with the flexibility to submit reports required under § 39.19(c)(3) as they are completed. The Commission did not receive any comments on these changes.

8. Decrease in Financial Resources—§ 39.19(c)(4)(i)

The Commission is adopting a technical amendment to § 39.19(c)(4)(i), which concerns reporting of a decrease in a DCO's financial resources. The amendment adds a reference to the financial resources requirements of § 39.33. The Commission also is renumbering the subparagraphs for the sake of clarity. The Commission did not receive any comments on these changes.

9. Decrease in Liquidity Resources—§ 39.19(c)(4)(ii)

The Commission is adopting new § 39.19(c)(4)(ii) [39] to require that a DCO report a decrease of 25 percent or more in the total value of the liquidity resources available to satisfy the requirements under §§ 39.11(e) and 39.33(c). Existing reporting requirements under § 39.11(f)(1)(ii) provide the Commission with notice of any change in a DCO's liquidity resources over the course of a fiscal quarter. In contrast, this new provision will provide the Commission with notice if a DCO has a significant decrease in liquidity resources either from the last quarterly report submitted under § 39.11(f) or from the value as of the close of the previous business day.

OCC supported proposed § 39.19(c)(4)(ii) but suggested that, when calculating liquidity resources to determine whether reporting is required, the margin on deposit should not be included in the calculation. OCC asserted that excluding margin on deposit from the calculation will align this requirement with the proposed changes to § 39.11. OCC also indicated that including margin on deposit in this calculation may skew the results of the calculation to create a less accurate measure of the resources a DCO has to manage a potential default. Alternatively, OCC suggested that, if margin on deposit is included in the calculation, the DCO should compare the liquidity resources of the clearing

[39] The Commission is also renumbering existing § 39.19(c)(4)(ii) and all subsequent paragraphs of § 39.19(c)(4).

member group with the highest projected stress test losses to the liquidity resources of that same clearing member group as of the last quarterly report or the previous business day. The Commission confirms that, for purposes of calculating liquidity resources to determine whether reporting is required under § 39.19(c)(4)(ii), margin on deposit is not included in the calculation, consistent with the amendments to § 39.11.

10. Request to Clearing Member To Reduce Positions—§ 39.19(c)(4)(vi)

The Commission is adopting the proposed changes to § 39.19(c)(4)(v), which is being renumbered as § 39.19(c)(4)(vi). This provision requires a DCO to notify the Commission immediately when the DCO requests that a clearing member reduce its positions. The Commission is deleting from this provision the language limiting notice to circumstances when ''the [DCO] has determined that the clearing member has exceeded its exposure limit, has failed to meet an initial or variation margin call, or has failed to fulfill any other financial obligation to the [DCO].'' This change is necessary because the Commission believes a DCO's request to a clearing member to reduce its positions is a sufficiently significant step that the Commission should be notified regardless of the reason for the request. The Commission did not receive any comments on the proposed changes to this provision.

11. Change in Key Personnel—§ 39.19(c)(4)(x)

The Commission is adopting the proposed changes to § 39.19(c)(4)(ix), and is renumbering it as § 39.19(c)(4)(x). This provision requires a DCO to report to the Commission no later than two business days following the departure or addition of key personnel, as defined in § 39.2. The Commission is clarifying that the notification requirement applies to both temporary and permanent replacements, and must include contact information. The Commission notes that the required contact information includes the individual's name, title, office address, email address, and phone number. The Commission did not receive any comments on the proposed changes to this provision.

12. Change in Legal Name—§ 39.19(c)(4)(xi)

The Commission is adopting new § 39.19(c)(4)(xi) to require a DCO to report a change to the legal name under which it operates. As the Commission noted in the Proposal, however, the DCO's registration order (and any other orders the DCO received from the Commission) would not need to be changed to reflect the legal name change. The Commission did not receive any comments on the proposed changes to this provision.

13. Change in Liquidity Funding Arrangement—§ 39.19(c)(4)(xiii)

The Commission is adopting new § 39.19(c)(4)(xiii) to require a DCO to report a change in any liquidity funding arrangement it has in place. The Commission believes that receiving this information will assist it in overseeing the liquidity risk management of DCOs.

ICE opposed the new requirement on the grounds that reporting is unnecessary, provided that the DCO continues to satisfy the liquidity and other financial resource requirements, and provided that the liquidity funding changes are consistent with the policies and procedures of the DCO. CME and ICE suggested that the Commission incorporate a materiality threshold into the new requirement. Specifically, CME argued that, with respect to SIDCOs, the focus should be on capturing and reporting material changes to liquidity funding arrangements that allow for resources to be treated as qualifying liquidity resources.

In response to commenters' requests that a materiality threshold be incorporated into the reporting requirement, the Commission notes that the requirement includes a materiality element, along with a non-exclusive list of reportable events. Specifically, the rule requires reporting for ''a change in provider, change in the size of the facility, change in expiration date, or any other material changes or conditions.'' In response to the comment that reporting changes in liquidity funding arrangements is unnecessary, the Commission believes that such reporting will not be burdensome because it does not expect reportable changes to be frequent. The Commission is adopting § 39.19(c)(4)(xiii) as proposed.

14. Change in Settlement Bank Arrangements—§ 39.19(c)(4)(xiv)

The Commission is adopting new § 39.19(c)(4)(xiv) to require a DCO to report a new relationship with, or termination of a relationship with, any settlement bank used by the DCO or approved for use by the DCO's clearing members. The new rule differs from the proposal in that the reporting requirement only applies when a new settlement bank is added or an existing settlement bank relationship is terminated, rather than when the DCO changes its arrangements with a settlement bank. Also, the rule requires reporting within three business days, as opposed to one business day, as previously proposed. Consistent with the observation of one commenter, the Commission believes that the three-day requirement is properly aligned with the requirement in § 1.20(g)(4) that DCOs file an acknowledgment letter within three business days after opening a futures customer funds account at a depository.

ICE opposed the proposed requirement. ICE argued that the purpose of the requirement is unclear, noting that DCOs can have relationships with multiple settlement banks and that those relationships can be changed for commercial, operational, or other reasons in the ordinary course of business. CME, ICE, and Eurex suggested that the Commission incorporate a materiality threshold into the requirement that a DCO report a change in its arrangements with any settlement bank. Specifically, CME and OCC suggested that a DCO only be required to report when it starts using a new settlement bank or ceases using an existing settlement bank. Eurex stated that incorporating a materiality threshold into this requirement would align it with the current reporting requirement related to changes in credit facility funding arrangements, and with the proposed reporting requirement related to changes in liquidity funding arrangements. ICE suggested that reporting be limited to defaults or significant failures by a settlement bank. CME and OCC asserted that the reporting requirement should be designed to avoid unnecessary reports of routine administrative or operational changes, and similar immaterial changes, at settlement banks. CME also suggested that DCOs be required to report changes in settlement bank arrangements within three business days, to make the rule consistent with the requirement that DCOs file acknowledgment letters within three business days.

15. Settlement Bank Issues—§ 39.19(c)(4)(xv)

The Commission is adopting new § 39.19(c)(4)(xv) to require a DCO to report to the Commission no later than one business day after learning of any material issues or concerns regarding the performance, stability, liquidity, or financial resources of any settlement bank used by the DCO or approved for use by the DCO's clearing members. ICE opposed the proposed requirement, suggesting that DCOs should not be required to report operational problems

that are resolved in the ordinary course of business. OCC suggested that a DCO have ''broad discretion'' to determine whether a settlement bank issue is ''material,'' and should therefore be reported. OCC argued that a DCO should not be required to report routine operational issues that do not affect the DCO's assessment of the performance, stability, liquidity, or financial resources of the settlement bank. The Commission agrees that a DCO should have broad discretion to determine whether a settlement bank issue is a ''material'' issue and should therefore be reported. The Commission further agrees that routine operational issues that are resolved in the ordinary course of business would not be ''material.''

16. Change in Depositories for Customer Funds—§ 39.19(c)(4)(xvi)

The Commission has determined not to adopt proposed § 39.19(c)(4)(xvi) at this time.[40] The proposed rule would have required a DCO to report any change in its arrangements with any depositories at which the DCO holds customer funds. CME and ICE opposed this requirement. ICE argued that the purpose of this requirement is unclear, noting that DCOs can have a relationship with a number of depositories and that those relationships can be changed for commercial, operational, or other reasons in the ordinary course of business. CME, ICE, and Nodal argued that this requirement is duplicative of the requirements in § 1.20(g)(4), that a DCO obtain written acknowledgment letters from depositories and file those letters with the Commission. Eurex, ICE, and CME suggested that the Commission incorporate into this requirement a materiality threshold. Eurex stated that incorporating a materiality threshold would align it with the current reporting requirement related to changes in credit facility funding arrangements, and with the proposed reporting requirement related to changes in liquidity funding arrangements. ICE suggested that reporting should be limited to defaults or significant failures of the depository. The Commission's intention was not to introduce duplicative requirements, but rather, to aid the Commission in monitoring a DCO's compliance with section 4d of the CEA and related Commission regulations regarding the treatment of customer funds. However, the Commission recognizes that this reporting may be duplicative of the requirements in § 1.20(g)(4), and is therefore declining to adopt it at this time.

17. Change in Fiscal Year—§ 39.19(c)(4)(xix)

The Commission is adopting new § 39.19(c)(4)(xix) to require a DCO to notify the Commission no later than two business days after any change to the start and end dates of its fiscal year. The new rule differs from the proposal in that notice is required within two business days, rather than immediately, as previously proposed. This change will better align the notice period with other requirements in § 39.19(c)(4). ICE agreed that notice of a change in fiscal year is appropriate; however, ICE stated that it is unclear why such notice needs to be immediate, on par with notice of a default and similar events.

18. Change in Independent Accounting Firm—§ 39.19(c)(4)(xx)

The Commission is adopting new § 39.19(c)(4)(xx) to require a DCO to report to the Commission no later than 15 days after any change in the DCO's independent public accounting firm. The Commission had proposed to require that the change be reported within one business day, but agrees with a comment from Nodal. Nodal opposed the requirement that the change be reported to the Commission within one business day, asserting that it places an undue burden on the DCO. Nodal instead suggested that the change be reported within 15 business days, arguing that 15 business days is more reasonable and consistent with requirements of other financial regulators, specifically, a regulation imposed by the Federal Deposit Insurance Corporation that requires insured depository institutions to report a change in independent accounting firm within 15 days.[41]

19. Major Decision of the Board of Directors—§ 39.19(c)(4)(xxi)

The Commission is adopting new § 39.19(c)(4)(xxi) to codify in § 39.19 the requirement (currently in § 39.32(a)(3)(i) and adopted in this rulemaking in § 39.24(a)(3)(i), as discussed further below) that a DCO report to the Commission any major decision of the DCO's board of directors. ICE opposed the proposed requirement, asserting that board decisions are not necessarily categorized as major or minor. ICE also noted that board decisions are routinely disclosed to clearing members and other interested parties pursuant to § 39.32(a)(3), and are disclosed to the Commission through a variety of processes, including §§ 40.5 and 40.6. ICE requested that the Commission clarify specific categories of events that must be reported. ICE also requested that DCOs not be required to report decisions before they are implemented or announced publicly. Nadex requested clarification as to what constitutes a ''major decision,'' whether the DCO has discretion to determine which decisions qualify as major, and regarding the scope of such discretion. Nadex further requested clarification as to whether the DCO must provide an updated notice if the original board decision is amended or withdrawn before being implemented. Lastly, Nadex requested confirmation that the notice will be confidential, the DCO will not be required to post the notice on its website, and that the notice will not be posted on the Commission's website.

In response to these comments, the Commission notes that existing § 39.32(a)(3)(i) (moved in this rulemaking to § 39.24(a)(3)(i)) already requires that SIDCOs and subpart C DCOs disclose ''major decisions of the board of directors'' to the Commission, and to clearing members and other relevant stakeholders. The Commission proposed § 39.19(c)(4)(xxii) (renumbered as paragraph (xxi) in the final) simply to include this existing obligation in § 39.19 so that all of a DCO's reporting obligations are set forth in one place. The Commission further reiterates that DCOs have reasonable discretion to determine whether a board decision is major, though DCOs should develop and implement procedures to determine if a board decision is major and therefore reportable. A DCO would have to provide an updated notice if the original board decision is amended or withdrawn before being implemented, otherwise the Commission will be misinformed in relying on the original notice. Lastly, the Commission confirms that the notice will be considered confidential, as are all submissions received pursuant to § 39.19, and will not be posted on the Commission's website, nor required to be posted on the DCO's website.

20. Margin Model Issues—§ 39.19(c)(4)(xxiii)

The Commission is adopting new § 39.19(c)(4)(xxiii) to require a DCO to report to the Commission no later than one business day after any issue occurs with a DCO's margin model, including margin models for cross-margined portfolios, that materially affects the DCO's ability to calculate or collect initial margin or variation margin. The final rule differs from the proposal in

[40] All of the paragraphs of § 39.19(c)(4) that follow proposed § 39.19(c)(4)(xvi) are being renumbered to account for the fact that the Commission determined not to adopt paragraph (xvi).

[41] 12 CFR 363.4(d).

that the required reporting is limited to those margin model issues that ''materially'' affect the DCO's ability to calculate or collect initial margin or variation margin.

OCC, FIA, and ISDA supported the proposed requirement. OCC requested clarification regarding the contents of the report, specifically whether a DCO may comply with the requirement by supplying the Commission with a copy of the margin model issue report that DCOs also registered with the SEC must submit to the SEC pursuant to Regulation Systems Compliance and Integrity.[42] FIA and ISDA suggested that DCOs also be required to notify clearing members of margin model issues, and to notify the Commission and clearing members when the DCO makes materially inaccurate margin calls, if the DCO incorrectly debits a clearing member's account, for example.

Nodal and ICE opposed the proposed requirement. Nodal argued that the proposed requirement is prescriptive, overbroad, and vague, especially to the extent that it requires reporting any issue, irrespective of its materiality, when no actual positions are affected by the issue. ICE argued that margin models face exceedances and other circumstances that are addressed through established processes, and that significant margin model problems are subject to existing reporting requirements.

Several commenters suggested that the proposed regulation include a materiality threshold. Nodal suggested that DCOs only be required to report margin model issues that materially affect the DCO's ability to calculate or collect variation or initial margin, and an actual position is affected. CME and LCH made the same suggestion, although CME suggested that an actual position must be materially impaired to trigger the reporting requirement. LCH commented that limiting reporting to material issues would minimize the reporting of immaterial or non-significant information and thereby ensure that the Commission focuses on those margin model issues that merit its attention. ICE suggested that reporting should be limited to margin model issues that are material to the operation of the DCO. LCH also noted that DCOs can detect and resolve margin model issues during daily back testing.

The Commission agrees with commenters that reporting should be limited to those margin model issues that ''materially'' affect the DCO's ability to calculate or collect initial margin or variation margin. The Commission believes that reporting only margin model issues that materially affect the DCO's ability to calculate or collect initial margin or variation margin, as opposed to all margin model issues, strikes an appropriate balance between supplying the Commission with information needed for effective oversight of DCOs, without placing an undue burden on the DCOs. The Commission confirms that a DCO may supply the Commission with a copy of the margin model issue report that it submits to the SEC pursuant to Regulation Systems Compliance and Integrity, but the DCO must supplement that report by providing the Commission with an explanation of the cause of the issue with the margin model.

21. Recovery and Wind-Down Plans—§ 39.19(c)(4)(xxiv)

The Commission is adopting new § 39.19(c)(4)(xxiv) to require a DCO that is required to maintain recovery and wind-down plans pursuant to § 39.39(b) to submit its plans to the Commission no later than the date on which it is required to have the plans. The new rule also permits a DCO that is not required to maintain recovery and wind-down plans pursuant to § 39.39(b), but which nonetheless maintains such plans, to submit the plans to the Commission. If a DCO subsequently revises its plans, the DCO will be required to submit the revised plans to the Commission along with a description of the changes and the reason for those changes. The Commission included this requirement because § 39.39(b) requires SIDCOs and subpart C DCOs to maintain recovery and wind-down plans, but there is currently no explicit requirement that the DCOs submit the plans to the Commission.

FIA and ISDA suggested that the Commission replace the requirement that a DCO submit its recovery and wind-down plans no later than the date on which it is required to have the plans with the actual date that a DCO is required to have plans, because it is otherwise difficult to discern exactly when a DCO must submit its plans. CME suggested that DCOs be required to submit their recovery and wind-down plans to the Commission annually, but that DCOs only be required to submit revised or updated plans if the changes are material.

In response to FIA and ISDA's comment, the Commission notes that the actual date by which a SIDCO or (new) subpart C DCO would be required to maintain a recovery and wind-down plan depends upon (a) when it is designated or elects subpart C status, (b) whether it requests relief pursuant to § 39.39(f), and (c) whether, and to what extent, the Commission were to grant such relief. That date cannot be ascertained in advance of a designation/election, potential request, and/or decision on such a request. In response to CME's suggestion that DCOs only be required to submit updated or revised plans when the changes are material, the Commission believes that, given the importance of recovery and wind-down plans to planning for and, in the unlikely event, addressing the bankruptcy of, or executing the resolution of, a DCO, it is important that the Commission have on hand, on an ongoing basis, an accurate and current version of the DCO's recovery and wind-down plans. The date of such a bankruptcy or resolution (and the corresponding urgent need for current information) cannot be determined in advance. For these reasons, the Commission is adopting § 39.19(c)(4)(xxv) as proposed (renumbered as § 39.19(c)(4)(xxiv)).

22. New Product Accepted for Clearing—§ 39.19(c)(4)(xxvi)

The Commission has determined not to adopt proposed new § 39.19(c)(4)(xxvi), which would have required a DCO to provide notice to the Commission no later than 30 calendar days prior to accepting a new product for clearing.

FIA and ISDA supported the proposed notice requirement for new products accepted for clearing, but MGEX, Nodal, CBOE, OCC, ICE, and CME opposed it. The commenters opposed to the proposed notice requirement offered several interrelated and overlapping reasons for their opposition, but the thrust of their arguments was that the proposed requirement is unnecessary and would be burdensome and inefficient because it needlessly duplicates and is inconsistent with the existing, well-functioning self-certification regime in § 40.2 for listing a new product for trading on a DCM or SEF. In addition, CME argued that the proposed 30-day notice requirement is inconsistent with section 5c(c) of the CEA. Lastly, commenters raised a number of concerns regarding how the term ''new product'' might be defined. Due to the many thoughtful and detailed comments addressing this provision, the Commission wishes to give further consideration to this issue and may address it in a separate rulemaking.

23. Requested Reporting—§ 39.19(c)(5)

The Commission is adopting the proposed changes to § 39.19(c)(5), which requires a DCO to provide to the

[42] 17 CFR 242.1000 *et seq.*

Commission specific types of information upon request. The Commission is amending paragraphs (i) through (iii) of § 39.19(c)(5) to delete the phrase ''in the format and manner specified, and within the time provided, by the Commission in the request'' and to add introductory language to subparagraph (c)(5) that requires a DCO to provide the requested information ''within the time specified in the request.'' Regulation 39.19(b) already requires a DCO to provide the information in the format and manner specified by the Commission, so it is unnecessary to repeat that requirement in § 39.19(c)(5). The Commission is also removing § 39.19(c)(5)(iii), which required a DCO to report to the Commission upon request end of day gross positions by each beneficial owner. To the extent that the Commission needs end-of-day gross position information by beneficial owner, the Commission retains the authority to request that information pursuant to § 39.19(c)(5)(i). The Commission did not receive any comments on the proposed changes to § 39.19(c)(5).

J. Public Information—§ 39.21

1. Public Disclosure and Publication of Information—§ 39.21(c) and (d)

The Commission is adopting changes to § 39.21(c) and removing § 39.21(d) in order to clarify the information that a DCO must publicly disclose on its website and to assist the public in locating the information. Regulation 39.21(c) requires a DCO to disclose publicly and to the Commission information concerning: (1) The terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO; (2) each clearing and other fee that the DCO charges its clearing members; (3) the margin-setting methodology; (4) the size and composition of the financial resource package available in the event of a clearing member default; (5) daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the DCO; (6) the DCO's rules and procedures for defaults in accordance with § 39.16; and (7) any other matter that is relevant to participation in the clearing and settlement activities of the DCO. Regulation 39.21(d) requires the DCO to post all of this information, as well as the DCO's rulebook and a list of its current clearing members, on the DCO's website, unless otherwise permitted by the Commission.

The Commission is removing § 39.21(d) and incorporating its requirements into § 39.21(c). The Commission reiterates that, as it clarified in the Proposal, a DCO must make each of the items of information listed in § 39.21(c) available separately on the DCO's website and not just in the DCO's rulebook, to assist members of the public in locating the relevant information, and potentially facilitate greater uniformity across DCO websites.

FIA and ISDA supported the proposed requirement that a DCO make certain information available on its website as opposed to in its rulebook. Nadex noted that it does not object to moving the requirements of § 39.21(d) into § 39.21(c), but requested confirmation that the exemptive relief granted in CFTC Letter No. 14–04,[43] which exempted Nadex from § 39.21(d) with respect to making the names of its clearing members that are retail customers publicly available on its website, will continue to apply. The Commission notes the inclusion in § 39.21(c) of the phrase ''unless otherwise permitted by the Commission'' acknowledges that a DCO may seek or have relief from these requirements.

2. Financial Resources—§ 39.21(c)(4)

Regulation 39.21(c)(4) requires a DCO to disclose publicly the size and composition of its financial resource package available in the event of a clearing member default. The Commission is amending § 39.21(c)(4) by adding the words ''updated as of the end of the most recent fiscal quarter or upon Commission request and posted as promptly as practicable after submission of the report to the Commission under § 39.11(f)(1)(i)(A).'' This change makes the frequency of public disclosure of a DCO's financial resources in the event of a clearing member default consistent with § 39.11(f)(1)(i)(A), which requires a DCO to report this information to the Commission each fiscal quarter or at any time upon Commission request. The Commission believes it is reasonable to require a DCO to update this information publicly with the same frequency. The final rule differs from the proposal, which would have required that the update be posted ''concurrently'' with the submission of the report.

ICE suggested changing the term ''concurrently'' in proposed § 39.21(c)(4) to ''as promptly as practicable,'' because for DCOs that are subsidiaries of public companies, it may not be feasible to make such a public disclosure until relevant financial statements for the public parent have been disclosed in accordance with all securities law requirements. MGEX agreed that updating the financial resource information on a quarterly basis seems reasonable, but noted that all subpart C DCOs are already making this data available each quarter in accordance with the CPMI–IOSCO Public Quantitative Disclosure Standards for Central Counterparties[44] (Quantitative Disclosure), as required under proposed § 39.37(c) (which the Commission is adopting herein), and recommended that the Commission explicitly acknowledge that a DCO's publication of its Quantitative Disclosure fulfills the requirement of § 39.21(c)(4). In commenting on the proposed changes to § 39.37, SIFMA AMG noted that the Quantitative Disclosures are difficult to locate on DCOs' websites.

The Commission is accepting ICE's suggestion to replace ''concurrently'' in proposed § 39.21(c)(4) with ''as promptly as practicable,'' to permit DCOs flexibility in situations in which posting updated information concurrently would not be possible. In response to MGEX's recommendation, the Commission notes that a DCO's publication of its Quantitative Disclosure would not fulfill the requirements of § 39.21(c)(4), for the same reasons that it stated in the Proposal that each of the disclosures required under § 39.21(c)(4) must be presented separately on the DCO's website.

3. Daily Settlement Prices, Volume, and Open Interest—§ 39.21(c)(5)

Regulation 39.21(c)(5) requires a DCO to disclose publicly daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the DCO. The Commission is amending § 39.21(c)(5) to clarify that DCOs are expected to publicly disclose volume and open interest, as well as settlement prices, on a daily basis in order to comply with § 39.21(c)(5). Although § 39.21(c)(5) does not specify a period of time the information must remain on the website as noted in the Proposal, the Commission encourages DCOs to make several days' worth of information available on their websites, as certain DCOs already do.

4. Swaps Required To Be Cleared—§ 39.21(c)(8)

The Commission is adopting new § 39.21(c)(8) to include in the list of required public disclosures the

[43] CFTC Letter No. 14–04 (Jan. 16, 2014).

[44] *See* CPMI–IOSCO, Public Quantitative Disclosure Standards for Central Counterparties (Feb. 2015), available at *https://www.bis.org/cpmi/publ/d125.pdf.*

information that DCOs make publicly available under § 50.3(a). Regulation 50.3(a) requires that a DCO make publicly available on its website a list of all swaps that it will accept for clearing and identify which swaps on the list are required to be cleared under section 2(h)(1) of the CEA and part 50 of the Commission's regulations. The Commission is adopting § 39.21(c)(8) to add a cross-reference to § 50.3(a). The Commission did not receive any comments on this proposal.

K. Governance Fitness Standards, Conflicts of Interest, and Composition of Governing Boards—§§ 39.24, 39.25, and 39.26

The Commission is removing § 39.32 in subpart C of part 39, which set forth the requirements for governance arrangements for SIDCOs and subpart C DCOs, and adopting new §§ 39.24, 39.25, and 39.26 in subpart B consistent with Core Principles O, P, and Q, thereby making these requirements applicable to all DCOs. Core Principle O requires a DCO to establish governance arrangements that are transparent to fulfill public interest requirements and to permit the consideration of the views of owners and participants. Core Principle O also requires a DCO to establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the DCO, any other individual or entity with direct access to the settlement or clearing activities of the DCO, and any other party affiliated with any of the foregoing individuals or entities. Core Principle P requires a DCO to establish and enforce rules to minimize conflicts of interest in the decision-making process of the DCO and establish a process for resolving such conflicts of interest. Core Principle Q requires a DCO to ensure that the composition of its governing board or committee includes ''market participants.''

Consistent with Core Principle Q, new § 39.26 requires that a DCO include market participants and individuals who are not executives, officers, or employees of the DCO or an affiliate thereof on the DCO's governing board or board-level committee. The Commission interprets ''governing board or board-level committee'' to mean the group with the ultimate decision-making authority. The Commission had proposed to define ''market participant'' for purposes of § 39.26 as ''any clearing member of the [DCO] or customer of a clearing member, or an employee, officer, or director of such entity.'' However, given comments received, as discussed below, the Commission is declining to adopt this definition at this time.

CME, SIFMA AMG, and Mr. Barnard agreed with the Commission's proposal to codify the governance arrangements applicable to SIDCOs and subpart C DCOs within proposed §§ 39.24 through 39.26, and to make them applicable to all DCOs. Mr. Barnard believed the standards are clearly appropriate for all DCOs and will enhance risk management and governance, thus further improving the protection for market participants and the public.

CME agreed with the definition of market participant as set forth in proposed § 39.26. CME stated that it has benefited from having a board of directors, oversight committee, and risk committees consisting of a variety of market participants with differing views and expertise. CME also appreciated that the Commission proposed a principles-based approach by allowing each DCO to determine the best representation of market participants for its governing board or committee for its risk management governance purposes, while also allowing each DCO to continue to comply with relevant state and securities laws.

SIFMA AMG and MFA supported the adoption of a definition of ''market participant'' to require that the composition of a DCO's governing board or committee include ''market participants.'' SIFMA AMG and MFA, however, both shared concerns that the definition of ''market participant'' as proposed in § 39.26 was a broad term that extends beyond customers and could permit DCOs to choose only persons associated with clearing members and/or DCO employees, officers, or directors to serve on the DCO's board of directors. SIFMA AMG and MFA requested that the Commission amend § 39.26 to explicitly require customer participation on DCOs' governing bodies, such as the board of directors and advisory committees. SIFMA AMG suggested that, had Congress intended for only clearing members to be on DCO governing boards, Congress would have stated so specifically. However, Congress chose to use the term ''market participants,'' which SIFMA AMG suggested that the Commission correctly defined as including clearing members and customers.

Mr. Saguato agreed with the benefits of multi-stakeholder representation at the board level of a DCO and a more direct engagement of market participants in the governance and supervision of a DCO. He further suggested that the Commission consider requiring at least half of the representatives of a DCO's risk committee be comprised of market participants, in particular clearing members, to transform risk committees from ''mere advisory committees'' to a committee with decision-making power. Mr. Saguato also suggested that the Commission consider requiring a DCO's board of directors to provide formal and comprehensive explanations to market participants and the Commission any time that the DCO dissents from the deliberations of the risk committee.

Nodal agreed that a DCO needs to be responsive to its clearing members and its customers. However, Nodal suggested that the Commission further interpret ''governing board or committee'' within proposed § 39.26 to include the board of the DCO's parent company to the extent it has relevant decision-making authority over the DCO.

ICE agreed that there might be benefits in some cases to having market participants on a DCO's board or governing body. However, ICE opposed requiring a DCO to include market participants on its board of directors or other governing body. ICE suggested that the Commission's approach is overly prescriptive and that the CEA, including Core Principle Q, does not mandate any particular form of market participation. ICE suggested that the Commission interpret ''governing board or committee'' to allow market participation through risk or other committees rather than the governing board itself. ICE suggested that it is not uniformly necessary for clearing members or their customers to participate on the board of directors or other governing body of a DCO. Further, ICE suggested that requiring the same approach for every DCO, regardless of differences in organizational structure, membership, cleared products mix, business considerations, jurisdiction of organization, and other relevant factors, is unnecessarily rigid and could lead to risks and conflicts that the Commission has not considered. For example, ICE argued that, depending on the corporate structure of a DCO, participation on the board of directors or governing body might bring fiduciary and other duties in favor of the DCO, which might expose a participant to legal liability and pose conflicts of interest with the participant's other activities. ICE believes that, while exculpatory provisions, indemnifications, and other rules might mitigate or cover some of these risks, it might not be possible to do so completely or in all cases.

In addition, ICE disagreed with the Commission's suggestion to allow non-voting representation by market

participants on the governing board, as ICE did not agree that such representation is a viable or desirable approach in all cases. ICE suggested that market participants might prefer representation on a risk or similar committee to non-voting representation on a DCO's governing board. ICE also suggested that non-voting representation might raise other issues of corporate governance, confidentiality, and duties to the DCO that a DCO would need to assess in light of its particular circumstances.

Nadex suggested that fully collateralized, non-intermediated DCOs be exempt from compliance with proposed §§ 39.24 and 39.26 as retail individuals, like those of Nadex's market participants, are not industry professionals, are not familiar with the DCO's internal operations in the same way that FCMs and other sophisticated members are familiar with ''traditional'' DCOs' business and operations, do not have an ownership interest or financial stake in the DCO or its default waterfall, and therefore are not as substantially involved in the DCO's governance. Nadex further suggested that solicitation of the views of Nadex's market participants as to the governance of the DCO would not likely provide significant value as compared with the burden and cost of reviewing such responses and could hinder the efficient operation of Nadex's board.

In response to the comments on § 39.26, the Commission notes that the requirement to include market participants on a DCO's governing board or committee is a statutory requirement under Core Principle Q, applicable to all DCOs regardless of whether it is restated in the Commission's regulations. In response to ICE's suggestion that the Commission interpret ''governing board or committee'' to allow market participation through risk or other committees rather than the governing board itself, the Commission believes that this interpretation could permit a DCO to create a lower-level committee that does not have the same decision-making authority as its board or board-level committee, thereby preventing market participation on the DCO's governing board or committee, which is contrary to the statutory requirement of Core Principle Q. Further, the Commission agrees with CME's comment that § 39.26 takes a principles-based approach that allows each DCO to determine the best representation of market participants on its governing board or committee for its risk management governance purposes, while also allowing each DCO to continue to comply with relevant state and securities laws. In response to Nodal's request that the Commission further interpret ''governing board or committee'' to include the board of the DCO's parent company to the extent that it has relevant decision-making authority over the DCO, the Commission agrees that market participant representation on the board of the DCO's parent company may be appropriate where the DCO does not have its own board and the board of the DCO's parent company serves as the ultimate decision-making authority for the DCO.

While the Commission expects that a DCO clearing for the customers of FCMs would generally have customer representation on the DCO's board or board-level committee, the Commission is not revising § 39.26 to explicitly require that a DCO include a customer on its board or board-level committee as requested by SIFMA AMG and MFA. The Commission reiterates that § 39.26 is designed to enhance risk management and controls by promoting transparency of a DCO's governance arrangements by taking into account the interests of a DCO's clearing members and, where relevant, the clearing members' customers.[45] The Commission further reiterates that customers clearing trades through an FCM in a particular market are exposed to the risks of the market, just as clearing members are, and therefore have similar interests in the decisions that govern the operation of the DCO.[46]

The Commission is, however, sympathetic to Nadex's concerns that the burden and cost of including market participants that are primarily retail and not exposed to the risk of lost margin or the default of the DCO's other customers may not be warranted for fully collateralized, non-intermediated DCOs. In light of this and other comments in this regard, the Commission wishes to give further consideration as to how to define ''market participant'' and declines to define it at this time.

The Commission notes that Mr. Saguato's suggestion that the Commission should require that at least half of the representatives of a DCO's risk committee be comprised of market participants is beyond the scope of the proposal, as it prescribes the composition of a DCO's risk committee rather than that of its governing body. Mr. Saguato's suggestion that the Commission require a DCO's board to provide formal and comprehensive explanations to market participants and the Commission any time that the DCO dissents from the deliberations of the risk committee is also beyond the scope of the proposal.

L. Legal Risk—§ 39.27

Regulation 39.27(c) requires a DCO that provides clearing services outside the United States to identify and address conflict of law issues, specify a choice of law, be able to demonstrate the enforceability of its choice of law in relevant jurisdictions, and be able to demonstrate that its rules, procedures, and contracts are enforceable in all relevant jurisdictions. In addition, Form DCO requires each applicant for DCO registration that provides or will provide clearing services outside the United States to provide a memorandum to the Commission that would, among other things, analyze the insolvency issues in the jurisdiction where the applicant is based.

The Commission is amending § 39.27(c) by adding paragraph (3), which requires a DCO that provides clearing services outside the United States to ensure on an ongoing basis that the memorandum required in Exhibit R of Form DCO is accurate and up to date, and to submit an updated memorandum to the Commission promptly following all material changes to the analysis or content contained in the memorandum.

ICE suggested that, instead of on an ongoing basis, the memorandum be reviewed and updated at regular intervals, such as every three years, or within a defined timeframe after a material change to the law. The Commission is declining ICE's suggestion because the purpose of the requirement is to ensure the DCO's ongoing monitoring of applicable legal requirements and prompt notification to the Commission if material changes occur. In response to ICE's comment, the Commission confirms that, while changes to the memorandum and filing of updates are expected to occur infrequently, the DCO has a continuing obligation to ensure that the information in the memorandum is current.

V. Amendments to Part 39—Subpart C—Provisions Applicable to SIDCOs and DCOs That Elect To Be Subject to the Provisions

A. Financial Resources for SIDCOs and Subpart C DCOs—§ 39.33

Regulation 39.33(a)(1) requires a SIDCO or a subpart C DCO that is systemically important in multiple jurisdictions, or that is involved in activities with a more complex risk profile, to maintain financial resources sufficient to enable it to meet its

[45] Derivatives Clearing Organization General Provisions and Core Principles, 84 FR 22244.

[46] *Id.*

financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined loss in extreme but plausible market conditions. The Commission is amending § 39.33(a)(1) by replacing the phrase ''largest combined loss'' with ''largest combined financial exposure'' in order to achieve consistency with the relevant provisions of Commission regulations and the CEA—specifically, § 39.11(a)(1) and section 5b(c)(2)(B) of the CEA regarding DCO financial resources requirements.

Regulation 39.33(c)(1) requires a SIDCO or subpart C DCO to maintain eligible liquid resources sufficient to meet its obligations to perform settlements with a high degree of confidence under a wide range of stress scenarios that should include the default of the clearing member creating the largest aggregate liquidity obligation for the SIDCO or subpart C DCO. The Commission is amending § 39.33(c)(1) by adding the phrase ''in all relevant currencies'' to clarify that the ''largest aggregate liquidity obligation'' means the total amount of cash, in each relevant currency, that the defaulted clearing member would be required to pay to the DCO during the time it would take to liquidate or auction the defaulted clearing member's positions, as reasonably modeled by the DCO. When evaluating its largest aggregate liquidity obligation on a day-to-day basis over a multi-day period, a SIDCO or subpart C DCO may use its liquidity risk management model.

Regulation 39.33(d) requires a SIDCO or a subpart C DCO to undertake due diligence to confirm that each of its liquidity providers has the capacity to perform its commitments to provide liquidity, and to regularly test its own procedures for accessing its liquidity resources. The Commission is amending the regulation to additionally require a SIDCO with access to deposit accounts and related services at a Federal Reserve Bank to use such services ''where practical.'' [47]

MGEX agreed that proposed § 39.33(d)(5) would further enhance a SIDCO's financial integrity and management of liquidity risk. MGEX further urged the Commission to advocate for other DCOs' ability to have accounts at a Federal Reserve Bank, as allowing broader access would not only lower the credit and liquidity risks faced by DCOs under the Commission's jurisdiction, it would also advance the Commission's goal of enhancing the protection of customer funds and help mitigate the disparity or competitive disadvantage that otherwise results based on a DCO's size or systemic importance. SIFMA AMG also supported proposed § 39.33(d)(5) and recommended that the Commission expand the requirements to all DCOs.

CME recommended that the Commission revise proposed § 39.33(d)(5) to clarify that a decision on whether the use of a Federal Reserve Bank's accounts and services is ''practical'' should take into account a SIDCO's ability to effectively manage its overall risk. Specifically, CME urged that a SIDCO should have the flexibility to strike the appropriate balance between using commercial banks (in their capacities as custodians and cash depositories) and a Federal Reserve Bank in order to allow a SIDCO to diversify its counterparty relationships to holistically manage its liquidity and operational risks. CME was of the view that, in the event of a clearing member default, commercial banks may more efficiently monetize non-cash collateral and can move collateral internally without the restraints of the Federal Reserve Banks' operating timelines.

As to MGEX's suggestion that the Commission advocate for all DCOs to have the ability to hold accounts at a Federal Reserve Bank, the Commission reiterates its view that section 806(a) of the Dodd-Frank Act supports Federal Reserve Banks acting as depositories for all registered DCOs, not just SIDCOs.[48] As to CME's suggestion that the Commission clarify when the use of a Federal Reserve Bank's accounts and services is ''practical,'' the Commission believes that this standard is consistent with Key Consideration 8 of PFMI Principle 7 (Liquidity Risk), which provides that ''[a financial market utility] with access to central bank accounts, payment services, or securities services should use these services, *where practical,* to enhance its management of liquidity risk.'' [49] However, the Commission agrees that a SIDCO's decision on whether the use of a Federal Reserve Bank's accounts and services is ''practical'' should take into account the SIDCO's ability to effectively manage its overall risk.

B. Risk Management for SIDCOs and Subpart C DCOs—§ 39.36

Regulation 39.36 requires a SIDCO or a subpart C DCO to conduct stress tests of its financial and liquidity resources and to regularly conduct sensitivity analyses of its margin models. The Commission is amending § 39.36(a)(6) to clarify that a SIDCO or subpart C DCO that is subject to the minimum financial resources requirement set forth in § 39.11(a)(1), rather than § 39.33(a), should use the results of its stress tests to support compliance with that requirement.

The Commission is also amending § 39.36(b)(2)(ii) to replace the words ''produce accurate results'' with ''react appropriately'' to more accurately reflect that the purpose of a sensitivity analysis is to assess whether the margin model will react appropriately to changes of inputs, parameters, and assumptions. Furthermore, the Commission is amending § 39.36(d), which requires each SIDCO and subpart C DCO to ''regularly'' conduct an assessment of the theoretical and empirical properties of its margin model for all products it clears, to clarify that the assessment should be conducted ''on at least an annual basis (or more frequently if there are material relevant market developments).'' Lastly, the Commission is amending § 39.36(e) by adding the heading ''[i]ndependent validation'' to the provision. The Commission did not receive comments on these changes.

C. Additional Disclosure for SIDCOs and Subpart C DCOs—§ 39.37

Regulation 39.37(a) and (b) requires a SIDCO or a subpart C DCO to publicly disclose its responses to the CPMI–IOSCO Disclosure Framework (Disclosure Framework) [50] and, in order to ensure the continued accuracy and usefulness of its responses, to review and update them at least every two years and following material changes to the SIDCO's or subpart C DCO's system or environment in which it operates. The Commission is amending § 39.37(b) to additionally require that a SIDCO or a subpart C DCO provide notice to the Commission of any such updates to its responses following material changes to

[47] Under section 806(a) of the Dodd-Frank Act, 12 U.S.C. 5465(a), the Board of Governors of the Federal Reserve System may authorize a Federal Reserve Bank to establish and maintain an account for a financial market utility (FMU), which includes a SIDCO. A SIDCO with access to accounts and services at a Federal Reserve Bank is required to comply with related rules published by the Board of Governors of the Federal Reserve System. *See generally* Financial Market Utilities, 78 FR 76973 (Dec. 20, 2013) (final rules adopted by the Board of Governors to govern accounts held by designated FMUs).

[48] *See* CFTC Order Exempting the Federal Reserve Banks from Sections 4d and 22 of the Commodity Exchange Act, 81 FR 53467, 53470–53471 (Aug. 12, 2016).

[49] *See* CPMI–IOSCO, Principles for Financial Market Infrastructures, at Principle 7: Liquidity Risk, Key Consideration 8 (April 2012), available at *https://www.bis.org/cpmi/publ/d101a.pdf.*

[50] *See* CPMI–IOSCO, Principles for Financial Market Infrastructures: Disclosure Framework and Assessment Methodology (Dec. 2012), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD396.pdf.*

its system or environment no later than ten business days after the updates are made. Further, such notice will have to be accompanied by a copy of the text of the responses, specifying the changes that were made to the latest version of the responses.

Regulation 39.37(c) requires a SIDCO or a subpart C DCO to disclose, to the public and to the Commission, relevant basic data on transaction volume and values. The Commission is amending § 39.37(c) to explicitly state that a SIDCO or a subpart C DCO must disclose relevant basic data on transaction volume and values that are consistent with the standards set forth in the CPMI–IOSCO Public Quantitative Disclosure Standards for Central Counterparties.

SIFMA AMG supported the proposed requirement in § 39.37(b)(2) to require a SIDCO or a subpart C DCO to show all deletions and additions made to the immediately preceding version of the Disclosure Framework, as SIFMA AMG believes it is extremely useful in understanding the evolution of a SIDCO's or a subpart C DCO's Disclosure Framework. SIFMA AMG recommended, however, that § 39.37(b)(2) require a SIDCO or a subpart C DCO to provide the Commission with notice of *any* changes, not only material ones, and require a SIDCO or a subpart C DCO to concurrently post a redline of any changes on its website when notifying the Commission. The Commission notes that the materiality limitation in § 39.37(b)(2) reflects the requirements of § 39.37(b)(1), which the Commission did not propose to change. SIFMA AMG further suggested that the Commission require a consistent format for SIDCOs' and subpart C DCOs' Disclosure Framework, provide a deadline for publishing such disclosures (*i.e.,* 30 days after quarter end), and audit such disclosures for material omissions.

As to SIFMA AMG's suggestion that the Commission require a consistent format for SIDCOs' and subpart C DCOs' Disclosure Framework and provide a deadline for publishing such disclosures, the Commission believes it would be more appropriate for these changes to be made by CPMI–IOSCO, and not the Commission, so that these changes would be applicable to all central counterparties.

VI. Amendments to Appendix A to Part 39—Form DCO

To request registration as a DCO, § 39.3(a)(2) requires an applicant to file a complete Form DCO, which includes a cover sheet, all applicable exhibits, and any supplemental materials, as provided in appendix A to part 39.

The Commission proposed to amend Form DCO to better describe the required exhibits in a manner that is consistent with the amendments to the relevant regulations as described herein; the modifications to Form DCO do not make any other substantive changes. The Commission did not receive any comments on the proposed changes to Form DCO, and the Commission is adopting it as proposed.

VII. Amendments to Appendix B to Part 39—Subpart C Election Form

The Commission proposed to amend the Subpart C Election Form to better reflect the requirements in subpart C of part 39 and to more closely align the format of the Subpart C Election Form with Form DCO by specifying the information and/or documentation that must be provided by a DCO as part of its petition for subpart C election. The Commission did not receive any comments on the proposed changes to the Subpart C Election Form, and the Commission is adopting it as proposed.

VIII. Amendments to Part 140—Organization, Functions, and Procedures of the Commission

Regulation 140.94 includes delegation of authority from the Commission to the Director of the Division of Clearing and Risk. The Commission proposed to revise § 140.94 to conform to the changes to part 39 contained in the Proposal, without making any substantive change to the scope of delegation. The Commission did not receive any comments on these changes and is adopting them as proposed.

IX. Additional Comments

In addition to the comments discussed above, the Commission received several general comments that addressed matters outside the scope of the Proposal. The Commission appreciates the additional feedback. Because these comments do not address proposed changes and are therefore outside the scope of this rulemaking, the Commission may take the comments under advisement for future rulemakings.

FIA and ISDA stated that the financial resources requirement that the Commission imposes on DCOs under § 39.11 should ensure that a DCO's own capital contribution is set at an appropriate level to align the interests of the DCO with those of its clearing members. They argued that the DCO should be required to contribute an amount to the default waterfall that is material to, and commensurate with the amount of risk cleared by, the DCO. They also argued that having sufficient ''skin in the game'' relative to the aggregate default fund would incentivize the DCO and its shareholders to engage in prudent risk management prior to and during a stress event because they would share in any resulting losses. They further argued that setting a DCO's minimum financial resources based, in part, upon a DCO's capital contribution would help to ensure the DCO's resiliency in variable market conditions. SIFMA AMG agreed, stating that a DCO's ''skin in the game'' is currently ''generally very low'' compared to the risk the DCO is responsible for managing but should be ''meaningful'' to appropriately incentivize the DCO's management and shareholders to manage the risks brought into clearing. SIFMA AMG recommended that the Commission lead an analytical study on ''the optimal level of [DCO] capital and its specific allocation to [skin in the game] and provide a robust capital framework and requirement for [skin in the game] to the industry to further strengthen DCO resilience.'' Similarly, Mr. Saguato encouraged the Commission to look into the ratios between clearinghouses' own capital and members' guaranty fund deposits in the default waterfall and to analyze the effects they have on clearinghouses' risk profiles.

SIFMA AMG stated that DCOs should not be permitted to count unfunded assessments towards resources available to the DCO pursuant to § 39.11(b)(1)(v), which is being renumbered as § 39.11(b)(1)(iv).

SIFMA AMG suggested that the Commission require DCOs to make their quarterly and annual reports required under § 39.11(f) publicly available concurrent with their submission to the Commission. In addition, SIFMA AMG recommended that full financial statements be prepared for each DCO at the DCO legal entity level and, where DCOs have structured themselves with mechanisms to limit recovery to a defined pool of assets, such DCOs should publicly disclose specific information regarding the total available recourse assets, including, but not limited to, the manner in which the assets are maintained and whether the DCO's capital is funded or unfunded and the manner by which it is segregated. The Commission encourages DCOs to make their financial reports available to the public.

MFA expressed support for the fair and open access provisions of § 39.12, in particular with respect to increasing customers' access to DCOs through direct membership. MFA noted that

currently, customers exclusively access central clearing and DCOs indirectly through clearing members, rather than becoming direct DCO members, for a variety of financial and operational reasons. However, MFA pointed out that such indirect clearing relationships expose customers to counterparty credit risk arising from their clearing member, custodian, and DCO, and also may expose customers to fellow customer risk arising from the pro rata sharing of losses resulting from the default of a clearing member's other customers. To mitigate those risks, some customers would like to become direct DCO clearing members; however, MFA noted that barriers in DCO membership requirements have limited customers' ability to do so.

ICE recommended that the Commission clarify in § 39.13(g)(1), which was not proposed to be amended, that the reference to ''on a regular basis'' means annually.

FIA and ISDA suggested, with respect to § 39.13(g)(8)(iii), that the Commission should address in a re-proposed rule the initial margin issues for separate accounts raised in CFTC Letter No. 19–17.[51]

In connection with § 39.15 generally, LCH suggested that the Commission allow a DCO to use its own money, securities, or other property to deposit additional collateral in a cleared swaps customer account to prevent a shortfall without desegregating the account. LCH was of the view that allowing DCOs to deposit their own resources as a ''buffer'' would be consistent with the FCM's ability to make such deposits pursuant to part 22 of the Commission's regulations and further the CFTC's policy objectives to ensure that customer accounts remain segregated. LCH further stated that DCO ''buffer collateral'' supports strong risk management and could protect against customer account shortfalls in possible instances of operational risk or error at the DCO, which LCH believes FCMs' ''buffer collateral'' would not address. LCH's suggestion is beyond the scope of § 39.15 as well as the amendments to § 39.15 adopted herein.

With regard to the rule and product certification processes set forth in part 40 of the Commission's regulations, SIFMA AMG suggested that the Commission require a DCO to obtain market feedback prior to filing any certification for a new or amended rule or product. SIFMA AMG suggested that the Commission require all DCO submissions to: (1) Certify that the DCO solicited market feedback and that the summary provided includes all material supporting and opposing views; (2) summarize all material supporting and opposing views received from a DCO's advisory committee and other market participants within all such submissions; and (3) delineate whether such views are from clearing members or customers. The Commission did not propose to amend its part 40 regulations in this rulemaking.

X. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis on the impact.[52] The final rule adopted by the Commission will affect only DCOs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[53] The Commission has previously determined that DCOs are not small entities for the purpose of the RFA.[54] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule adopted herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

1. Background

The Paperwork Reduction Act of 1995 (PRA)[55] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring a collection of information as defined by the PRA. The rule amendments adopted herein would result in such a collection, as discussed below. A person is not required to respond to a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (OMB). The rule amendments include a collection of information for which the Commission has previously received control numbers from OMB. As noted in the Proposal, the Commission sought to consolidate the information collections under four existing control numbers applicable to Part 39.[56] The title for this collection of information is ''Requirements for Derivatives Clearing Organizations, OMB control number 3038–0076.''

The Commission did not receive any comments regarding its PRA burden analysis in the preamble to the Proposal. The Commission is revising collection 3038–0076 to reflect the adoption of amendments to part 39, as discussed below, with changes to reflect adjustments that were made to the final rules in response to comments on the Proposal. The Commission does not believe the rule amendments as adopted impose any other new collections of information that require approval of OMB under the PRA.

2. Subpart A—General Requirements Applicable to DCOs

Subpart A establishes the procedures and information required for applications for registration as a DCO, including submission of a completed Form DCO accompanied by all applicable exhibits. The Commission is adopting changes to § 39.3(a)(2) that remove the requirement that DCOs use Form DCO to request an amended order of registration. In addition, the Commission is adopting changes that would move governance requirements from Subpart C to Subpart A, and making corresponding amendments to Form DCO to require that the information be included in an application for registration as a DCO, which the Commission previously estimated would move 22 burden hours per respondent from the Subpart C Election Form to Form DCO. Accordingly, the Commission's original burden estimate of two respondents, with one response annually, has not changed.

The Commission is estimating that the change to 39.3(a)(2) to eliminate the requirement for DCOs to use Form DCO to request an amended order of DCO registration will result in a decrease of one burden hour. The aggregate burden estimate for Form DCO is as follows:

Form DCO—§ 39.3(a)(2)

Estimated number of respondents: 2.

[51] The Commission notes that CFTC Letter 19–17 was issued after the Proposal. The Commission's failure to amend § 39.13(g)(8)(iii) in this release should not be construed as superseding CFTC Letter 19–17 in any way.

[52] 5 U.S.C. 601 *et seq.*

[53] 47 FR 18618 (Apr. 30, 1982).

[54] *See* 66 FR 45604, 45609 (Aug. 29, 2001).

[55] 44 U.S.C. 3501 *et seq.*

[56] The four collections are: OMB Control No. 3038–0066, Financial Resources Requirements for Derivatives Clearing Organizations; OMB Control No. 3038–0081, General Regulations and Derivatives Clearing Organizations; OMB Control No. 3038–0069, Information Management Requirements for Derivatives Clearing Organizations; and OMB Control No. 3038–0076, Risk Management Requirements for Derivatives Clearing Organizations. The Commission also proposed to change the title of the collection under OMB Control No. 3038–0076 to ''Requirements for Derivatives Clearing Organizations.''

Estimated number of reports per respondent: 1.

Average number of hours per report: 421.

Estimated gross annual reporting burden: 842.

The Commission also is adopting as proposed the changes to § 39.3 regarding requests for extension of the review of a DCO application, vacation of a DCO's registration, and transfer of positions. The Commission is adopting new § 39.3(a)(6), which will permit the Commission to extend the 180-day review period for DCO applications specified in § 39.3(a)(1) for any period of time to which the applicant agrees in writing. The Commission estimates that there would be two requests for extension of the DCO application per year, one per respondent, and that it will take one hour per report. The aggregate estimate for the agreement in writing to extend the application review period pursuant to § 39.3(a)(6) is as follows:

Estimated number of respondents: 2.

Estimated number of reports per respondent: 1.

Average number of hours per report: 1.

Estimated gross annual reporting burden: 2.

The Commission is adopting amendments to § 39.3(e) to codify statutory requirements regarding vacation of registration. The revised regulation specifies information that a DCO must include in its request to vacate, and requires a DCO to continue to maintain its books and records after its registration has been vacated for the requisite statutory and regulatory retention periods. The Commission estimated that there would be one request to vacate every three years and that it would take three hours per report. The annual aggregate reporting burden for the request to vacate requirement has been divided to reflect the estimate of one request to vacate a DCO registration pursuant to § 39.3(e)(1) every three years as follows:

Estimated number of respondents: 1.

Estimated number of reports per respondent: 0.33.

Average number of hours per report: 1.

Estimated gross annual reporting burden: 1.

For recordkeeping by a DCO that has requested to vacate its registration, the Commission is adding this recordkeeping burden to OMB control number 3038–0076, which currently includes 16 responses and 50 burden hours for the recordkeeping requirement of registered DCOs. The Commission is also transferring the 100 recordkeeping burden hours currently contained in OMB control number 3038–0069 to OMB control number 3038–0076. The burden for the request to vacate requirement has been divided to reflect the estimate of one record of the request to vacate a DCO registration pursuant to § 39.3(e)(1) every three years. The combined annual aggregate recordkeeping burden estimate for subparts A and B of part 39 under OMB control number 3038–0076 is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 1.

Average number of hours per report: 150.

Estimated number of respondents-request to vacate: 1.

Estimated number of reports per respondent-request to vacate: 0.33.

Average number of hours per report-request to vacate: 1.

Estimated gross annual recordkeeping burden: 2,401.[57]

The Commission proposed changes to § 39.3(f), to be renumbered as § 39.3(g), to simplify the requirements for requesting a transfer of open interest. The rule submission filing is covered by OMB control number 3038–0093, which reflects that there are 50 reports annually and that it takes two hours per response. The Commission is of the view that to the extent that the request to transfer open interest would be submitted as part of a new rule or rule amendment filing pursuant to § 40.5, the proposed change is already covered by OMB control number 3038–0093 and there is no change in the burden estimates.

3. Subpart B—Requirements for Compliance With Core Principles

a. CCO Annual Reporting Requirements—§ 39.10(c)

Currently, § 39.10(c)(3) requires the CCO of a DCO to prepare, and to submit to the Commission and the DCO's board of directors, an annual compliance report containing specified information regarding the DCO's compliance with the core principles and Commission regulations. The burden for CCO annual reports, which is currently covered by OMB control number 3038–0081, is being moved to OMB control number 3038–0076. OMB control number 3038–0081 reflects that there are 12 respondents that submit CCO annual reports annually and that it takes 80 hours to complete and submit the report, and 960 hours in the aggregate. The number of respondents has been updated to 16 to reflect the current number of registered DCOs. The Commission is adopting changes that allow a DCO to incorporate by reference certain sections of prior annual compliance reports. Specifically, if the sections of the CCO annual report that describe the DCO's compliance policies and procedures have not materially changed, the current report may reference a prior year's report, provided that the referenced report was filed within the prior five years. The Commission estimates that this change will decrease the burden of preparing the CCO annual report by ten hours per respondent, and 160 hours in aggregate, by not requiring the report to repeat potentially lengthy descriptions of policies and procedures that have already been adequately described in a CCO annual report previously submitted to the Commission.

The Commission is adopting a requirement that the CCO annual report must identify, by name, rule number, or other identifier, the policies and procedures intended to comply with each core principle and applicable regulation. The Commission estimates the change will add two hours to the burden of preparing each report, and 32 hours in the aggregate. Lastly, the Commission is adopting an amendment to § 39.10(c)(4) to require that the CCO annual report describe the process by which the report is submitted to the DCO's board or senior officer. This requirement will require DCOs to memorialize in the report a process they are already required to follow. Nonetheless, the Commission anticipates an increase of one hour in the burden for each report, and 16 hours in the aggregate due to this change. Overall, the Commission estimates that the net impact of these increases and reductions to the CCO annual report burden due to the changes is expected to be a decrease of seven hours per respondent in the existing information collection burden associated with the CCO annual report.[58] The aggregate

[57] The total annual recordkeeping burden estimate reflects the combined figures for 16 registered DCOs with an annual burden of one response and 150 hours per response ($16 \times 1 \times 150 = 2400$), and one vacated DCO registration every three years with an annual burden of one hour.

[58] The existing burden estimate for the CCO annual report is 80 hours per response. For the new estimate, the Commission is subtracting ten hours for the rule amendment that allows a DCO to incorporate by reference certain sections of prior annual compliance reports if the information has not changed from the prior report, adding two hours for the requirement to reference rules and policies, and one hour for the requirement that the report include documentation of the process of providing the report to the board, for a net burden per respondent of 73 hours. The recordkeeping burden is covered by OMB Control No. 3038–0076 and it is not affected by these requirements.

estimate for the CCO annual report is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 1.

Average number of hours per report: 73.

Estimated gross annual reporting burden: 1,168.

b. Cross-Margining Programs

The Commission is adding § 39.13(i), which sets forth the procedure for DCOs to submit information related to their proposed cross-margining programs with other DCOs (or other clearing organizations). Regulation § 39.13(i) requires that the DCO provide this information as part of a rule filing submitted for Commission approval pursuant to § 40.5. The rule submission filing is covered by OMB control number 3038–0093, which reflects that there are 50 reports annually and that it takes 2 hours per response. The Commission is of the view that to the extent that the cross-margining program would be submitted as part of a new rule or rule amendment filing pursuant to § 40.5, the proposed changes is already covered by OMB control number 3038–0093 and there is no change in the burden estimates.

c. Financial Resources Reporting

i. Annual Financial Reports

Existing § 39.11(f) requires DCOs to provide to the Commission quarterly reports of their financial resources, and § 39.19(c)(3) requires DCOs to prepare and submit audited annual financial statements. The Commission is adding § 39.11(f)(2), which incorporates in § 39.11 the annual reporting requirement that currently exists in § 39.19(c)(3). This change simply moves the existing requirement to a different location, and does not alter the existing information collection burden associated with this requirement. Accordingly, the burden for annual financial reports is being moved from OMB control number 3038–0069 to OMB control number 3038–0076, and the burden for quarterly financial reports is being moved from OMB control number 3038–0066 to OMB control number 3038–0076. The Commission is cancelling OMB control numbers 3038–0069 and 3038–0066.

The Commission is amending § 39.11(f)(2) to require that, concurrently with filing the required annual financial report, a DCO also provide: (1) A reconciliation, including appropriate explanations, of its balance sheet in the certified annual financial statements with the DCO's most recent quarterly report when material differences exist or, if no material differences exist, a statement so indicating, and (2) such further information as may be necessary to make the required statements not misleading. The Commission estimates that this change will add an additional 20 hours per report, and 320 hours in the aggregate, to the current burden of 2606 hours per respondent, and 41,696 hours in the aggregate, in OMB control number 3038–0069, which as noted above, is being moved to OMB control number 3038–0076.

Finally, the Commission is not adopting proposed changes to § 39.11(f)(2)(i) that would have required the annual report to identify the DCO's own capital allocated to the DCO's compliance with § 39.11(a)(1), and also identify each of the DCO's financial resources allocated to the DCO's compliance with § 39.11(a)(2). The Commission previously estimated that the proposed change would add an additional 14 hours per report and 224 hours in the aggregate to the annual report burden, and has reduced its per report and total burden estimates because this additional requirement will not be adopted. The total annual burden hour estimate for this requirement, which is being moved from OMB control number 3038–0069 to OMB control number 3038–0076, is stated below.

The Commission estimates that the aggregate result of these changes will be to increase the information collection burden associated with annual financial reports from 2606 hours to 2626 hours for each DCO. The revised estimated aggregate burden for the audited annual financial statements is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 1.

Average number of hours per report: 2,626.

Estimated gross annual reporting burden: 42,016.

ii. Quarterly Financial Reports

The Commission is removing from § 39.11(f)(3) the requirement that certain documentation be filed quarterly; instead, DCOs would only need to include the information in their first quarterly report submission and upon any subsequent change, for an expected reduction of three hours per report. Proposed § 39.11(f)(1)(v) would have required a DCO to identify in its quarterly report the financial resources allocated to meeting its obligations under § 39.11(a)(1) and (a)(2), with an expected increase of one hour per report. The Commission has determined not to adopt this change and has reduced the burden hour estimate by one hour per report. The Commission has adjusted the burden hour estimate for quarterly reporting to reflect these changes, which result in an overall reduction in burden of three hours per report. The estimated aggregate burden for the quarterly reports as amended is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 4.

Average number of hours per report: 7.

Estimated gross annual reporting burden: 448.

The Commission is adopting the amendment to § 39.11(f)(1)(ii), which required a DCO to file with the Commission a financial statement of the DCO or of its parent company, to require that the financial statement provided be that of the DCO and not the parent company. The Commission is further adopting changes to the periodic financial reporting requirements in § 39.11(f)(1)(ii) and (f)(2)(i) to permit quarterly and annual financial statements to be prepared in accordance with U.S. GAAP for DCOs incorporated or organized under U.S. law and in accordance with either U.S. GAAP or IFRS for DCOs incorporated or organized under the laws of any foreign country. As the Commission noted in the Proposal, these changes are not expected to affect the burden.

d. Daily Reporting

The Commission proposed to amend § 39.19(c)(1)(i)(A)–(C), which requires a DCO to report margin, cash flow, and position information by house origin and separately by customer origin, to report this information by individual customer account as well. The Commission also proposed to amend § 39.19(c)(1)(i)(D) to specify that, with respect to end-of-day position information, DCOs must report both unadjusted and risk-adjusted position information. Although the Commission is clarifying, in response to comments, that certain information is required to be provided only where it is in the possession of the DCO, these clarifications do not affect the Commission's prior burden estimates. The burden associated with these changes is anticipated to result in an increase from 0.1 to 0.5 hours per report, and 2000 in the aggregate. The burden increase for daily financial reports is being moved from OMB control number 3038–0069 to OMB control number 3038–0076.

Separately, the Commission is adopting changes to § 39.19(c)(1)(i) to codify relief previously granted to fully

collateralized DCOs that would reduce their daily reporting burden by not requiring information on initial margin, daily variation margin payments, other daily cash flows, and end-of-day positions. This change will reduce the burden for fully collateralized DCOs, but does not affect the burden for the majority of DCOs that are subject to daily reporting requirements. The revised aggregate burden estimate for daily reporting being transferred to OMB control number 3038–0076 is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 250.

Average number of hours per report: 0.5.

Estimated gross annual reporting burden: 2,000.

The Commission is adopting amendments to § 39.13(g)(8)(i)(B) to require a DCO to have rules requiring its FCM clearing members to report customer information about futures (as well as swaps) to DCOs. This is a new information collection that is not covered by an existing OMB control number. The burden applicable to FCM clearing members is estimated as follows:

Estimated number of respondents: 64.

Estimated number of reports per respondent: 250.

Average number of hours per report: 0.2.

Estimated gross annual reporting burden: 3,200.

e. Event-Specific Reporting

Regulations 39.18(g) and (h) require a DCO to provide notice regarding certain exceptional events or planned changes related to a DCO's automated systems. These notice requirements are adopted by reference in § 39.19(c)(4). Regulation 39.19(c)(4) also requires a DCO to notify the Commission of the occurrence of other specified events; for example, a decrease in financial resources or the default of a clearing member. The information collection burden associated with these notices required under § 39.19(c)(4) is currently addressed by OMB Control No. 3038–0069, but is being moved to OMB control number 3038–0076 and consolidated with the burden in OMB control number 3038–0076 that is currently associated with § 39.18(g) and (h). The Commission is also amending § 39.16(c)(2)(ii) to require that a DCO provide public notice of a declaration of default on its website. The estimated burden of § 39.16(c)(2)(ii) is included in the estimate for event-specific reporting because it is related to the requirement under § 39.19(c)(4)(vii) that a DCO provide immediate notice to the Commission regarding the default of a clearing member. In addition, the Commission is adding to § 39.19(c)(4) several events for which DCOs will be required to provide notification if such events occur.

The Commission determined not to adopt several proposed notice requirements, and has reduced the burden estimate for event-specific notice requirements by 6 responses annually, from 20 to 14. The aggregate revised burden estimate of § 39.19(c)(4) being transferred to OMB control number 3038–0076 is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 14.

Average number of hours per report: 0.5.

Estimated gross annual reporting burden: 112.

f. Public Information

The Commission is revising § 39.21 to clarify that information regarding the financial resource package available in the event of a clearing member default, which a DCO is required to post on its website pursuant to § 39.21, should be updated at least quarterly, consistent with the requirement in § 39.11(f)(1)(i)(A) to report this information to the Commission each fiscal quarter or at any time upon Commission request. The Commission is also clarifying that other information specified in § 39.21 must be disclosed separately on the DCO's website, and not provided solely in the DCO's posted rulebook. This is a new information collection that is not covered by an existing OMB control number. The changes are estimated to add an average of two hours per response, and eight hours per respondent annually (4 quarterly reports × 2 hours per report) to OMB control number 3038–0076, for an aggregate estimated burden as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 4.

Average number of hours per report: 2.

Estimated gross annual reporting burden: 128.

g. Governance

As noted above, the Commission is incorporating governance provisions from subpart C, which only applies to a limited subset of DCOs, into subpart B, which is applicable to all DCOs. Therefore, the information collection burden currently associated with the governance standards of § 39.32, which results from required disclosure of major board decisions and governance arrangements, has been reallocated to § 39.24. The burden associated with subpart C governance provisions, which is currently covered by OMB control number 3038–0081, is being moved to OMB control number 3038–0076. The aggregate burden of these requirements would increase because they will be applicable to all registered DCOs. The aggregate burden estimate for § 39.24 that is associated with the required ongoing disclosure of major board decisions and governance arrangements by registered DCOs, including DCOs that are not currently subject to subpart C, is estimated as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 6.

Average number of hours per report: 3.

Estimated gross annual reporting burden: 288.

h. Legal Risk

The Commission is adopting changes to § 39.27 that will require a DCO that provides clearing services outside the United States to ensure that the legal opinion that a DCO must obtain to provide those services is accurate and up to date. The new subsection also requires the DCO to submit an updated legal memorandum to the Commission following all material changes to the analysis or content contained in the memorandum. This requirement will apply only to DCOs offering clearing services outside the U.S. This is a new information collection that is not covered by an existing OMB control number. The Commission expects that circumstances necessitating submission of an updated legal memorandum will occur infrequently, not more than once every three years, and has estimated the aggregate burden as follows:

Estimated number of respondents: 1.

Estimated number of reports per respondent: 0.33.

Average number of hours per report: 20.

Estimated gross annual reporting burden: 6.6.

4. Subpart C—Provisions Applicable to SIDCOs and DCOs That Elect To Be Subject to the Provisions of Subpart C

Because the Commission is removing and reserving § 39.32 and Exhibit B of the subpart C Election Form and moving the governance requirements to Form DCO and § 39.24, the corresponding information collection burden under § 39.32, currently covered by OMB control number 3038–0081, will be eliminated and the burden under the subpart C Election Form will be

reduced. Further, in consolidating the burden for subpart C, currently in OMB control number 3038–0081, with OMB control number 3038–0076, the Commission has reassessed the burden for the subpart C Election Form, and is adjusting certain burden hour estimates and numbers of respondents. Specifically, the Commission is reducing the number of burden hours estimated for the certification portion of the subpart C Election Form from 25 hours to 2 hours, because the prior estimate overstated the burden necessary to prepare the one-page certification. The burden that is currently estimated separately for the certifications, exhibits, and supplements/amendments to the subpart C Election Form have been combined because a DCO must provide all the required information in order to submit a complete subpart C Election Form.[59]

Additionally, the Commission is updating the estimated numbers of respondents for subpart C to reflect the current number of SIDCOs and subpart C DCOs, and a reduction, from five to one, in the anticipated number of DCOs newly electing to be subject to subpart C. The Commission is also updating the number of responses for the rescission notices that must be provided to clearing members based on an average of the current number of clearing members at subpart C DCOs. The Commission also is combining burden estimates that previously were estimated separately for SIDCOs only and for all subpart C DCOs; that distinction was made in the initial implementation of subpart C but is no longer necessary since the subpart C rules have been in place for several years. The revised estimated aggregate reporting burden related to the subpart C Election Form, notices and disclosure being transferred to OMB control number 3038–0076 is as follows:

Subpart C Election Form

Estimated number of respondents: 1.
Estimated number of reports per respondent: 1.
Average number of hours per report: 180.
Estimated gross annual reporting burden: 180.

Subpart C Withdrawal Notice

Estimated number of respondents: 1.
Estimated number of reports per respondent: 1.
Average number of hours per report: 2.
Estimated gross annual reporting burden: 2.

Subpart C Rescission Notice

Estimated number of respondents: 1.
Estimated number of reports per respondent: 16.
Average number of hours per report: 3.
Estimated gross annual reporting burden: 48.

PFMI Disclosures

Estimated number of respondents: 1.
Estimated number of reports per respondent: 1.
Average number of hours per report: 200.
Estimated gross annual reporting burden: 200.

Quantitative Disclosures

Estimated number of respondents: 1.
Estimated number of reports per respondent: 1.
Average number of hours per report: 80.
Estimated gross annual reporting burden: 80.

Additionally, the Commission is adding to § 39.37 a notification requirement regarding changes to the PFMI disclosure framework for SIDCOs and subpart C DCOs, which is expected to increase, by one hour, the existing information collection burden of 80 hours per response. The aggregate estimated burden for § 39.37 is stated below:

Subpart C Disclosure Framework Requirements—§ 39.37

Estimated number of respondents: 9.
Estimated number of reports per respondent: 1.
Average number of hours per report: 81.
Estimated gross annual reporting burden: 729.

Because the Commission is moving all of the burden estimates for subpart C from OMB control number 3038–0081 to OMB control number 3038–0076 and cancelling information collection 3038–0081, the existing burden estimates for §§ 39.33, 39.36, 39.38, and 39.39, and certain disclosures under § 39.37, as updated to reflect the current number of SIDCOs and subpart C DCOs, are restated below. In addition, for the quantitative disclosures required under § 39.37, which may be updated as frequently as quarterly, the Commission has updated the number of reports per respondent from one to four annually, and has distributed the existing 35 burden hours among the four reports (35/4=8.75, rounded to 9). The updated subpart C reporting burden estimates for the changes to Subpart C—Provisions is as follows:

Subpart C Financial and Liquidity Resource Documentation—§ 39.33

Estimated number of respondents: 9.
Estimated number of reports per respondent: 1.
Average number of hours per report: 120.
Estimated gross annual reporting burden: 1,080.

Subpart C Stress Test Results—§ 39.36

Estimated number of respondents: 9.
Estimated number of reports per respondent: 16.
Average number of hours per report: 14.
Estimated gross annual reporting burden: 2,016.

Subpart C Quantitative Disclosures—§ 39.37

Estimated number of respondents: 9.
Estimated number of reports per respondent: 4.
Average number of hours per report: 9.
Estimated gross annual reporting burden: 324.

Subpart C Transaction, Segregation and Portability Disclosures—§ 39.37

Estimated number of respondents: 9.
Estimated number of reports per respondent: 1.
Average number of hours per report: 35.
Estimated gross annual reporting burden: 315.

Subpart C Efficiency and Effectiveness Review—§ 39.38

Estimated number of respondents: 9.
Estimated number of reports per respondent: 1.
Average number of hours per report: 3.
Estimated gross annual reporting burden: 27.

Subpart C Recovery and Wind-Down Plan—§ 39.39

Estimated number of respondents: 9.
Estimated number of reports per respondent: 1.
Average number of hours per report: 480.
Estimated gross annual reporting burden: 4,320.

[59] The current burden for the subpart C Election Form exhibits is 155 hours per response; 22 of these hours are being moved to the Form DCO burden as discussed in the Form DCO section above, leaving 133 hours. Also, the Commission is reducing the burden currently attributed to amendments to the subpart C Election Form and consolidating it with the burden for supplemental information because in practice, DCOs have not frequently filed amendments. Consolidating the certification (2 hours), exhibits (133 hours), and supplemental or amended information (45 hours) results in a burden of 180 hours.

With respect to the subpart C recordkeeping burden that the Commission is moving from OMB control number 3038–0081 to OMB control number 3038–0076, the Commission also has combined the burden estimates for financial and liquidity resources, and liquidity resource due diligence and testing because these requirements apply to the same set of respondents. As noted above, the general recordkeeping requirements that were previously estimated separately for SIDCOs and all subpart C DCOs also have been combined. The updated subpart C recordkeeping burden estimates are restated below:

Subpart C Recordkeeping—General

Estimated number of respondents: 9.
Estimated number of reports per respondent: 110.
Average number of hours per report: 10.
Estimated gross annual recordkeeping burden: 9,900.

Subpart C Recordkeeping—Financial and Liquidity Resources, Liquidity Resource Due Diligence and Testing

Estimated number of respondents: 9.
Estimated number of reports per respondent: 8.
Average number of hours per report: 10.
Estimated gross annual recordkeeping burden: 720.

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[60] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors below.[61]

In the Proposal, the Commission established, based on the subject matter of the proposals, that it did not consider any of the proposed changes contained therein to have any significant impact on price discovery. The Commission received no responses from commenters with respect to its analysis regarding price discovery. For the remaining areas, where the Commission believed the costs or benefits of the Proposal were significant, the Commission addressed, section by section, the qualitative costs or benefits associated with the Proposal. Where reasonably possible, the Commission has endeavored to estimate quantifiable costs and benefits. Where quantification is not feasible, the Commission identifies and describes costs and benefits qualitatively. The Commission requested comments on the costs and benefits associated with the proposed rules. In particular, the Commission requested that commenters provide data and any other information or statistics that the commenters relied on to reach any conclusions regarding the Commission's proposed considerations of costs and benefits. The Commission received comments that indirectly address the costs and benefits of the proposal. These comments are discussed as relevant below.

The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of the rules on all activity subject to the amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under section 2(i) of the CEA.[62] In particular, the Commission notes that some entities affected by this rulemaking are located outside of the United States. The Commission has carefully considered alternatives suggested by commenters, and in a number of instances, for reasons discussed in detail above, has adopted such alternatives or modifications to the proposed rules where, in the Commission's judgment, the alternative or modified standard accomplishes the same regulatory objective in a more cost-effective manner. Where the Commission declined to accept alternatives suggested by commenters, the costs and benefits of the alternatives are discussed below.[63]

2. Economic Baseline

The baseline for the Commission's consideration of the costs and benefits of this rulemaking are the following requirements prior to taking into account the final amendments being adopted herein: (1) The DCO Core Principles set forth in section 5b(c)(2) of the CEA; (2) the general provisions applicable to DCOs under subparts A and B of part 39 of the Commission's regulations; (3) the Commission's regulations in subpart C of part 39, which establish additional standards for compliance with the core principles for those DCOs that are designated as SIDCOs or have elected to opt-in to the subpart C requirements in order to achieve status as a qualified central counterparty (QCCP); (4) Form DCO in Appendix A to part 39; (5) Subpart C Election Form in Appendix B to part 39; and (6) §§ 1.20(d) and 140.94.

The Commission notes that some of the rules codify existing no-action relief and other guidance issued by Commission staff. To the extent that market participants have relied upon such relief or staff guidance, the actual costs and benefits of the rules, as discussed in this section, may not be as significant.

3. Comments on Cost-Benefit Considerations Generally

ICE commented that the Commission insufficiently considered the costs and benefits of those proposed rules not related to Project KISS and that the Commission should re-propose those rules in a separate rulemaking that more fully considers costs to DCOs. CME stated that the proposed amendments, in aggregate, will increase, rather than reduce, the regulatory burdens on DCOs and the markets they clear. The Commission acknowledges these comments and, as discussed further below, notes that it has modified or determined not to finalize many of the proposed rules in light of specific comments related to costs.

4. Written Acknowledgment From Depositories—§ 1.20

Regulation 1.20(d)(1) requires an FCM to obtain a written acknowledgment

[60] 7 U.S.C. 19(a).

[61] The Commission has not identified any impact that the final rule would have on price discovery.

[62] 7 U.S.C. 2(i).

[63] The Commission is not discussing the costs and benefits of alternatives that would require a proposal prior to adoption. The Commission will consider proposing such alternatives in the future and will discuss their costs and benefits in any proposing release.

from each depository with which the FCM deposits futures customer funds. The regulation provides that an FCM is not required to obtain a written acknowledgment from a DCO that has adopted rules providing for the segregation of customer funds, but other provisions of § 1.20(d) seem to suggest that a DCO must provide the written acknowledgment regardless. The Commission is amending as proposed § 1.20(d) to clarify the Commission's intent that the requirements listed in § 1.20(d)(3) through (6) do not apply to a DCO, or to an FCM that clears through that DCO, if the DCO has adopted rules that provide for the segregation of customer funds.

The Commission did not receive comments on the costs associated with these amendments. As to the benefits, FIA and ISDA commented that clarifying the applicability of § 1.20(d)(3) through (6) avoids redundant information-sharing arrangements.

The Commission believes the amendments to § 1.20(d) will benefit FCMs and DCOs by reducing uncertainty as to when an FCM must obtain a written acknowledgment from a DCO.

The Commission does not believe the amendments would impose any additional costs on DCOs or FCMs, as it is clarifying the circumstances under which an acknowledgment letter would not be required.

As to the costs and benefits in light of the section 15(a) factors, in consideration of section 15(a)(2)(B) of the CEA, the Commission believes that the amendments to § 1.20(d) would not negatively impact the protection of market participants and the public, including DCOs' clearing members and their customers, as the amendments merely clarify the instances in which a DCO, or an FCM that clears through that DCO, would not need to file an acknowledgment letter because the DCO has adopted rules that provide for the segregation of customer funds. The Commission believes that the amendments to § 1.20(d) will result in an incremental increase in efficiency for FCMs that follows from reducing any previous uncertainty regarding when they must obtain an acknowledgment letter. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

5. Definitions—§ 39.2

Regulation 39.2 sets forth definitions applicable to terms used in part 39 of the Commission's regulations. The Commission proposed amendments to the definition of ''business day,'' ''customer,'' ''customer account or customer origin,'' and ''key personnel'' in § 39.2 to maintain consistency with terms defined elsewhere in Commission regulations and to provide clarity with respect to the use of these terms. The Commission is also adding new definitions for ''enterprise risk management'' and ''fully collateralized position'' to correspond with amendments that the Commission proposed elsewhere in part 39.

The Commission did not receive comments on the costs or benefits associated with these amendments. The Commission received comments from CME, ICE, and Nadex that suggested clarifications to the proposed definitions, and the Commission has incorporated these suggestions in the final rule.

The amendments to § 39.2 benefit DCOs by clarifying existing part 39 requirements, such as what constitutes a Federal holiday for purposes of applying the definition of ''business day.'' The new definitions in § 39.2 for ''enterprise risk management'' and ''fully collateralized position'' are necessary to understanding the new rules for an enterprise risk management framework it is adopting in § 39.10(d) and exceptions from several requirements for fully collateralized positions throughout part 39, and hence benefit DCOs by helping them understand the new rules mentioned above. The amendments to the definitions of ''customer'' and ''customer account or customer origin'' also have the benefit of clarification as they help to avoid conflicts with similar terms defined in § 1.3.

The Commission does not believe the new and amended definitions in § 39.2 would impose additional costs on DCOs, as they are not imposing additional requirements, but rather defining terms that are used in other provisions.

In addition to the discussion above, the Commission evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(B) of the CEA, the Commission believes that, to the extent that the amended definitions provide clarity, reduce any previous uncertainty, or help to avoid conflicts with similar terms that are defined in different sections, these effects, individually and in aggregate, may yield increased efficiency for DCOs. After considering the other section 15(a) factors, the Commission believes they are not implicated by the amendments.

6. Procedures for Registration—§ 39.3 and Form DCO

The Commission is adopting several changes to its procedures for DCO registration, including: Application procedures—§ 39.3(a), stay of application review—§ 39.3(b), request to amend an order of registration—§ 39.3(a)(2) and § 39.3(d), dormant registration—§ 39.3(e), vacation of registration—§ 39.3(f), and request for transfer of registration and open interest—§ 39.3(g).

The amendments to § 39.3(a) improve clarity and consistency of the rules, provide greater flexibility to DCO applicants submitting supplemental information, clarify references to the portion of the Form DCO cover sheet and other application materials that will be made public; and, in new § 39.3(a)(6), permit the Commission to extend the 180-day review period for DCO applications for any period of time to which the applicant agrees in writing. Furthermore, the Commission is amending § 39.3(a)(2) to eliminate the required use of Form DCO to request an amended order of registration from the Commission.

In § 39.3(b)(2), the Commission is clarifying the stay of the application review process and adopting a change to replace the inaccurate ''designation'' with ''registration.

In § 39.3(d), the Commission is also adopting a new rule to establish a separate process for requests to amend an order of registration.

Regulation § 39.3(e) establishes the procedure for a dormant DCO to reinstate its registration before it can begin ''listing or relisting'' products for clearing. The Commission is renumbering § 39.3(d) as § 39.3(e) and adding clarification and accuracy by replacing ''listing or relisting'' with ''accepting.''

Amendments to § 39.3(f) renumber current § 39.3(e) as § 39.3(f)(1) and add provisions under § 39.3(f)(1) regarding procedures for a DCO seeking to vacate its registration. The Commission is also adopting § 39.3(f)(2) to streamline the process of notifying all registered entities of a vacation request filed with the Commission by requiring the Commission to post the required documents on its website.

In § 39.3(f), which is renumbered as § 39.3(g), the Commission is simplifying the requirements for requesting a transfer of open interest and removing references to transfers of registration and requirements regarding corporate changes. Furthermore, the amendments will require transfer requests to be submitted under § 40.5.

In addition, the Commission is revising Form DCO to correspond with amendments to part 39 and to reflect Commission staff's experience with DCO applications. Finally, the Commission is revising the Subpart C Election Form to better reflect the requirements in subpart C of part 39 and to more closely align the format of the Subpart C Election Form with Form DCO by specifying the information and/or documentation that must be provided by a DCO as part of its petition for subpart C election.

The Commission did not receive comments on the costs associated with these amendments.

The Commission believes the amendments to the DCO registration procedures in § 39.3, Form DCO, and the Subpart C Election Form will make the procedures more transparent to applicants. This should allow prospective DCO applicants to more efficiently prepare complete applications, which should reduce the need for Commission staff to request additional information after receiving the application and therefore reduce the overall time needed to review an application. For example, the Commission is modifying Form DCO to clarify the types of information that are required and align the exhibits with the amendments under part 39. Similarly, the Commission is modifying the Subpart C Election Form to more closely align its format with Form DCO. These amendments may reduce an applicant's time and resources used in responding to staff inquiries during the application review process, as DCO applicants would be better able to provide more complete, accurate, and nuanced application materials. The amendments to § 39.3 also adapt certain language to better reflect terminology applicable to DCOs in § 39.3(a)(1) through (2) and (b), which could help to avoid confusion for potential DCO applicants and existing DCOs. Furthermore, the Commission is codifying its long-standing procedures for staying an application in § 39.3(a)(6) to provide DCO applicants with greater transparency of the registration process.

The Commission is amending § 39.3(a)(2) and Form DCO to eliminate the required use of Form DCO to request an amended order of registration from the Commission. This change better reflects current practice, where a DCO is permitted to file a request for an amended order with the Commission rather than submitting Form DCO. Similarly, the Commission is specifying in § 39.3(f) the types of information that the Commission currently requests to determine whether to vacate an order of registration, which will provide DCOs with more transparency as to the types of information that are required as part of a request to vacate an order of registration. The recordkeeping requirements in § 39.3(f)(1)(iii) through (iv), which require a vacated DCO to continue to maintain the books and records that it would otherwise be required to maintain as a registered DCO, provide the benefit of ensuring that a DCO does not vacate its registration and destroy its books and records in order to hinder or avoid Commission action.

The Commission is also streamlining the procedures for requesting a transfer of open interest by separating those procedures in existing § 39.3(g) from the procedures to notify the Commission of a DCO corporate structure or ownership change. Under the amendments to § 39.3(g), a DCO seeking to transfer its open interest will be required to submit rules for Commission approval pursuant to § 40.5, rather than submitting a request for an order at least three months prior to the anticipated transfer. This will simplify the existing requirements and permit the transfer to take effect after a 45-day Commission review period.

The Commission believes DCOs would not incur any additional costs associated with the procedures to request an amended order of registration in § 39.3(d), as a DCO would incur the same costs if requesting to amend its order of registration by using the current Form DCO.[64] In stating support for this amendment, ICE noted that it believes this modification will help streamline the process for a DCO to file a request for an amended order.

As to the procedures to vacate a DCO's registration in § 39.3(f), the Commission believes the costs would not be substantial. Any costs incurred by DCOs would more likely be due to the recordkeeping requirements in § 39.3(f)(1)(iii) through (iv), which require a vacated DCO to continue to maintain the books and records that it would otherwise be required to maintain as a registered DCO pursuant to § 1.31(b).

Finally, the Commission is amending § 39.3(g) to permit a DCO seeking to transfer its open interest to submit rules for Commission approval pursuant to § 40.5, rather than submitting a request for an order at least three months prior to the anticipated transfer. The Commission does not anticipate that DCOs would incur any additional costs as a result of these procedural changes beyond the costs to prepare a § 40.5 rule submission, which are likely to be similar to the costs of requesting an order approving the transfer. Additionally, the information requested in § 39.3(g) reflects information that DCOs are already required to provide in order to transfer their open interest.

As an alternative, ICE suggested that it may be appropriate for a transfer to take effect pursuant to a rule self-certification under § 40.6 where the transfer does not raise any particular novel issues or concerns. ICE further requested that the Commission clarify that it may, in appropriate circumstances, take action on a transfer request in less than 45 days, both in circumstances that do not raise particular concerns and in exigent or distressed circumstances in which the full period may not be necessary or feasible. The Commission considered ICE's suggestions but still believes that the 45-day review period under § 40.5, rather than the 10 business day review period under § 40.6(a), is necessary in order to determine whether any concerns exist. However, the Commission notes that the same outcome—a shorter review period where circumstances allow—can be achieved by the Commission acting on a transfer request in less than 45 days as permitted by § 40.5(g).

The Commission does not believe DCOs would incur additional costs from any of the other amendments to the DCO registration procedures in § 39.3. In addition to the discussion above, the Commission evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. The Commission believes that the changes to the registration procedures will maintain the protection of market participants and the public by ensuring that DCOs are in compliance with the DCO Core Principles and Commission regulations. The changes will also increase efficiency by making the registration process more transparent. This will enable DCOs and DCO applicants to provide more complete documentation in a more concise manner, thereby reducing the time and resources needed to comply with such procedures. To the extent that the changes to the registration procedures act to streamline the application process, as well as to establish the process for vacating a DCO's registration, those changes will result in a more efficient process for registering as a DCO and for vacating that registration.

Additionally, the Commission believes that the amendments to

[64] The Commission estimates for PRA purposes that there would be a reduction in the burden incurred by DCOs, as discussed in section X.B.2 above.

§ 39.3(g), which addresses a request to transfer a DCO's open interest, will result in increased efficiency because the amendments streamline and improve the existing process, as DCOs would be able to use the existing process under § 40.5, with which DCOs are already familiar a'nd which requires a shorter review period. As a result, DCOs may obtain approval to transfer their open interest in a timelier manner, which may benefit their operational and business needs. To that end, the Commission believes that these changes will have a beneficial effect on the risk management practices of DCOs, inasmuch as the changes may modestly reduce the risks that may accompany the transfer of open interest to another DCO. Moreover, the recordkeeping requirements for vacated DCOs will protect market participants and the public by ensuring that a DCO does not vacate its registration and destroy its books and records in order to hinder or avoid Commission action. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

7. Fully Collateralized Positions

The Commission is amending certain regulations in part 39 to address fully collateralized positions, which do not pose the same risks that the regulations are meant to address. As discussed in above, fully collateralized positions do not expose DCOs to many of the risks that traditionally margined products do, as full collateralization prevents a DCO from being exposed to credit risk stemming from the inability of a clearing member or customer of a clearing member to meet a margin call or a call for additional capital. This limited exposure and full collateralization of that exposure renders certain provisions of part 39 inapplicable or unnecessary. As a result, the Division of Clearing and Risk has granted relief from certain provisions of part 39 to DCOs that clear fully collateralized positions.[65] The Commission is amending certain regulations consistent with that relief.[66]

The amendments are based on an assessment of how the DCO Core Principles and part 39 apply to fully collateralized positions, as well as the relief previously granted to DCOs that clear such positions. The Commission believes the amendments will not negatively impact prudent risk management at any DCO, regardless of the types of products cleared. The costs and benefits of these changes are discussed in conjunction with the discussion of the related provisions below.

8. DCO Chief Compliance Officer—§ 39.10(c)

The Commission is amending § 39.10(c) as proposed. These amendments will allow a DCO to have its CCO report to the senior officer responsible for the DCO's clearing activities. This would provide DCOs with flexibility to structure the management and oversight of the CCO based on the DCO's particular corporate structure, size, and complexity. This may increase efficiency, reduce costs, and improve the quality of the oversight of the CCO, as the senior officer overseeing the DCO's clearing activities would be better positioned to provide day-to-day oversight of the CCO. The Commission believes that this amendment will not increase costs to DCOs since it does not require any change in their practices.

The Commission is also amending certain requirements in § 39.10(c) relating to the CCO annual report to permit DCOs to incorporate by reference, for up to five years, any descriptions of written policies and procedures that have not materially changed since they were described within the most recent CCO annual report. CME noted that these revisions would reduce the requirement to provide duplicative information contained in previous reports and thus reduce the administrative burden on the DCO's compliance staff. The Commission agrees with CME's comment.

The Commission is amending § 39.10(c) to require that a DCO identify its compliance policies and procedures by name, rule number, or other identifier; describe the process by which the annual report was submitted to the board of directors or senior officer; and allow incorporation by reference in limited circumstances. The Commission notes that a number of DCOs already provide this information. Therefore, the Commission expects that the changes to § 39.10(c) would not impose additional costs on those DCOs, but would impose additional costs on DCOs that do not currently provide this information. The Commission did not receive comments on the costs associated with this amendment.

Furthermore, Nadex suggested that the Commission consider conforming the language of the CCO's duties and annual report requirements in § 39.10 with that of § 3.3, which pertains to the CCOs of FCMs, swap dealers, and major swap participants. The Commission may consider this in a separate proposal.

As to the costs and benefits in light of the section 15(a) factors, the Commission believes that certain of the changes to § 39.10(c) will enhance the protection of market participants and the public. Specifically, the changes to a CCO's reporting lines, along with the added clarity regarding proper identification of the compliance policies and procedures in the CCO annual report, is anticipated to enhance the compliance function at DCOs, which may have the corresponding effect of improving the protections for market participants and the public. Additionally, in consideration of section 15(a)(2)(B) of the CEA, the amendment to permit incorporation by reference in the CCO annual report will increase efficiency in preparing that report. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

9. Enterprise Risk Management—§ 39.10(d)

The Commission is adopting § 39.10(d) to require a DCO to have a program of enterprise risk management that identifies and assesses sources of risk and their potential impact on the operations and services of the DCO and identify an enterprise risk officer. The Commission believes that requiring DCOs to establish and maintain an enterprise risk management program may encourage DCOs to strengthen their existing programs, especially if a DCO lacks an enterprise risk management program that is commensurate with industry best practices. This may benefit the resiliency of individual DCOs' operations by requiring DCOs to proactively identify potential risks on an enterprise-wide basis beyond those that a DCO might otherwise identify pursuant to its compliance with specific requirements in part 39. Compliance with § 39.10(d) by DCOs who are affiliated with other registered entities such as DCMs, SEFs, and swap data repositories may also benefit the financial markets more broadly, as risks identified and addressed by the DCO may also apply to their affiliates within the derivatives markets.

The Commission has found that DCOs that proactively identify and manage foreseeable risks have generally

[65] *See* CFTC Letter No. 14–04 (January 16, 2014) (granting exemptive relief to the North American Derivatives Exchange, Inc. (Nadex)); CFTC Letter No. 17–35 (July 24, 2017) (granting exemptive relief to LedgerX).

[66] The Division also issued interpretive guidance to Nadex for other provisions in part 39. CFTC Letter No. 14–05 (January 16, 2014). The interpretive guidance may be relied on by third parties, and is not impacted by this rulemaking.

implemented enterprise risk management frameworks, in whole or in part, to identify, assess, and manage sources of risk in a manner similar to the requirements adopted in § 39.10(d)(1) through (4). Therefore, the Commission believes that any additional costs associated with these requirements will be minimal relative to existing industry practice for those DCOs whose enterprise risk management programs are commensurate with industry best practices. The regulation will impose additional costs on DCOs that need to change their practices to comply with the regulation, but the extent of the costs will depend on the extent of the changes required. In addition, as DCOs would be able to comply with this requirement by including the DCO in the enterprise risk management program administered by the DCO's parent company or affiliate, the Commission believes any additional costs to comply with proposed § 39.10(d) could be reduced if the DCO is able to share the costs of compliance with its parent or affiliates.

MGEX expressed concern regarding the burdens of developing an enterprise risk management program and also raised the possibility that procedures developed as part of the enterprise risk management program might conflict with other risk management procedures. The Commission notes that it has sought to avoid requiring specific standards and methodologies with respect to enterprise risk management, preferring instead that DCOs develop a program based on the specific characteristics of that DCO. Regulation 39.10(d)(3), as adopted, requires a DCO to follow generally accepted standards and industry best practices in the development and review of its enterprise risk management framework, assessment of the performance of its enterprise risk management program, and management and mitigation of risk to the derivatives clearing organization. In the interests of offering guidance, the Commission specified in the Proposal two industry standards as examples of the types of standards that would reasonably be considered in the development of an enterprise risk management program.[67] Although the Commission expects that a DCO will analyze its risks through an enterprise risk management framework and develop and modify its program accordingly, the Commission would also expect that a DCO in good standing would be able to build upon at least some elements of its current risk management framework, thus reducing the costs of developing an enterprise risk management program relative to creating an entirely new structure from scratch.

LCH, in responding to a request for comment regarding whether the same individual should be permitted to serve as both the chief risk officer and the enterprise risk officer, suggested that requiring separate individuals to serve the two roles would be duplicative and inefficient. The Commission has finalized § 39.10(d) without adding language prohibiting the same individual from serving both roles, although it has noted that the nature and structure of the organization could be such that it will not be possible for one individual to do so without violating the requirements of the position.

The Commission has added additional language to § 39.10(d)(4) requiring that the enterprise risk officer have access to the board of directors to ensure that the board receives reports and information from the enterprise risk officer, regardless of the formal reporting relationship. The Commission believes that such access will improve governance by ensuring that issues or concerns regarding enterprise risk management will be conveyed to the board. The Commission does not believe that requiring such access will impose any material costs.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes that the proposal to require a DCO to have a formal enterprise risk management program will improve DCO risk management practices by ensuring that DCOs have a process for identifying and assessing potential risks to the DCO on an enterprise-wide basis, thereby enhancing protection of market participants and the public and the financial integrity of the derivatives markets. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

10. Financial Resources—§ 39.11

The Commission is amending § 39.11 to, among other things: Make it more consistent with Core Principle B; clarify certain items including how a DCO's largest financial exposure should be calculated in § 39.11(c); require that the financial statements submitted each quarter be that of the DCO and not the parent company; require that financial statements be prepared in accordance with U.S. GAAP or, for a DCO that is incorporated or organized under the laws of any foreign country, IFRS; and require a DCO to annually submit a reconciliation of its balance sheet in the audited year-end financial statement with the balance sheet in the DCO's financial statement for the last quarter of the fiscal year when material differences exist. Except where noted below, the Commission is amending § 39.11 as proposed.

The Commission is finalizing additional minimum requirements that a DCO will have to follow in determining its financial exposure in accordance with § 39.11(c)(1). In particular, the Commission is requiring a DCO to calculate its largest financial exposure net of the clearing member's required initial margin amount on deposit. Additionally, the Commission is requiring that when stress tests produce losses in both customer and house accounts, a DCO must combine the customer and house stress test losses of each clearing member using the same stress test scenario. New § 39.11(c)(2)(iii) allows a DCO to net gains in the house account with losses in the customer account, if permitted by its rules, but explicitly prohibits a DCO from netting losses in the house account with gains in the customer account. New § 39.11(c)(2)(iv) allows a DCO, with respect to a clearing member's cleared swaps customer account, to net customer gains against customer losses only to the extent permitted by the DCO's rules. The Commission also is amending the requirements of § 39.11(c) to state that they do not apply to fully collateralized positions.

Commenters generally supported the proposed amendments to § 39.11(c) and there were no comments related to costs. In response to questions and requests for clarification, the Commission is modifying proposed § 39.11(c)(2)(i) to clarify that, for purposes thereof, required margin includes any add-ons, such as concentration charges and liquidity charges, and that only required margin (including add-ons) may be considered.

The Commission believes these adjustments to the methodology used to calculate a DCO's financial resources requirement in § 39.11(c) will focus a DCO's analysis on the resources that would actually be available to it during times of stress. This approach is consistent with guidance issued by CPMI–IOSCO suggesting that, when assessing the adequacy of their financial resources, central counterparties should take into account only prefunded

[67] *See* Derivatives Clearing Organization General Provisions and Core Principles, 84 FR 22232, n. 24.

financial resources and ignore voluntary excess contributions. Central counterparties that wish to be considered QCCPs are expected to follow this guidance, so having Commission requirements that are consistent with the guidance should improve efficiencies for the industry while more prudently managing financial risk. The clarification that required margin includes any add-ons should also increase efficiencies for the industry while more prudently managing financial risk.

Several changes made to § 39.11, such as amending § 39.11(d)(2) to replace the phrase ''those obligations'' with ''the total amount required under paragraph (a)(1) of this section'' and the amendments to § 39.11(e)(1)(iii) and § 39.11(e)(3) to clarify that a DCO may use a committed line of credit or similar facility to satisfy § 39.11(e)(1)(ii) or § 39.11(e)(2) as long as it is not counted twice, are clarifications that do not impose additional burdens but have the benefit of more clearly articulating what is required. The Commission is finalizing these rules as proposed. The Commission is amending § 39.11(f)(1)(ii) to require that the financial statement provided be that of the DCO and not the parent company in order to better and more accurately assess the financial strength of the DCO. The Commission believes it would also benefit the DCO to be able to assess its compliance with Core Principle B and § 39.11 and its financial health separately from that of its parent. MGEX suggested that the proposed revisions to § 39.11(f)(1)(ii) requiring that the financial statement provided be that of the DCO and not the parent company should only apply to DCOs that are part of a complex corporate structure, and not to simple parent/subsidiary structures. MGEX stated that compiling and submitting separate financial statements for a simple parent/subsidiary structure would result in increased expenses while providing no material benefit. The Commission is declining to adopt this suggestion because the Commission believes it will benefit from understanding the financial condition of a DCO separately from that of its parent company and will be better equipped to protect market participants and the public with this additional information. Moreover, separate legal entities should be able to prepare separate financial statements, and there is no bright line distinguishing between simple and complex corporate structures. The Commission acknowledges that the rule may be more costly for certain DCOs relative to MGEX's suggested alternative, but the Commission does not believe that these additional costs will be large.

The Commission is not adopting its proposed changes to § 39.11(f)(1)(ii) and § 39.11(f)(2)(i) that would have required DCOs to identify assets required to meet the resource requirements of § 39.11(a)(1) and (2). The Commission is persuaded by comments from CME and Eurex that certain requirements of U.S. GAAP and IFRS, respectively, may preclude a company from including this information on its balance sheet. Instead, the Commission is encouraging DCOs to identify the assets required to meet the resource requirements of § 39.11(a)(1) and (2) to the extent that they can, given applicable accounting standards. The Commission notes that providing such information would facilitate its review of DCOs' financial statements and potentially reduce the burden on DCOs to respond to staff inquiries regarding their financial statements and compliance with § 39.11(a)(1) and (2). The Commission is amending the periodic financial reporting requirements in § 39.11(f)(1)(ii) and (f)(2)(i) to permit quarterly and annual financial statements to be prepared in accordance with U.S. GAAP for DCOs incorporated or organized under U.S. law and in accordance with either U.S. GAAP or IFRS for DCOs incorporated or organized under the laws of any foreign country. These amendments will retain flexibility for non-U.S. DCOs and provide greater transparency to DCOs and DCO applicants of the financial reporting requirements. The Commission is also requiring in § 39.11(f)(2) that, in addition to its audited year-end financial statement, a DCO submit a reconciliation, including appropriate explanations, of its balance sheet when material differences exist between it and the balance sheet in the DCO's financial statement for the last quarter of the fiscal year or, if no material differences exist, a statement so indicating. Without such an explanation, Commission staff may be under the impression that the representations are false or incorrect. This requirement gives DCOs the opportunity to correct any discrepancies and avoid unnecessary follow-up questions from Commission staff.

The Commission is amending § 39.11(f)(1)(iv) to incorporate the language of current § 39.11(f)(4), which requires a DCO to submit its quarterly report no later than 17 business days after the end of the DCO's fiscal quarter (or at a later time as permitted by the Commission in its discretion in response to a DCO's request for an extension). CME recommended that, for the first three quarters of the fiscal year, the due dates for submitting the DCO quarterly financial resource reports be aligned with the due dates for a DCM's submission of financial resource reports pursuant to § 38.1101(f)(4), which requires the reports to be filed no later than 40 calendar days after the end of the DCM's first three fiscal quarters. The Commission is declining to take CME's recommendation because the reporting dates currently in effect are the same as those for FCMs and broker/dealers reporting dates under the Commission's regulations. The Commission believes that DCO financial report filings should be aligned with FCMs rather than with DCMs because FCMs, unlike DCMs, hold initial margin and default funds and collect variation margin, which clearly and directly relate to the financial resources available to DCOs. The Commission acknowledges that § 39.11(f)(1)(iv) may be more costly for CME and other DCOs that are affiliated with DCMs relative to CME's suggested alternative, but the Commission does not believe that these additional costs will be large.

DCOs could incur initial costs to recalibrate the method by which they compute their financial resources to comply with § 39.11(c). If a DCO does not have financial resources sufficient to comply with § 39.11(a)(1) based on its computation pursuant to § 39.11(c), the DCO would have to procure additional financial resources. Because DCOs vary in terms of their size and level of clearing activity, the Commission believes they are better positioned to provide cost estimates in this regard.

DCOs may incur costs to prepare their own financial statements (as opposed to being included in the financial statements of the parent company) in accordance with § 39.11(f)(1)(ii). For DCOs that already prepare their own financial statements, the Commission believes that incremental costs will be minimal. Had the Commission adopted MGEX's suggestion to apply the requirement that the financial statement provided be that of the DCO and not the parent company only to DCOs that are part of a complex corporate structure, DCOs that are part of a simple parent/subsidiary structure would have avoided the additional costs of preparing their own financial statements, but at the cost of first analyzing whether the corporate structure was simple or complex for purposes of triggering the requirement and potentially needing to justify that analysis to the Commission. Additionally, DCOs may incur minimal costs to prepare a reconciliation of their

balance sheet when material differences exist as compared to the DCO's financial statement for the last quarter of the fiscal year.

Had the Commission adopted LCH's suggestion that non-U.S. DCOs be allowed to submit financial reports using currencies other than the U.S. dollar, such DCOs may have experienced reduced costs in preparing their financial reports, but the Commission believes that staff will be better able to protect the financial integrity of markets if it has all financial reports in U.S. dollars. Adopting LCH's suggestion would have required Commission staff to convert such currencies to U.S. dollars to complete its analysis, which would have required staff to make decisions about exchange rates. This, in turn, could have led to staff determining that the DCO failed to comply with one or more financial resources requirements even if a reasonable exchange rate used by the DCO would have demonstrated compliance with such requirements. Such a determination could potentially cost the DCO in terms of the time and effort to address staff's determination and potentially taking remedial action for failing to comply with requirements.

The Commission is revising § 39.11(f)(3) to clarify that a DCO must send the documentation to the Commission required under paragraphs (i)(A) and (i)(B) of that section only upon the DCO's first submission under § 39.11(f)(1) and in the event of any change thereafter. Not requiring that this documentation be prepared and sent to the Commission every quarter may reduce DCOs' reporting costs.

LCH also suggested defining ''material'' for the purposes of annual reporting requirements as 10 percent of either the (1) six-month liquidity test, or (2) 12-month capital cost-based financial resources test. The Commission believes that DCOs should retain discretion to define ''material'' for these purposes and therefore declines to include this suggestion. Providing DCOs with additional discretion should not impose significant costs on DCOs.

The Commission believes DCOs may incur additional costs associated with complying with the certification requirements in § 39.11(f)(4). These costs may be reduced for DCOs that already provide them. The Commission recognizes that a DCO may have to develop a process in certifying its financial reports; however, the Commission believes that these costs may be reduced for DCOs to the extent that they already have this process in place.[68]

The Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) of the CEA, the Commission believes that the amendments to § 39.11 will result in improved protections for market participants and the public. Specifically, the adjustments to the methodology used to calculate a DCO's financial resources requirement in § 39.11(c) and the corresponding improvements to a DCO's stress testing results are expected to enhance the safety and soundness of DCOs and their ability to manage their risks, thereby better protecting DCOs' clearing members and their customers, market participants, and the public. Additionally, in further consideration of section 15(a)(2)(A) of the CEA, the proposal to require in § 39.11(f)(1)(ii) the financial statement of the DCO and not that of its parent company, is expected to better and more accurately assess the financial strength of the DCO, which will ultimately serve to protect market participants and the public and further the financial integrity of derivatives markets. In consideration of section 15(a)(2)(B) of the CEA, the Commission believes that, to the extent that the amendments to § 39.11 will result in increased clarity or transparency, those changes are anticipated to result in an incremental increase in efficiency. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes the adjustments to the methodology used to calculate a DCO's financial resources requirement in § 39.11(c) would focus a DCO's analysis on the resources that would actually be available to it during times of stress, thereby improving the DCO's risk management practices. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

SIFMA AMG stated that DCOs should not be permitted to count unfunded assessments towards resources available to the DCO pursuant to current § 39.11(b)(1)(v), which is being renumbered § 39.11(b)(1)(iv). Similarly, FIA and ISDA requested that the Commission amend § 39.11(d)(2) to prohibit the use of assessments because assessments are unfunded resources. In contrast, ICE suggested that the Commission clarify that in applying the 20 percent limitation on the use of assessments per proposed § 39.11(d)(2), the calculation should be based on the exposure prior to netting against initial margin. The Commission may consider these suggestions in future proposals.

[68] *See* 17 CFR 228, 229, 232, 240, 249, 270 and 274.

11. Participant and Product Eligibility—§ 39.12

Regulation 39.12(b)(2) provides that a DCO shall adopt rules providing that all swaps with the same terms and conditions are economically equivalent within the DCO. As it was not the intention of the Commission to require DCOs that do not clear swaps to adopt the rules required under this provision, the Commission is revising § 39.12(b)(2) so that it explicitly applies only to DCOs that clear swaps.

The Commission did not receive any comments on the benefits or costs associated with the changes to § 39.12.

Amendments to § 39.12 would reduce rulebook drafting costs for future DCO applicants that do not intend to accept swaps for clearing.

The Commission believes the amendments to § 39.12 would not impose costs on DCOs or swaps market participants, as they would not be clearing swaps through a DCO that does not accept swaps for clearing.

The Commission has considered the section 15(a) factors and believes that they are not implicated by these amendments.

12. Risk Management—§ 39.13

Regulation 39.13(b) requires a DCO to establish and maintain written policies, procedures, and controls, approved by its board of directors, which establish an appropriate risk management framework. The introductory heading to this provision states that it is a ''[d]ocumentation requirement.'' The Commission is replacing ''[d]ocumentation requirement'' with ''[r]isk management framework'' and replacing the words ''establish and maintain'' with ''have and implement.'' This has the benefit of making clear the existing requirement that a DCO is not only required to have a documented risk management framework but to put it into action. The Commission did not receive any comments on these changes. The Commission does not believe the amendments will impose any additional costs on DCOs, as it simply clarifies the existing requirement.

Regulation 39.13(f) requires a DCO to limit its exposure to potential losses from clearing member defaults to ''ensure'' that the DCO's operations would not be disrupted and non-defaulting clearing members would not be exposed to unanticipated or uncontrollable losses. Recognizing that

a DCO cannot ensure protection from that which it cannot anticipate, the Commission is amending § 39.13(f) by replacing ''ensure'' with ''reasonably designed to ensure,'' as suggested by commenters.

Specifically, FIA and ISDA requested that the Commission retain the original language because they stated that changing ''ensure'' to ''minimize the risk'' would increase the potential for non-defaulting clearing members to be exposed to uncapped liability. FIA and ISDA suggested revising the language to require that ''[a] derivatives clearing organization shall limit its exposure to potential losses from defaults by clearing members through margin requirements and other risk control mechanisms reasonably designed to ensure that . . . .''

The Commission notes that the change in § 39.13(f) clarifies, but does not alter a DCO's existing obligations under this provision. Therefore, the Commission believes that the amendments will not impose any additional costs on DCOs and will facilitate DCOs' compliance with the rule.

Regulation 39.13(g)(2)(i) requires that a DCO have initial margin requirements that are commensurate with the risks of each product and portfolio, including any unusual characteristics of, or risks associated with, particular products or portfolios. The regulation currently notes that such risks include but are not limited to jump-to-default risk or similar jump risk. The Commission proposed to amend § 39.13(g)(2)(i) to note that such risks also include ''concentration of positions.''

The Commission is amending § 39.13(g)(2)(i) to delete the existing requirement that such risks ''includ[e] but are not limited to jump-to-default risk or similar jump risk,'' and to remove the proposed reference to ''concentration of positions.'' The Commission is concerned that including and adding to a list of examples of types of risks might be interpreted to mean that a DCO does not have to consider risks not mentioned. The Commission reiterates that a DCO should consider a range of risks, including, for example, jump-to-default risk, concentration risk, correlation risk, and other risks associated with the particular products and portfolios it clears. The Commission notes that, by not enumerating the risks that should be considered, DCOs are given greater discretion with respect to how they identify, label, and address such risks. The Commission believes that this flexibility will benefit DCOs in complying with this provision, and notes that this change clarifies, but does not alter a DCO's existing obligations under this provision. Therefore, the Commission does not believe the amendments will impose additional costs on DCOs. To the extent that § 39.13(g)(2)(i) no longer includes a list of types of risks to be considered, a DCO may incur higher costs in accurately determining the types of risks that should be considered. The Commission did not receive comments on the costs associated with these amendments.

Regulation 39.13(g)(3) requires a DCO to have its systems for initial margin requirements reviewed and validated by a qualified and independent party on a regular basis. The Commission is revising this regulation to change ''on a regular basis'' to ''an annual basis.'' Additionally, § 39.13(g)(3) provides that an employee of the DCO may conduct such independent validations as long as they are not responsible for the development or operation of the systems and models being tested. The Commission is amending § 39.13(g)(3) to expand the pool of eligible employees to include employees of an affiliate of the DCO, which will provide DCOs with greater flexibility in selecting appropriate staff to conduct the validations. In addition, in response to commenters' suggestions, the Commission is amending § 39.13(g)(3) to specify that, where no material changes to the margin model have occurred, previous validations can be reviewed and affirmed as part of the annual review process.

The Commission believes that this amendment will benefit DCOs by providing greater flexibility and reducing their costs in obtaining an independent validation, while maintaining the independence of the validation and not otherwise reducing the benefits associated with the independent validation.

ICE expressed support for permitting employees of an affiliate of the DCO to conduct initial margin model validations. FIA and ISDA, however, requested that the Commission withdraw this proposal and instead require in a re-proposed rule that a qualified and independent third party conduct the validations. FIA and ISDA stated that employees that validate an initial margin model used by more than one affiliated DCO may not independently analyze whether the same model is appropriate for different products cleared by the affiliated DCOs. FIA and ISDA also noted that, to the extent that the inherent conflict of interest in model validation results in a compromised margin model, there will be costs to the clearing members, as well as the markets. The Commission believes it is appropriate to permit a DCO's employees or employees of an affiliate of the DCO to conduct the validations, provided they are not responsible for development or operation of the systems and models being tested (as required under § 39.13(g)(3)). Since § 39.13(g)(3) has been in place, the Commission has not encountered any issues with employees of a DCO conducting the validations; therefore, the Commission believes it is appropriate to permit employees of an affiliate of the DCO to conduct the validations. Having a third party conduct the validations may be more costly than having a DCO's employees or employees of an affiliate of the DCO conduct the validations.

Nodal commented that if the proposal requires annual validations of theoretical models, it would place an undue burden on certain DCOs due to the significant cost and time that would be involved in obtaining an independent validation for models that do not change from year-to-year. In response to Nodal's comment and similar suggestions by CME, FIA, and ISDA, the Commission is specifying in the final rule that where no material changes to the margin model have occurred, previous validations can be reviewed and affirmed as part of the annual review process. The Commission believes that this modification addresses Nodal's concerns about costs while ensuring the benefits of requiring DCOs to validate their margin models on an annual basis.

To be consistent with terminology used in other Commission regulations, the Commission in § 39.13(g)(4) is substituting the phrase ''conceptual basis'' for the phrase ''theoretical basis'' in the discussion of spread margin. The Commission received one comment in support of the proposed change, but did not otherwise receive comments on the costs associated with the change. The Commission does not believe the amendment will impose additional costs on DCOs, as it simply clarifies the existing requirement and does not alter the meaning of the rule.

The Commission is adopting new § 39.13(g)(7)(iii) to clarify that, in conducting back tests of initial margin requirements, a DCO should compare portfolio losses only to those components of initial margin that capture changes in market risk factors. This change is expected to ensure that back testing of a DCO's initial margin model is more appropriately calibrated.

The Commission did not receive any comments on the costs associated with the proposal. Commenters disagreed with which elements should be

included when back testing initial margin requirements. ICE commented that all margin model charges and add-ons should be included, whereas SIFMA AMG supported the proposal, stating that margin add-ons should not be included when back testing. The Commission considered the costs and benefits between these two alternatives. The Commission believes that DCOs and the markets they serve benefit from accurate back testing, as it helps to ensure that a DCO has collected sufficient margin to meet its coverage requirement, and that comparing portfolio losses only to components of initial margin that capture changes in market risk factors reduces the likelihood of misrepresenting the actual margin coverage produced by a DCO's models, as the inclusion of other components may result in margin breaches going undetected. Moreover, the Commission notes that back testing without charges and add-ons is also easier and more time- and cost-effective.

Regulation 39.13(g)(8)(i) requires a DCO to collect initial margin on a gross basis for each clearing member's customer account(s). The Commission is amending § 39.13(g)(8)(i) to permit a DCO to collect customer initial margin from its clearing members on a gross basis only during its end-of-day settlement cycle. The Commission did not receive any comments on the costs associated with the proposal, and does not believe the amendments would impose any additional costs on DCOs. The Commission believes that DCOs will benefit from the amendment because it clarifies when a DCO is required to collect customer initial margin, and it provides DCOs with more flexibility in meeting the requirements in light of the operational issues that may arise intraday.

The Commission is adopting amendments to § 39.13(g)(8)(i)(B) to require a DCO to have rules that require its clearing members to provide reports to the DCO each day setting forth end-of-day gross positions of each individual customer account within each customer origin of the clearing member. In response to an industry comment about the burden of DCOs maintaining customer-level records, the final rule requires that the daily reports specify positions of ''each individual customer account'' instead of ''each beneficial owner,'' as originally proposed. In addition, the Commission is clarifying that a DCO shall have rules that require only its clearing members to provide the specified reports to the DCO.

The Commission received two comments on the costs and benefits associated with the proposed amendments. ICE noted the benefit of additional transparency associated with reporting customer-level information, but asked that the Commission consider the costs to clearing members and DCOs of developing new operational systems and procedures that the proposal would necessitate, and consider ways to phase in any new requirements to allow for the necessary development of new operational systems and procedures, at both the DCO and clearing member levels. OCC stated that the proposal would introduce a significant shift in the burden to maintain customer-level records from FCMs and introducing brokers to a DCO. OCC also questioned the benefits of the proposal, stating that, because virtually every FCM clears through multiple DCOs, requiring a DCO to collect and report customer-level information to the Commission does not in fact allow the Commission to appropriately understand the risks associated with individual customers without further aggregating the data that various DCOs receive from an individual FCM. OCC represented that it and its clearing members would need to make significant operational changes to obtain this information and report it daily, and OCC would need to make corresponding rule changes.

The Commission believes that these changes provide additional transparency, as identified by ICE, and the Commission has further modified § 39.13(g)(8)(i)(B) to address the costs identified in the comments received by the Commission.

Regulation 39.13(g)(8)(ii) provides that a DCO must require its clearing members to collect customer initial margin from their customers, for non-hedge positions, at a level that is greater than 100 percent of the DCO's initial margin requirements with respect to each product and swap portfolio. Consistent with the Division of Clearing and Risk's 2012 interpretation on customer margining, the Commission is adopting revisions to § 39.13(g)(8)(ii) to permit DCOs to continue the practice of establishing customer initial margin requirements based on the type of customer account and by applying prudential standards that result in FCMs collecting customer initial margin at levels commensurate with the risk presented by each customer account. The Commission is also adopting additional clarifying revisions to state that the DCO shall have reasonable discretion in determining clearing initial margin requirements for products or portfolios and whether and by how much customer initial margin requirements for categories of customers determined to have heightened risk profiles by their clearing members must exceed, at a minimum, the DCO's clearing initial margin requirements by a standardized amount, because the Commission believes that this better articulates the DCO's obligations. The Commission further confirms that the changes to § 39.13(g)(8)(ii) are not intended to shift the burden of determining the appropriate level of additional customer margin from clearing members to the DCO, but instead, are intended to clarify existing requirements. To the extent that the changes clarify existing requirements, the Commission believes that it will not impose additional costs on DCOs, but that DCOs will benefit from regulatory clarity.

OCC and ICE supported the proposed changes to § 39.13(g)(8)(ii), noting that DCOs will benefit from additional discretion in determining the percentage by which customer initial margin requirements must exceed the DCO's clearing initial margin requirements. CME supported codification of the 2012 interpretation on customer margining, but was concerned that the proposed changes to § 39.13(g)(8)(ii) would shift the burden of determining the appropriate level of additional customer margin from FCM clearing members to DCOs, and proposed edits to address the issue. FIA and ISDA commented that the proposed change to customer initial margin requirements may impose an operationally impractical regime for clearing members to collect initial margin from customers.

Regulation 39.13(g)(12) requires a DCO to apply appropriate reductions in value to reflect credit, market, and liquidity risks (haircuts), to the assets that it accepts in satisfaction of initial margin obligations. This provision also requires a DCO to evaluate the appropriateness of the haircuts ''on at least a quarterly basis.'' Regulation 39.11(d)(1) requires that haircuts be evaluated on a monthly basis for assets that are used to meet the DCO's financial resources obligations set forth in § 39.11(a). The Commission is adopting amendments to § 39.13(g)(12) to align it with § 39.11(d)(1) by requiring that DCOs evaluate the appropriateness of the haircuts that they apply to assets accepted in satisfaction of initial margin obligations on a monthly basis.

While LCH questioned the benefit of the proposal, suggesting that haircuts may not significantly change on a monthly basis, FIA and ISDA disagreed, noting that the value of assets held for initial margin can change frequently. In addition, the changes will align the § 39.13(g)(12) requirement with the § 39.11(d)(1) standard that DCOs are

required to use to meet their financial resources obligations. The Commission believes that this harmonization will reduce the cost of regulatory compliance and that DCOs will benefit from an enhanced ability to risk manage with more frequently calibrated haircuts.

Regulation 39.13(h)(1)(i) requires a DCO to impose risk limits on each clearing member, by house origin and by each customer origin, in order to prevent a clearing member from carrying positions for which the risk exposure exceeds a specified threshold relative to the clearing member's and/or the DCO's financial resources. The Commission proposed to clarify that such risk limits should also be imposed to address positions that may be difficult to liquidate.

The Commission has determined not to adopt the proposed changes to § 39.13(h)(1) at this time, but will continue to consider this issue further. The Commission remains concerned about positions that may be difficult to liquidate, particularly concentrated positions. However, the Commission believes that DCOs should address difficult–to-liquidate positions using the DCO's margin methodology and consider whether and what other measures may be appropriate. The comments received from OCC, FIA, ISDA, and LCH in this regard have contributed to the Commission's decision.

Regulation 39.13(h)(5)(ii) requires a DCO to, on a periodic basis, review the risk management policies, procedures, and practices of each of its clearing members, which address the risks that such clearing members may pose to the DCO, and to document such reviews. The Commission is adopting an amendment to § 39.13(h)(5)(ii) to clarify that DCOs should, having conducted such reviews, take appropriate actions to address concerns identified in such reviews, and that the documentation of the reviews should include the basis for determining what action was appropriate to take.

The Commission did not receive any comments on the costs associated with the proposed amendments. However, ICE, FIA, and ISDA questioned the benefits of the rule, while LCH supported the change. FIA and ISDA stated that the proposal is unnecessary, and ICE suggested that such supervision should instead be conducted at the DSRO level.

The Commission believes that there may be incremental costs associated with requiring DCOs to address concerns identified in reviews of their clearing members' risk management policies. In response to ICE's suggestion that clearing member risk reviews should be conducted by a DSRO, the Commission notes that not all clearing members are subject to the supervision of a DSRO. Finally, the Commission disagrees with FIA and ISDA's comment that the proposed amendments are unnecessary. As the Commission stated in the Proposal, absent such follow-up, the reviews would lack purpose.

The Commission is codifying its existing practices for evaluating cross-margining programs in new § 39.13(i), which requires a DCO that seeks to implement or modify a cross-margining program with one or more other clearing organizations to submit rules for Commission approval pursuant to § 40.5. However, the Commission is not adopting the proposed requirement that a DCO provide, at a minimum, specific information needed to facilitate the Commission's review of the rule filing. Rather, the Commission is requiring that a DCO submit information sufficient for the Commission to understand the risks that would be posed by the program and the means by which the DCO would address and mitigate those risks. The Commission believes that leaving it to the discretion of the DCO to determine what information to provide, yet giving the Commission the ability to request any additional information it may need to conduct its review of a cross-margining program, is appropriate given that cross-margining programs can vary greatly, depending on the products, participants, and clearing organizations involved.

The Commission received comments on the costs and benefits associated with the proposed amendments from OCC, FIA, and ISDA. OCC opposed the proposal to require a DCO to provide specific types of information, arguing that it would reduce the Commission's flexibility to determine what types of information are necessary for it to review in specific circumstances. OCC suggested that a DCO should not be required to provide each of the specified types of information when it is requesting the Commission's approval to update an existing cross-margining program, where analyzing factors unrelated to the change for which it is requesting approval would create an unnecessary burden. OCC suggested that instead the Commission should issue guidance on what information it may require in its review of a cross-margining program. OCC further requested that, should the Commission nonetheless choose to require specific types of information in proposed § 39.13(i), the information should only be required when the Commission reviews a new cross-margining program and not when the Commission reviews changes to an existing cross-margining program. OCC also suggested that DCOs should be able to submit a cross-margining program under either § 40.5 or § 40.6(a), and requested that the Commission only apply the § 40.5 review process to a new cross-margining program.

FIA and ISDA recommended that the Commission consider including in its evaluation the credit and liquidity risk management, and settlement and default management-related principles identified in the PFMIs to increase transparency and improve the ability of clearing members to manage the risks associated with positions subject to cross-margining. Because the Commission did not propose this requirement, it cannot adopt it at this time but may consider it in conjunction with a future rulemaking.

In response to OCC's comment about the costs associated with DCOs including specified information in a § 40.5 in this regard, the Commission is modifying the rule text to remove the specific information that should be included, but is retaining the rule text stating that the Commission may request additional information in support of a rule submission filed under § 39.13(i), and may approve such rules in accordance with § 40.5. The Commission is declining to take OCC's recommendation to include the specified information as guidance. The Commission believes that the information that a DCO should submit is dependent on the facts and circumstances and that the specified information as proposed may be inadequate. The Commission also acknowledges OCC's observation that some of the specified information may not be necessary in some situations. Were the Commission to adopt instead OCC's suggestion to include the specified information as guidance, DCOs might rely upon the guidance to their detriment and incur costs associated with preparing unnecessary information to include in their request for approval under § 40.5. The Commission is also declining to permit DCOs to submit cross-margining programs or modifications to cross-margining programs under § 40.6. Because cross-margining programs involve two or more clearing organizations' rules and operations, they are too complex to be evaluated within the 10 business days provided under § 40.6, which is why they historically required approval by the Commission. The Commission also believes that a rule submission for an existing cross-margining program can raise as many

issues as a rule for a new cross-margining program. Had the Commission adopted OCC's suggestion to permit DCOs to file under § 40.6, DCOs would not have experienced any increase in costs. However, the Commission believes that the approval process provides some assurance to market participants that a DCO is adequately managing its risks with a cross-margining program. The Commission also believes that the § 40.5 process would not necessarily place additional costs on DCOs due to the longer review period. The Commission may expedite a § 40.5 review period and, in contrast, may stay a § 40.6 self-certification for a 90-day period. For the reasons discussed above, the Commission is also declining to add the specified information FIA and ISDA suggested.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) of the CEA, the Commission believes that the amendments to § 39.13 will aid in the protection of market participants and the public by enhancing certain risk management requirements of DCOs. For example, amendments to § 39.13(g)(12) will require DCOs to increase the frequency by which they evaluate the appropriateness of haircuts that they apply to initial margin collateral. Given that initial margin is held for risk management purposes, assessing haircuts more frequently would enhance a DCO's ability to manage its risks. In addition, the amendments to § 39.13 will help preserve the efficiency and financial integrity of the derivatives markets by enhancing certain risk management requirements of DCOs. For example, the amendments to § 39.13(g)(7)(iii), which clarify that in conducting back tests of initial margin requirements, a DCO should compare portfolio losses only to those components of initial margin that capture changes in market risk factors, may help to ensure that a DCO can more accurately confirm that it is collecting sufficient margin to meet its coverage requirements. The Commission also believes that the amendments to § 39.13 will strengthen and promote sound risk management practices across DCOs, their clearing members, and clearing members' customers. Specifically, the amendments enhance, clarify, and provide flexibility in complying with several DCO risk management requirements, which will aid DCOs in efficiently allocating their risk management attention and resources. Finally, in consideration of section 15(a)(2)(E) of the CEA, the Commission notes the public interest in promoting and protecting public confidence in the safety and security of the financial markets. DCOs are essential to risk management in the financial markets, both systemically and on an individual firm level. The amendments, by enhancing, clarifying, and providing flexibility beyond current requirements, promote the ability of DCOs to perform these risk management functions. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

13. Treatment of Funds—§ 39.15

The Commission is amending § 39.15(b)(1) to clarify that ''funds and assets'' are equivalent to ''money, securities, and property,'' to better align the language of § 39.15(b)(1) with the language in the CEA. Furthermore, § 39.15(b)(2)(ii) requires a DCO to file a petition for an order pursuant to section 4d(a) of the CEA in order for the DCO and its clearing members to commingle customer positions in futures, options, and swaps in a futures customer account subject to section 4d(a) of the CEA.

The Commission is amending § 39.15(b)(2)(ii) to permit a DCO to file rules for Commission approval pursuant to § 40.5 in order for the DCO and its clearing members to commingle such positions. This better aligns the requirements of § 39.15(b)(2)(ii) with § 39.15(b)(2)(i), which requires a DCO that wants to commingle futures, options, and swaps in a cleared swaps customer account to file rules for Commission approval.

Regulation 39.15(d) requires a DCO to have rules providing for the prompt transfer of all or a portion of a customer's portfolio of positions and related funds at the same time from the carrying clearing member to another clearing member, without requiring the close-out and re-booking of the positions prior to the requested transfer. Based on feedback received from DCOs, the Commission is amending § 39.15(d) to delete the words ''at the same time,'' thus requiring the ''prompt,'' but not necessarily simultaneous, transfer of a customer's positions and related funds. The Commission is further amending this provision to require the transfer of related funds ''as necessary,'' recognizing that the transfer of customer positions will not always require the transfer of funds.

The Commission is amending § 39.15(e), which relates to permitted investments of customer funds, to clarify that the regulation applies to any investment of customer funds or assets, including cleared swaps customer collateral, as defined in § 22.1. At the time § 39.15(e) was adopted, the Commission had not yet adopted regulations concerning cleared swaps customer funds but intended for § 39.15(e) to also apply to those funds. This change ensures that cleared swaps customer collateral will receive the same safekeeping as other funds and assets invested by DCOs and would reflect the Commission's intent.

The Commission did not receive any comments on the costs and benefits of the proposed changes.

This approach will reduce the burden on DCOs while providing the Commission with sufficient means to determine whether the customer funds will be adequately protected. The Commission believes the amendments to § 39.15(b)(2)(ii) will streamline the procedures for a request to commingle customer funds. As discussed above, the amendment may potentially reduce costs for DCOs that would otherwise have to petition the Commission for an order providing relief from section 4d of the CEA in order to commingle such customer funds.

Amendments to § 39.15(d) were meant to reflect common practice and provide greater flexibility to DCOs in transferring positions and funds. The Commission also notes that simultaneous transfer of funds may not be possible when a third party is involved, hence bringing further clarification to the rule. Amendments to § 39.15(e) also benefits customers as, under the new rules, their collateral will receive the same safekeeping as other funds and assets invested by DCOs.

The Commission expects costs related to amendments to § 39.15 to be de minimis. To the extent that amendments to § 39.15(b)(2)(ii), which requires a DCO to file rules for Commission approval pursuant to § 40.5, is more costly than what DCOs are currently required to file, there might be additional costs to DCOs. The Commission does not believe these additional costs will be significant.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) of the CEA, the Commission believes that the amendments to § 39.15 will aid in the protection of market participants and the public, specifically customers of clearing members, by providing clarity on several requirements related to the

treatment of customer funds, including with respect to the transfer of customer positions and funds under § 39.15(d). The Commission notes that amendments to § 39.15(e) also make sure that customers' collateral will receive the same safekeeping as other funds and assets invested by DCOs, again furthering protection of market participants and the public. Moreover, the amendments will promote efficiency in the derivatives markets by streamlining the procedures for a request to commingle customer funds, as DCOs will be able to file rules for Commission approval whether requesting to commingle customer funds in a futures or cleared swaps customer account. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

14. Default Rules and Procedures—§ 39.16

The Commission is amending § 39.16(b) to require a DCO to include clearing members and participants in an annual test of its default management plan to the extent the plan relies on their participation. Although the Commission did not receive comments specifically addressing the costs or benefits associated with these amendments, commenters generally suggested that DCOs should be given greater flexibility and discretion in the extent to which clearing members participate in tests of a DCO's default management plan. As a result, the Commission is modifying the language in the final regulation to require participation of clearing members and participants to add the phrase ''to the extent the plan relies on their participation.'' This change is intended to provide greater flexibility to DCOs while promoting participation in testing and ensuring that clearing members and participants are prepared in the event of a default. To comply with this requirement, a DCO may incur costs to coordinate clearing members' participation. However, the Commission believes that many DCOs already involve clearing members in their tests as a matter of best practice. The Commission believes that greater flexibility in this regard would have no detrimental impact on the benefits anticipated from, and may alleviate some of the costs associated with, clearing member participation in testing of a DCO's default management plan.

The Commission has determined not to finalize at this time a proposal to amend § 39.16(c)(1) to require a DCO to establish a default committee, but may re-propose the rule in the future. The default committee would have been required to include clearing members and could have included other participants, and would be convened in the event of a default involving substantial or complex positions to help identify any market issues that the DCO is considering. Commenters' views were mixed, with several commenters opposing the proposal and others supporting it. Opposing comments noted costs associated with reduced efficiency of the default management process.

For example, CME believes the proposal to require a default committee and clearing member participation on that committee risks unnecessarily prolonging and overcomplicating the default management process. CME further indicated that the proposed requirements could trigger resource scarcity at clearing members precisely when trading expertise is most needed—*i.e.,* in a stress event surrounding a clearing member default. FIA and ISDA supported the proposal but recommended that clearing member participation on default management committees be voluntary (with the decision on whether to participate being left to each clearing member) rather than mandatory. Nodal commented that requiring a DCO to have a default committee that includes clearing members or other participants is not likely to assist in efficiently managing the positions of the defaulting member; instead, it would add unnecessary complexity to what is already an efficient process. Nodal further believes that clearing members on a default committee could create the potential for conflicts for any clearing member or participant selected, as well as introduce an element of self-interest or potential gaming within the decision-making of the default procedure and response.

Mr. Saguato supported the proposal to have clearing member and customer participation on a DCO's default committee. Mr. Saguato suggested that the Commission explore the costs and benefits of further increasing and formalizing the role of clearing members and their customers in the default process, as Mr. Saguato believes clearing members should have a primary role in setting default procedures. In light of the strong divergence in the views expressed in the comments received, the Commission has determined to forego adopting the proposed changes to § 39.16(c)(1) at this time. The Commission wishes to give industry stakeholders holding these divergent views time to come closer to consensus on this issue.

As to Mr. Saguato's suggestion, the Commission will explore such costs and benefits if it moves forward with another proposed rulemaking on this issue. As to CME's comment that the proposal to require a default committee and clearing member participation on that committee risks unnecessarily prolonging and overcomplicating the default management process, the Commission notes that the proposed rule would have had the benefit of helping to ensure that clearing members and participants have input into the default management process and that the interests of clearing members and participants are considered in default management decisions.

Furthermore, the Commission is requiring in § 39.16(c)(2)(ii) that a DCO's default procedures include public notice on the DCO's website of a declaration of default. The Commission believes that such notice should occur as quickly as possible, taking into account the potential negative impact that it might have on the ability of the DCO to manage the default, but did not specify timing in the final rule. The Commission's proposal would have required immediate public notice of a default, but the Commission modified the proposal in light of comments in opposition to the requirement that such notice be immediate and suggestions by commenters that DCOs have flexibility in the manner and timing of these notices. Commenters did generally support providing public notice of a clearing member's default with that modification. For example, MGEX generally agreed that public notice of a default is vital for promoting the integrity and stability of financial markets; however, MGEX suggested that the Commission give DCOs some discretion with respect to the timing of posting such notice, which would allow DCOs to take into consideration the nature of the default and any circumstances warranting flexibility. CME believes mandatory immediate public notification runs the risk of causing disadvantageous pricing for liquidation or auctions, which could increase the costs to the DCO of managing the clearing member default, and if losses are incurred, could ultimately increase the risk of mutualizing losses among its clearing members. OCC, ICE, FIA, ISDA, Eurex, and Nodal indicated that immediate public notice could potentially impact the market and the DCO's ability to manage the default. Similarly, Mr. Saguato added that requiring immediate public notice of a declaration of default is unnecessary and potentially

counterproductive to an effective default management process and should not be adopted as proposed.

The Commission believes that providing public notice of a default will help to promote the integrity and stability of financial markets at little cost to DCOs and will avoid the potential costs described by commenters associated with immediate public notice.

Lastly, § 39.16(c)(2)(iii)(C) requires any allocation of a defaulting clearing member's positions to be proportional to the size of the participating or accepting clearing member's positions in the same product class at the DCO. The Commission is amending this provision to clarify that a DCO may not require a clearing member to bid for a portion of, or accept an allocation of, the defaulting clearing member's positions that is not proportional to the size of the bidding or accepting clearing member's positions in the same product class at the DCO. The Commission did not receive comments on the costs or benefits of the proposed changes. The Commission did receive, however, comments that were opposed to the aspect of the proposed rule that would have required DCOs to use initial margin requirement as the basis for determining limits on potential bidding and allocation requirements. Therefore, the Commission is modifying the proposed change to not require the use of initial margin requirement as the metric in this regard. The final rule will ensure that clearing members have the flexibility, but not the requirement, to participate in auctions and allocations beyond the proportional size of their respective positions, while providing DCOs with discretion in measuring the size of clearing members' portfolios for purposes of determining limits on potential bidding and allocation requirements. The Commission has not identified any costs associated with this change.

As to the costs and benefits in light of the section 15(a) factors, in consideration of section 15(a)(2)(A) of the CEA, the Commission believes that the amendments to § 39.16(c)(2)(ii) to require that a DCO have default procedures that include public notice on the DCO's website of a declaration of default will aid in the protection of market participants and the public by ensuring public notice of a default. In further consideration of section 15(a)(2)(A) of the CEA, the Commission believes the amendments to § 39.16(c)(2)(iii)(C) regarding the allocation of a defaulting clearing member's positions will protect clearing members from involuntarily having to bid on or accept defaulting positions that are not in proportion to the size of their positions in the relevant product class, while also providing clearing members with the flexibility to voluntarily bid on or accept more than a proportional share of the defaulting positions if that clearing member has the ability to manage the risk of those new positions. In consideration of section 15(a)(2)(B) and (D) of the CEA, the Commission believes the amendments to § 39.16(b) support the financial integrity of the derivatives markets and promote sound risk management practices by requiring DCOs to have greater clearing member participation in a test of their default management plans to the extent appropriate and ensure that clearing members are permitted, but not required, to bid on or accept defaulting positions that are not in proportion to the size of their positions in the relevant product class. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

15. Rule Enforcement—§ 39.17

Regulation 39.17(a) codifies Core Principle H, which requires a DCO to maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and dispute resolution. The Commission is making a technical change to § 39.17(a)(1) to emphasize that a DCO is required to monitor and enforce compliance by both itself and its members with the DCO's rules. The Commission also is amending § 39.17(b), which permits a DCO's board of directors to delegate its responsibility for compliance with the requirements of § 39.17(a) to the DCO's risk management committee, to allow a DCO to delegate such responsibility to a committee other than the risk management committee. While ICE supported the proposed amendments, there were no comments related to the costs or benefits of these changes. The Commission is adopting the amendments as proposed.

The amendment to § 39.17(a)(1) will help clarify DCOs' responsibilities but is otherwise non-substantive, while the amendment to § 39.17(b) will allow DCOs more discretion in delegating the compliance function to the most appropriate committee.

The Commission does not believe the amendments to § 39.17(a)(1) or (b) will impose any additional costs on DCOs or their members because the changes are technical in nature.

ICE suggested that the Commission should consider permitting a DCO's board to broaden the delegation of this responsibility to the president of the DCO or an equivalent officer. The Commission declines to adopt ICE's suggestion at this time; the Commission may consider it in a future proposal where comment could be sought and the costs and benefits could be considered.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes that the amendments to § 39.17 will promote sound risk management practices by emphasizing the importance of compliance with DCO rules and by providing DCOs with additional flexibility in structuring their governance arrangements. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

16. Reporting—§ 39.19

Regulation 39.19 implements Core Principle J, which requires that each DCO provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the DCO. The Commission is adopting several amendments to § 39.19 to add new requirements, clarify certain existing requirements, and incorporate other changes to part 39 via updated cross-references and other technical amendments. The purpose of the amendments to § 39.19 is to assist DCOs by centralizing many of their ongoing reporting requirements into § 39.19, and by providing additional detail with respect to certain requirements. The Commission also is adopting additional reporting requirements to enhance Commission oversight of DCOs' compliance with the Core Principles and Commission regulations.

The amendments to § 39.19 may be divided into two groups to facilitate consideration of the costs and benefits associated with these changes. The first group of changes consists of the changes to § 39.19 that clarify existing reporting requirements and, in certain instances, incorporate into § 39.19 reporting requirements previously contained elsewhere within part 39. The Commission believes that the costs and benefits associated with this group of changes are minimal because, as noted above, these changes do not alter the substantive reporting obligations of DCOs. The second group of changes consist of new requirements under the daily reporting requirements in

§ 39.19(c)(1)(i) and event-specific reporting requirements in § 39.19(c)(4).

The Commission is amending the daily reporting requirements of § 39.19(c)(1)(i)(A) through (C) to require that DCOs report margin, cash flow, and position information by individual customer account, in addition to the existing requirement that DCOs report this information by house origin and customer origin. The Commission also is amending § 39.19(c)(1)(i)(D) to require that, with respect to end-of-day position information, DCOs must report the positions themselves (*i.e.,* the long and short positions) as well as risk sensitivities and valuation data for these positions.[69] Lastly, the Commission is amending § 39.19(c)(1)(i)(D) to require DCOs to provide any legal entity identifiers and internally-generated identifiers associated with individual customer accounts, to the extent that the DCO possesses such information.

This information, individually and in aggregate, will assist the Commission in identifying customer positions across clearing members and DCOs. Analyzing positions at the customer level is a crucial element of an effective risk surveillance program, and incorporating risk sensitivities and valuation data into position information better informs Commission staff of the assumptions embedded in the position information. Identifying customers whose positions create the most risk to a DCO's clearing members assists the Commission in determining whether adequate measures are in place to address those risks and whether the Commission needs to take proactive steps to see that those risks are mitigated, thereby enhancing the protections afforded to the markets generally. The Commission believes that enhancing the supervision of DCOs and clearing members, especially identifying and mitigating the risks that individual customers and clearing members may present to a single DCO or to multiple DCOs, will result in increased safety and soundness of the markets, which will benefit DCOs, clearing members, and market participants.

The Commission believes DCOs may incur costs associated with these amendments, although not substantial costs. Several commenters expressed concern regarding the burden associated with reporting this information. All of the concerns were of a general nature; no commenter provided quantification of the additional burdens that this requirement would impose. In fact, as noted above, DCOs already are reporting this information, subject to existing technological and operational limitations. In response to comments, the Commission modified the rule text to clarify that it is not requiring DCOs to calculate risk sensitivities or valuation data on behalf of the Commission, or to obtain legal entity identifiers from clearing members. Lastly, with respect to daily reporting requirements, as explained above, DCOs already report most of this information. Because staff guidance regarding the format and manner of this reporting is periodically updated, there may be costs associated with making technical changes to accommodate these updates. The Commission notes that any costs associated with complying with new or modified technical specifications for data intake would be borne by the DCOs irrespective of the amended daily reporting requirements.

The other set of new reporting requirements are the event-specific reporting requirements that the Commission is adding to § 39.19(c)(4), including: a decrease in liquidity resources in § 39.19(c)(4)(ii); a legal name change in § 39.19(c)(4)(xi); a change in any liquidity funding arrangement in § 39.19(c)(4)(xiii); a change in settlement bank arrangements in § 39.19(c)(4)(xiv); a change in the DCO's fiscal year in § 39.19(c)(4)(xix); a change in the DCO's accounting firm in § 39.19(c)(4)(xx); major decisions of the DCO's board in § 39.19(c)(4)(xxi); and issues with a DCO's margin model in § 39.19(c)(4)(xxiii) or settlement bank in § 39.19(c)(4)(xv). The Commission believes it is important for it to be notified of these events due to their potential impact on a DCO's operations.

The Commission expects that the cost burden associated with the changes to the event-specific reporting requirements under § 39.19(c)(4) will not be substantial. First, the events that would trigger such reporting do not occur very often. Additionally, where reporting is required under § 39.19(c)(4), the level of detail a DCO is required to provide is limited to a brief notice with only the pertinent details of the incident or event. Although commenters expressed the view generally that the event-specific reporting requirements were unnecessarily burdensome, especially with regard to the anticipated frequency of certain reportable events, no commenter quantified any burdens associated with any of the new event-specific reporting requirements. Nevertheless, as explained above, the Commission modified several of the event-specific reporting requirements to address commenters' concerns. These modifications include, for example, limiting reporting of margin model issues to those that are ''material,'' limiting instances that would require notification to the Commission regarding settlement bank arrangements, and extending the deadline to report changes to a DCOs independent accounting firm.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) and (D) of the CEA, the Commission believes that the amendments to § 39.19 promote the protection of market participants and the public and contribute to sound risk management practices by providing the Commission with timely information that is critical to its risk surveillance efforts. Also, in consideration of section 15(a)(2)(D) of the CEA, the Commission believes that requiring DCOs to provide notice to the Commission of certain additional events under § 39.19, such as a decrease in liquidity resources, settlement bank issues, and margin model issues, could further incentivize DCOs to avoid those risks, or to mitigate them more effectively if they do occur. Additionally, event-specific reporting will enhance the Commission's ability to identify trends or changes in market conditions, whether within the operations of a particular DCO, across DCOs, or in the marketplace generally, and to develop an appropriate supervisory response. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

17. Public Information—§ 39.21

The Commission is amending the public reporting requirements of § 39.21 to require that DCOs make each of the items of information listed in proposed § 39.21(c)[70] available separately on the DCO's website instead of merely including them in the DCO's rulebook. This would assist DCOs' current and prospective clearing members and the general public in locating the relevant

[69] The Commission estimates for PRA purposes that there would be an increase in the burden incurred by DCOs, as discussed in section X.B.2 above.

[70] Regulation 39.21(c) requires a DCO to disclose publicly and to the Commission information concerning: (1) The terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO; (2) each clearing and other fee that the DCO charges its clearing members; (3) the margin-setting methodology; (4) the size and composition of the financial resource package available in the event of a clearing member default; (5) daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the DCO; (6) the DCO's rules and procedures for defaults in accordance with § 39.16; and (7) any other matter that is relevant to participation in the clearing and settlement activities of the DCO.

information. Furthermore, § 39.21(c)(4) requires a DCO to publicly disclose the size and composition of its financial resource package available in the event of a clearing member default. To address questions concerning how often this information must be updated, the Commission is amending § 39.21(c)(4) to clarify that it should be updated quarterly, consistent with § 39.11(f)(1)(i)(A), which requires a DCO to report this information to the Commission each fiscal quarter. This change will assist DCOs in complying with this requirement, while ensuring consistent and timely disclosure to the public. The Commission noted in the Proposal that because the proposed amendments to § 39.21 merely require a DCO to separately make public information that would otherwise be made public in its rulebook, the Commission anticipated any additional costs to DCOs would be minimal.

The Commission did not receive any comments on the costs of the amendments to § 39.21. One commenter, MGEX, recommended that the Commission explicitly acknowledge that a DCO's publication of its Quantitative Disclosure, which subpart C DCOs are already required by § 39.37 to make available each quarter, fulfills the requirement of § 39.21(c)(4). The Commission is adopting § 39.21(c)(4) and is not adopting MGEX's suggestion. The Commission believes that the cost of separately disclosing information on the DCO's financial resources in the event of a default is minimal.

The Commission believes that the amendments to § 39.21 will benefit market participants and the public by making sure that important information regarding DCOs' operations is up-to-date, complete and easily accessible.

The Commission believes costs associated with the amendments to § 39.21 to be minimal because the amendments require a DCO to separately make public information that would otherwise be made public in its rulebook. The Commission also believes that the cost of separately disclosing information on the DCO's financial resources in the event of a default is minimal.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A), (B), and (D) of the CEA, the Commission believes that the amendments to § 39.21 would enhance existing protection of market participants and the public; promote the efficiency and financial integrity of the derivatives markets; and aid in sound risk management practices by ensuring that key public information about the DCO's operations is readily accessible, complete, and current. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

18. Governance Fitness Standards, Conflicts of Interest, and Composition of Governing Boards—§§ 39.24, 39.25, and 39.26

The Commission is removing § 39.32, which sets forth requirements for governance arrangements for SIDCOs and subpart C DCOs, and adopting new §§ 39.24, 39.25, and 39.26, which incorporates all of the requirements of § 39.32. Therefore, all DCOs, including SIDCOs and subpart C DCOs, are subject to the same governance fitness standards, conflict of interest requirements, and board composition requirements, which most DCOs already meet in order to be considered a QCCP. This gives DCOs clear direction on how to comply with Core Principles O, P, and Q,[71] the only DCO Core Principles for which the Commission has yet to adopt implementing regulations. Further, consistent with Core Principle Q, new § 39.26 requires a DCO's governing board or board-level committee to include market participants. The Commission is specifying that market participants' inclusion is required on the DCO's governing board or governing committee, *i.e.,* the group with the ultimate decision-making authority. This avoids ambiguity and provides DCOs with greater clarity.

CME commented that it has benefited from having a board of directors, oversight committee, and risk committees consisting of a variety of market participants with differing views and expertise. CME also appreciated the Commission taking a principles-based approach by allowing each DCO to determine the best representation of market participants for its governing board or committee for its risk management governance purposes, while also allowing each DCO to continue to comply with relevant state and securities laws. Mr. Barnard said the governance standards in §§ 39.24, 39.25, and 39.26 will enhance risk management and governance, thus further improving the protection for market participants and the public. Mr. Saguato agreed with the benefits of a multi-stakeholder representation at the board level of a DCO and a more direct engagement of market participants in the governance and supervision of DCOs.

Incorporating the requirements of § 39.32 to new §§ 39.24, 39.25, and 39.26 ensures that all DCOs, including SIDCOs and subpart C DCOs, will be subject to the same governance fitness standards, conflict of interest requirements, and board composition requirements. To the extent some DCOs were not already meeting these standards, this change benefits markets and market participants by improving the governance fitness standards and avoiding conflicts of interest for DCOs operating in those markets. This change also benefits DCOs by giving them clear direction on how to comply with Core Principles O, P, and Q. Furthermore, § 39.26 will require that a DCO's governing board or committee include market participants, which will benefit DCOs and markets by enhancing risk management and governance decisions through inclusion of various stakeholders in a DCO's governing board or governing committee.

The Commission believes that DCOs may incur costs to comply with the requirements in §§ 39.24, 39.25, and 39.26, to the extent they are not already doing so. However, the Commission notes that some DCOs must already comply with these standards and will not face incremental costs. The Commission further believes that non-U.S. DCOs that are neither SIDCOs nor subpart C DCOs are generally held to similar requirements by their home country regulators and would also not incur additional costs.

As an alternative, ICE suggested that DCOs should have the flexibility to consider the means for providing market participant representation best suited to its business. Nadex commented that fully collateralized, non-intermediated DCOs should be exempt from compliance with proposed §§ 39.24 and 39.26 as the solicitation of retail individuals, like those of Nadex's market participants, would not likely provide significant value as compared with the burden and cost of reviewing such responses and could hinder the efficient operation of Nadex's board. Nadex noted that its market participants are not industry professionals, are not familiar with the DCO's internal operations in the same way that FCMs and other sophisticated members are familiar with ''traditional'' DCOs' business and operations, do not have an ownership interest or financial stake in the DCO or its default waterfall, and therefore, are not as substantially involved in the DCO's governance.

[71] Core Principles O, P, and Q respectively address governance arrangements, conflicts of interest, and composition of governing boards.

The Commission has considered the alternative suggested by commenters and notes that the requirement to include market participants on a DCO's governing board or committee is a statutory requirement under Core Principle Q. Additionally, the Commission believes that the alternatives suggested by commenters could permit a DCO to create a lower-level committee that does not have the same decision-making authority as its board or board-level committee, which would weaken the benefits described herein.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. Although the Commission believes that most, if not all, DCOs already comply with these requirements, to the extent they do not, the Commission believes the adoption of §§ 39.24, 39.25, and 39.26 would improve DCO risk management practices by promoting transparency of governance arrangements and making sure that the interests of a DCO's clearing members and, where relevant, their customers are taken into account. This would further enhance the protection of market participants and the public and the financial integrity of the derivatives markets. The Commission also believes that the required inclusion of market participants will enhance a DCO's sound risk management practices, as the inclusion of the DCO's market participants could provide a DCO's board of directors or board-level committee with additional derivatives product knowledge and risk management expertise. The Commission further believes that this amendment would benefit market participants, as well as improve the integrity of financial markets, by mitigating any potential conflict of interest that could arise if a DCO's board of directors or board-level committee is composed solely of DCO executives. The Commission acknowledges that DCOs that are not already complying with these requirements might incur additional costs to do so, but the Commission expects that this includes only a few DCOs.

19. Legal Risk—§ 39.27

The Commission is amending § 39.27(c) to require a DCO that provides clearing services outside the United States to ensure that the memorandum required in Exhibit R of Form DCO remains accurate and up-to-date. This will ensure that the DCO remains aware of any potential choice of law issues that may impact the enforceability of the DCO's rules, procedures, and contracts in all relevant jurisdictions. The Commission did not receive any comments related to the costs or benefits of amendments to § 39.27(c).

The Commission believes that amendments to § 39.27(c) will benefit the integrity of derivatives markets by making sure that the DCO remains aware of any potential choice of law issues that may impact the enforceability of the DCO's rules, procedures, and contracts in all relevant jurisdictions.

The Commission believes this requirement will not impose additional costs on DCOs that already maintain compliance with § 39.27(c), as DCOs with prudent risk management practices should continuously assess their rules, procedures, and policies against the laws and regulations of the jurisdictions in which they operate.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. The Commission believes that the amendments to § 39.27(c) will improve the integrity of derivatives markets while not imposing any additional costs.

20. Provisions Applicable to SIDCOs and DCOs That Elect To Be Subject to the Provisions—§§ 39.33, 39.36, 39.37, and Subpart C Election Form

a. Financial Resources for SIDCOs and Subpart C DCOs—§ 39.33

Regulation 39.33(a)(1) requires a SIDCO or a subpart C DCO that is systemically important in multiple jurisdictions, or that is involved in activities with a more complex risk profile, to maintain financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined loss in extreme but plausible market conditions. The Commission is amending § 39.33(a)(1) by replacing the phrase ''largest combined loss'' with ''largest combined financial exposure'' in order to be consistent with Core Principle B and § 39.11(a)(1) regarding DCO financial resources requirements. The Commission is also amending § 39.33(c)(1) to clarify that the ''largest aggregate liquidity obligation'' means the total amount of cash, in each relevant currency, that the defaulted clearing member would be required to pay to the DCO.

Furthermore, the Commission is amending § 39.33(d) to require that a SIDCO use available Federal Reserve Bank accounts and services where practical. This requirement would further enhance a SIDCO's financial integrity and management of liquidity risk, thereby promoting the financial integrity of the derivatives markets, while permitting SIDCOs to consider lower cost alternatives where appropriate.

The Commission did not receive any comments on the costs or benefits associated with these changes.

The Commission believes that the amendment to § 39.33(a)(1) makes the requirement more consistent with Core Principle B and § 39.11(a)(1) regarding DCO financial resources requirements and benefits DCOs by bringing added uniformity and clarification. Furthermore, the Commission believes the changes to § 39.33(c)(1) will reduce currency risk for SIDCOs and subpart C DCOs by ensuring that these DCOs have sufficient liquidity in the relevant currency of corresponding obligations during the time it would take to liquidate or auction a defaulted clearing member's positions. This requirement improves the financial stability of markets. Additionally, amendments to § 39.33(d) will also enhance the financial integrity of derivatives markets and reduce potential costs for SIDCOs by allowing them to use lower cost alternatives if practical.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes the amendments to § 39.33(c)(1) will promote sound risk management policies by reducing currency risk for SIDCOs and subpart C DCOs by ensuring that these DCOs have sufficient liquidity in the relevant currency of corresponding obligations during the time it would take to liquidate or auction a defaulted clearing member's positions. The Commission also believes that the amendments to § 39.33(d)(5) will promote sound risk management practices by requiring SIDCOs with access to accounts and services at a Federal Reserve Bank to use those accounts and services where practical, thereby reducing investment risk as compared to holding funds at a commercial bank. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

b. Risk Management for SIDCOs and Subpart C DCOs—§ 39.36

Regulation 39.36 requires a SIDCO or a subpart C DCO to conduct stress tests

of its financial and liquidity resources and to regularly conduct sensitivity analyses of its margin models. The Commission is amending § 39.36(a)(6) to clarify that a SIDCO or subpart C DCO that is subject to the minimum financial resources requirement set forth in § 39.11(a)(1), rather than § 39.33(a), should use the results of its stress tests to support compliance with that requirement.

The Commission also is amending § 39.36(b)(2)(ii) to replace the words ''produce accurate results'' with ''react appropriately'' to more accurately reflect that the purpose of a sensitivity analysis is to assess whether the margin model will react appropriately to changes of inputs, parameters, and assumptions. The Commission is further amending § 39.36(d), which requires each SIDCO and subpart C DCO to ''regularly'' conduct an assessment of the theoretical and empirical properties of its margin model for all products it clears, to clarify that the assessment should be conducted on at least an annual basis (or more frequently if there are material relevant market developments). Lastly, the Commission is amending § 39.36(e) by adding the heading ''[i]ndependent validation'' to the provision. Because these changes are meant to clarify existing requirements, the Commission does not expect SIDCOs and subpart C DCOs to incur additional costs. The Commission did not receive any comments on the costs or benefits associated with these changes.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) and (B) of the CEA, respectively, the Commission believes that the amendments will protect market participants and the public, and promote the financial integrity of SIDCOs and the derivatives markets by, for example, ensuring that SIDCOs continue to test their margin models with sufficient frequency. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

c. Additional Disclosure for SIDCOs and Subpart C DCOs—§ 39.37

Under § 39.37, a SIDCO or a subpart C DCO is required to publicly disclose its responses to the CPMI–IOSCO Disclosure Framework [72] and, in order to ensure the continued accuracy and usefulness of its responses, to review and update them at least every two years and following material changes to the SIDCO's or subpart C DCO's system or environment in which it operates. The Commission is amending § 39.37(b)(2) to additionally require that a SIDCO or a subpart C DCO notify the Commission no later than ten business days after any updates to its responses to the CPMI–IOSCO Disclosure Framework to reflect material changes to the DCO's system or environment. The notice would need to identify changes made since the latest version of the responses. The Commission is also amending § 39.37(c) to explicitly state that a SIDCO or a subpart C DCO must disclose relevant basic data on transaction volume and values that are consistent with the standards set forth in the CPMI–IOSCO Public Quantitative Disclosure Standards for Central Counterparties. These amendments are consistent with SIDCOs' and subpart C DCOs' existing CPMI–IOSCO obligations. SIFMA AMG supported the proposed requirement in § 39.37(b)(2) as SIFMA AMG believes it is extremely useful in understanding the evolution of a SIDCO's or a subpart C DCO's Disclosure Framework. The Commission did not receive any comments on the costs of the proposed changes.

The Commission believes that amendments to § 39.37(b)(2) will help the Commission understand any material changes to the DCO's system or environment, allowing the Commission to more effectively improve the safety and financial integrity of the marketplace. Amendments to § 39.37(c) will improve public disclosure of relevant basic data on transaction volume and values, which can help promote competition and market integrity.

The Commission notes that most of the amendments to subpart C of part 39 clarify existing requirements and, as a result, the Commission does not expect that SIDCOs and subpart C DCOs would incur additional costs. The Commission believes any cost associated with the required reporting notice within amended § 39.37(b) would be nominal for SIDCOs and subpart C DCOs, as they already are required to periodically update the information publicly.

The Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes that the amendments will enhance the sound risk practices of centralized clearing by providing clearing members and their customers with more timely and transparent notice of a DCO's changes to its Disclosure Framework, thereby allowing these market participants, prospective DCO market participants, the Commission, and the public to more easily identify and analyze changes made since the DCO's last posted Disclosure Framework. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

21. Part 140—Organization, Functions, and Procedures of the Commission

The Commission is amending § 140.94 to provide the Director of the Division of Clearing and Risk with delegated authority to review DCO registration applications, determine whether an application is materially complete, request additional information in support of an application, stay the running of the 180-day review period for an application, and request additional information in support of a rule submission. The Commission believes that DCOs will benefit from the delegation of authority, as it will promote a more efficient process to address these aspects of registration and rule certification. The Commission has not identified any costs on DCOs or their members associated with the amendments to § 140.94. The Commission did not receive any comments on the costs or benefits of these changes. The Commission has considered the section 15(a) factors and believes that they are not implicated by these changes.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation.[73]

The Commission believes that the public interest to be protected by the antitrust laws is generally the promotion of competition. In the Proposal, the Commission requested comment on whether: (1) The proposed rulemaking implicates any other specific public interest to be protected by the antitrust laws; (2) the proposed rulemaking is anticompetitive and, if it is, what the anticompetitive effects are; and (3) there are less anticompetitive means of achieving the relevant purposes of the

[72] *See* CMPI–IOSCO, Principles for Financial Market Infrastructures: Disclosure Framework and Assessment Methodology (Dec. 2012), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD396.pdf.*

[73] 7 U.S.C. 19(b).

CEA that would otherwise be served by adopting the proposed rules. The Commission did not receive any comments in this regard.

The Commission has considered the rulemaking to determine whether it is anticompetitive and has identified no anticompetitive effects. Because the Commission has determined that the rules are not anticompetitive and have no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Definitions, Reporting and recordkeeping requirements, Swaps.

17 CFR Part 39

Application form, Business and industry, Commodity futures, Consumer protection, Default rules and procedures, Definitions, Enforcement authority, Participant and product eligibility, Reporting and recordkeeping requirements, Risk management, Settlement procedures, Swaps, Treatment of funds.

17 CFR Part 140

Authority delegations (Government agencies), Conflict of interests, Organization and functions (Government agencies).

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR chapter I as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 (2012).

■ 2. In § 1.20, revise paragraphs (d)(1) and (7) and (d)(8) introductory text to read as follows:

§ 1.20 Futures customer funds to be segregated and separately accounted for.

* * * * *

(d) * * *

(1) A futures commission merchant must obtain a written acknowledgment from each bank, trust company, derivatives clearing organization, or futures commission merchant prior to or contemporaneously with the opening of an account by the futures commission merchant with such depositories; *provided, however,* that a written acknowledgment need not be obtained from a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the segregation of futures customer funds in accordance with all relevant provisions of the Act and the rules in this chapter, and orders promulgated thereunder, and in such cases, the requirements set forth in paragraphs (d)(3) through (6) of this section shall not apply to the futures commission merchant.

* * * * *

(7) Where a written acknowledgment is required, the futures commission merchant shall promptly file a copy of the written acknowledgment with the Commission in the format and manner specified by the Commission no later than three business days after the opening of the account or the execution of a new written acknowledgment for an existing account, as applicable.

(8) Where a written acknowledgment is required, a futures commission merchant shall obtain a new written acknowledgment within 120 days of any changes in the following:

* * * * *

■ 3. In § 1.59, revise paragraph (a)(1) to read as follows:

§ 1.59 Activities of self-regulatory organization employees, governing board members, committee members, and consultants.

(a) * * *

(1) *Self-regulatory organization* means a ''self-regulatory organization,'' as defined in § 1.3.

* * * * *

■ 4. In § 1.63, revise paragraph (a)(1) to read as follows:

§ 1.63 Service on self-regulatory organization governing boards or committees by persons with disciplinary histories.

(a) * * *

(1) *Self-regulatory organization* means a ''self-regulatory organization,'' as defined in § 1.3, except as defined in paragraph (b)(6) of this section.

* * * * *

■ 5. In § 1.64, revise paragraph (a)(1) to read as follows:

§ 1.64 Composition of various self-regulatory organization governing boards and major disciplinary committees.

(a) * * *

(1) *Self-regulatory organization* means ''self-regulatory organization,'' as defined in § 1.3.

* * * * *

■ 6. In § 1.69, revise paragraph (a)(7) to read as follows:

§ 1.69 Voting by interested members of self-regulatory organization governing boards and various committees.

(a) * * *

(7) *Self-regulatory organization* means a ''self-regulatory organization,'' as defined in § 1.3, but excludes registered futures associations for the purposes of paragraph (b)(2) of this section.

* * * * *

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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

Authority: 7 U.S.C. 2, 7a–1, and 12a; 12 U.S.C. 5464; 15 U.S.C. 8325.

■ 8. Revise § 39.2 to read as follows:

§ 39.2 Definitions.

For the purposes of this part:

Activity with a more complex risk profile includes:

(1) Clearing credit default swaps, credit default futures, or derivatives that reference either credit default swaps or credit default futures and

(2) Any other activity designated as such by the Commission pursuant to § 39.33(a)(3).

Back test means a test that compares a derivatives clearing organization's initial margin requirements with historical price changes to determine the extent of actual margin coverage.

Business day means the intraday period of time starting at the business hour of 8:15 a.m. and ending at the business hour of 4:45 p.m., on all days except Saturdays, Sundays, and any holiday on which a derivatives clearing organization and its domestic financial markets are closed, including a Federal holiday in the United States, as established under 5 U.S.C. 6103.

Customer account or customer origin means ''customer account'' as defined in § 1.3 of this chapter.

Depository institution has the meaning set forth in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

Enterprise risk management means an enterprise-wide strategic business process intended to identify potential events that may affect the enterprise and to manage the probability or impact of those events on the enterprise as a whole, such that the overall risk remains within the enterprise's risk appetite and provides reasonable assurance that the derivatives clearing organization can continue to achieve its objectives.

Fully collateralized position means a contract cleared by a derivatives clearing organization that requires the derivatives clearing organization to

hold, at all times, funds in the form of the required payment sufficient to cover the maximum possible loss that a party or counterparty could incur upon liquidation or expiration of the contract.

House account or house origin means a clearing member account which is not subject to section 4d(a) or 4d(f) of the Act.

Key personnel means derivatives clearing organization personnel who play a significant role in the operations of the derivatives clearing organization, the provision of clearing and settlement services, risk management, or oversight of compliance with the Act and Commission regulations in this chapter, and orders promulgated thereunder. Key personnel include, but are not limited to, those persons who are or perform the functions of any of the following: Chief executive officer; president; chief compliance officer; chief operating officer; chief risk officer; chief financial officer; chief technology officer; chief information security officer; and emergency contacts or persons who are responsible for business continuity or disaster recovery planning or program execution.

Stress test means a test that compares the impact of potential extreme price moves, changes in option volatility, and/or changes in other inputs that affect the value of a position, to the financial resources of a derivatives clearing organization, clearing member, or large trader, to determine the adequacy of the financial resources of such entities.

Subpart C derivatives clearing organization means any derivatives clearing organization, as defined in section 1a(15) of the Act and § 1.3 of this chapter, which:

(1) Is registered as a derivatives clearing organization under section 5b of the Act;

(2) Is not a systemically important derivatives clearing organization; and

(3) Has become subject to the provisions of subpart C of this part, pursuant to § 39.31.

Systemically important derivatives clearing organization means a financial market utility that is a derivatives clearing organization registered under section 5b of the Act, which is currently designated by the Financial Stability Oversight Council to be systemically important and for which the Commission acts as the Supervisory Agency pursuant to 12 U.S.C. 5462(8).

Trust company means a trust company that is a member of the Federal Reserve System, under section 1 of the Federal Reserve Act (12 U.S.C. 221), but that does not meet the definition of depository institution as set out in this section.

U.S. branch or agency of a foreign banking organization means the U.S. branch or agency of a foreign banking organization as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

■ 9. In § 39.3, revise paragraphs (a), (b)(2)(i), and (c) through (f) and add paragraph (g) to read as follows:

§ 39.3 Procedures for registration.

(a) *Application for registration*—(1) *General procedure.* An entity seeking to register as a derivatives clearing organization shall file an application for registration with the Secretary of the Commission in the format and manner specified by the Commission. The Commission will review the application for registration as a derivatives clearing organization pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act, and may approve or deny the application. If the Commission approves the application, the Commission will register the applicant as a derivatives clearing organization subject to conditions as appropriate.

(2) *Application.* Any entity seeking to register as a derivatives clearing organization shall submit to the Commission a completed Form DCO, which shall include a cover sheet, all applicable exhibits, and any supplemental materials, as provided in appendix A to this part (application). The Commission will not commence processing an application unless the applicant has filed the application as required by this section. Failure to file a completed application will preclude the Commission from determining that an application is materially complete, as provided in section 6(a) of the Act. Upon its own initiative, an applicant may file with its completed application additional information that may be necessary or helpful to the Commission in processing the application.

(3) *Submission of supplemental information.* The filing of a completed application is a minimum requirement and does not create a presumption that the application is materially complete or that supplemental information will not be required. At any time during the application review process, the Commission may request that the applicant provide supplemental information in order for the Commission to process the application. The applicant shall provide supplemental information in the format and manner specified by the Commission.

(4) *Application amendments.* An applicant shall promptly amend its application if it discovers a material omission or error, or if there is a material change in the information provided to the Commission in the application or other information provided in connection with the application. An applicant is only required to submit exhibits and other information that are relevant to the application amendment when filing a Form DCO for the purpose of amending its pending application.

(5) *Public information.* The following sections of all applications to become a registered derivatives clearing organization will be public: First page of the Form DCO cover sheet (up to and including the General Information section), Exhibit A–1 (regulatory compliance chart), Exhibit A–2 (proposed rulebook), Exhibit A–3 (narrative summary of proposed clearing activities), Exhibit A–7 (documents setting forth the applicant's corporate organizational structure), Exhibit A–8 (documents establishing the applicant's legal status and certificate(s) of good standing or its equivalent), and any other part of the application not covered by a request for confidential treatment, subject to § 145.9 of this chapter.

(6) *Extension of time for review.* The Commission may further extend the review period in paragraph (a)(1) of this section for any period of time to which the applicant agrees in writing.

(b) * * *

(2) * * *

(i) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Risk or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to notify an applicant seeking registration as a derivatives clearing organization that the application is materially incomplete and the running of the 180-day period under section 6(a) of the Act is stayed.

* * * * *

(c) *Withdrawal of application for registration.* An applicant for registration may withdraw its application submitted pursuant to paragraph (a) of this section by filing such a request with the Secretary of the Commission in the format and manner specified by the Commission. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the application for registration was pending with the Commission.

(d) *Amendment of an order of registration.* (1) A derivatives clearing

organization requesting an amendment to an order of registration shall file the request with the Secretary of the Commission in the form and manner specified by the Commission.

(2) A derivatives clearing organization shall provide to the Commission, upon the Commission's request, any additional information and documentation necessary to review a request to amend an order of registration.

(3) The Commission shall issue an amended order of registration upon a Commission determination, in its own discretion, that the derivatives clearing organization would maintain compliance with the Act and the Commission's regulations in this chapter upon amendment to the order. If deemed appropriate, the Commission may issue an amended order of registration subject to conditions.

(4) The Commission may decline to issue an amended order based upon a Commission determination, in its own discretion, that the derivatives clearing organization would not continue to maintain compliance with the Act and the Commission's regulations in this chapter upon amendment to the order.

(e) *Reinstatement of dormant registration.* Before accepting products for clearing, a dormant derivatives clearing organization as defined in § 40.1 of this chapter must reinstate its registration under the procedures of paragraph (a) of this section; provided, however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(f) *Vacation of registration*—(1) *Request.* A derivatives clearing organization may have its registration vacated pursuant to section 7 of the Act by submitting a request to the Secretary of the Commission in the format and manner specified by the Commission. A vacation of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the derivatives clearing organization was registered with the Commission. The request shall include:

(i) The date that the vacation should take effect, which must be at least ninety days after the request was submitted;

(ii) A description of how the derivatives clearing organization intends to transfer or otherwise unwind all open positions at the derivatives clearing organization and how such actions reflect the interests of affected clearing members and their customers;

(iii) A statement that the derivatives clearing organization will continue to maintain its books and records for the requisite statutory and regulatory retention periods after its registration has been vacated; and

(iv) A statement that the derivatives clearing organization will continue to make its books and records available for inspection by any representative of the Commission or the United States Department of Justice after its registration has been vacated, as required by § 1.31 of this chapter.

(2) *Notice to registered entities.* The Commission shall fulfill its obligation to send a copy of the request and the order of vacation to all other registered entities by posting the documents on the Commission website.

(g) *Request for transfer of open interest*—(1) *Submission.* A derivatives clearing organization seeking to transfer its positions comprising open interest for clearing and settlement to another clearing organization shall submit rules for Commission approval pursuant to § 40.5 of this chapter.

(2) *Required information.* The rule submission shall include, at a minimum, the following:

(i) The underlying agreement that governs the transfer;

(ii) A description of the transfer, including the reason for the transfer and the impact of the transfer on the rights and obligations of clearing members and market participants holding the positions that comprise the derivatives clearing organization's open interest;

(iii) A discussion of the transferee's ability to comply with the Act, including the core principles applicable to derivatives clearing organizations, and the Commission's regulations in this chapter, as applicable;

(iv) The transferee's rules marked to show changes that would result from acceptance of the transferred positions;

(v) A list of products for which the derivatives clearing organization requests transfer of open interest; and

(vi) A representation by the transferee that it is in and will maintain compliance with any applicable provisions of the Act, including the core principles applicable to derivatives clearing organizations, and the Commission's regulations upon the transfer of the open interest.

(3) *Commission action.* The Commission may request additional information in support of a rule submission filed under paragraph (g)(1) of this section, and may grant approval of the rules in accordance with § 40.5 of this chapter.

■ 10. In § 39.4, revise paragraphs (a) and (e) to read as follows:

§ 39.4 Procedures for implementing derivatives clearing organization rules and clearing new products.

(a) *Request for approval of rules.* A registered derivatives clearing organization may request, pursuant to the procedures of § 40.5 of this chapter, that the Commission approve any or all of its rules and subsequent amendments thereto, including operational rules, prior to their implementation or, notwithstanding the provisions of section 5c(c)(2) of the Act, at any time thereafter, under the procedures of § 40.5 of this chapter. A derivatives clearing organization may label as ''approved by the Commission'' only those rules that have been so approved.

* * * * *

(e) *Holding securities in a futures portfolio margining account.* A derivatives clearing organization seeking to provide a portfolio margining program under which securities would be held in a futures account as defined in § 1.3 of this chapter, shall submit rules to implement such portfolio margining program for Commission approval in accordance with § 40.5 of this chapter. Concurrent with the submission of such rules for Commission approval, the derivatives clearing organization shall petition the Commission for an order under section 4d(a) of the Act.

■ 11. In § 39.10, revise paragraphs (c)(1)(ii) and (iv), (c)(3) introductory text, (c)(3)(i), (c)(3)(ii) introductory text, (c)(3)(ii)(A), (c)(3)(v), and (c)(4)(i) and (ii) and add paragraph (d) to read as follows:

§ 39.10 Compliance with core principles.

* * * * *

(c) * * *

(1) * * *

(ii) The chief compliance officer shall report to the board of directors or the senior officer of the derivatives clearing organization or, if the derivatives clearing organization engages in substantial activities not related to clearing, the senior officer responsible for the derivatives clearing organization's clearing activities. The board of directors or the senior officer shall approve the compensation of the chief compliance officer.

* * * * *

(iv) A change in the designation of the individual serving as the chief compliance officer of the derivatives clearing organization shall be reported to the Commission in accordance with the requirements of § 39.19(c)(4)(x).

* * * * *

(3) *Annual report.* The chief compliance officer shall, not less than

annually, prepare and sign a written report that covers the most recently completed fiscal year of the derivatives clearing organization. The annual report shall, at a minimum:

(i) Contain a description of the derivatives clearing organization's written policies and procedures, including the code of ethics and conflict of interest policies; provided that, to the extent that the derivatives clearing organization's written policies and procedures have not materially changed since they were most recently described in an annual report to the Commission, and if the annual report containing the most recent description was submitted within the last five years, the annual report may instead incorporate by reference the relevant descriptions from the most recent annual report containing the description;

(ii) Review each core principle and applicable Commission regulation in this chapter including, in the case of systemically important derivatives clearing organizations and subpart C derivatives clearing organizations, regulations in subpart C of this part, and with respect to each:

(A) Identify, by name, rule number, or other identifier, the compliance policies and procedures that are designed to ensure compliance with each core principle and applicable regulation in this chapter;

* * * * *

(v) Describe any material compliance matters, including incidents of noncompliance, since the date of the last annual report, and describe the corresponding action taken.

(4) * * *

(i) Prior to submitting the annual report to the Commission, the chief compliance officer shall provide the annual report to the board of directors or the senior officer of the derivatives clearing organization or, if the derivatives clearing organization engages in substantial activities not related to clearing, the senior officer responsible for the derivatives clearing organization's clearing activities, for review. Submission of the report to the board of directors or the senior officer shall be recorded in the board minutes or otherwise, as evidence of compliance with the requirement in this paragraph (c)(4)(i). The annual report shall describe the process by which it was submitted to the board of directors or the senior officer. When submitted to the Commission, the annual report shall be accompanied by a cover letter, notice, or other document that specifies the date on which it was submitted to the board of directors or the senior officer.

(ii) The annual report shall be submitted to the Secretary of the Commission in the format and manner specified by the Commission not more than 90 days after the end of the derivatives clearing organization's fiscal year. The report shall include a certification by the chief compliance officer that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the annual report is accurate and complete.

* * * * *

(d) *Enterprise risk management*—(1) *General.* A derivatives clearing organization shall have an enterprise risk management program that identifies and assesses sources of risk and their potential impact on the operations and services of the derivatives clearing organization. The derivatives clearing organization shall measure, monitor, and manage identified sources of risk on an ongoing basis, including through the development and use of appropriate information systems. The derivatives clearing organization shall test the effectiveness of any mitigating controls employed to reduce identified sources of risk to ensure that the risks are properly mitigated.

(2) *Enterprise risk management framework.* A derivatives clearing organization shall establish and maintain written policies and procedures, approved by its board of directors or a committee of the board of directors that establish an appropriate enterprise risk management framework. The framework shall be reviewed at least annually by the board of directors or committee of the board of directors and updated as necessary.

(3) *Standards for enterprise risk management framework.* A derivatives clearing organization shall follow generally accepted standards and industry best practices in the development and review of its enterprise risk management framework, assessment of the performance of its enterprise risk management program, and management and mitigation of risk to the derivatives clearing organization.

(4) *Enterprise risk officer.* A derivatives clearing organization shall identify as its enterprise risk officer an appropriate individual that exercises the full responsibility and authority to manage the enterprise risk management program of the derivatives clearing organization. The enterprise risk officer shall have the authority, independence, resources, expertise, and access to relevant information necessary to fulfill the responsibilities of the position, including access to the board of directors of the organization for which the enterprise risk officer is responsible for managing the risks or an appropriate committee thereof, consistent with the requirements of this section.

■ 12. In § 39.11:

■ a. Revise paragraphs (a) introductory text, (a)(2), (b)(1) introductory text, (b)(1)(i) through (v), (c), (d)(2)(iv), (e)(1)(ii)(A) through (C), and (e)(1)(iii);

■ b. Add paragraph (e)(1)(iv);

■ c. Revise paragraphs (e)(2) and (3), (e)(4)(i), (f)(1) introductory text, (f)(1)(i)(A), and (f)(1)(ii) and (iii);

■ d. Add paragraph (f)(1)(iv); and

■ e. Revise paragraphs (f)(2) through (4).

The revisions and additions read as follows:

§ 39.11 Financial resources.

(a) *General.* A derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization. A derivatives clearing organization shall maintain sufficient financial resources to cover its exposures with a high degree of confidence. At a minimum, each derivatives clearing organization shall possess financial resources that exceed the total amount that would:

* * * * *

(2) Enable the derivatives clearing organization to cover its operating costs for a period of at least one year, calculated on a rolling basis. A derivatives clearing organization shall identify and adequately manage its general business risks and hold sufficient liquid resources to cover potential business losses that are not related to clearing members' defaults, so that the derivatives clearing organization can continue to provide services as a going concern.

(b) * * *

(1) Financial resources available to satisfy the requirements of paragraph (a)(1) of this section may include:

(i) The derivatives clearing organization's own capital;

(ii) Guaranty fund deposits;

(iii) Default insurance;

(iv) Potential assessments for additional guaranty fund contributions, if permitted by the derivatives clearing organization's rules; and

(v) Any other financial resource deemed acceptable by the Commission.

* * * * *

(c) *Calculation of financial resources requirements.* (1) A derivatives clearing organization shall, on a monthly basis, perform stress tests that will allow it to make a reasonable calculation of the financial resources needed to meet the

requirements of paragraph (a)(1) of this section. The derivatives clearing organization shall have reasonable discretion in determining the methodology used to calculate the requirements, subject to the limitations identified in paragraph (c)(2) of this section, and provided that the methodology must take into account both historical data and hypothetical scenarios. The Commission may review the methodology and require changes as appropriate. The requirements of this paragraph (c) do not apply to fully collateralized positions.

(2) When calculating its largest financial exposure, a derivatives clearing organization:

(i) In netting its exposure against the clearing member's initial margin, shall:

(A) Use only that portion of the margin amount on deposit (including initial margin and any add-ons) that is required; and

(B) Use customer margin (including initial margin and any add-ons) only to the extent permitted by parts 1 and 22 of this chapter, as applicable;

(ii) Shall combine the customer and house stress test losses of each clearing member using the same stress test scenarios;

(iii) May net any gains in the house account with losses in the customer account, if permitted by the derivatives clearing organization's rules, but shall not net losses in the house account with gains in the customer account; and

(iv) With respect to a clearing member's cleared swaps customer account, may net customer gains against customer losses only to the extent permitted by the derivatives clearing organization's rules.

(3) A derivatives clearing organization shall, on a monthly basis, make a reasonable calculation of its projected operating costs over a 12-month period in order to determine the amount needed to meet the requirements of paragraph (a)(2) of this section. The derivatives clearing organization shall have reasonable discretion in determining the methodology used to compute such projected operating costs. The Commission may review the methodology and require changes as appropriate.

(d) * * *

(2) * * *

(iv) The derivatives clearing organization shall only count the value of assessments, after the haircut, to meet up to 20 percent of the total amount required under paragraph (a)(1) of this section. The value of the assessments may be determined by using the largest financial exposure in extreme but plausible market conditions prior to netting against required initial margin on deposit.

(e) * * *

(1) * * *

(ii) * * *

(A) Calculate the average daily settlement variation pay for each clearing member over the last fiscal quarter;

(B) Calculate the sum of those average daily settlement variation pays; and

(C) Using that sum, calculate the average of its clearing members' average daily settlement variation pays.

(iii) If the total amount of the financial resources required pursuant to the calculation set forth in paragraph (e)(1)(ii) of this section is insufficient to enable the derivatives clearing organization to fulfill its obligations during a one-day settlement cycle, the derivatives clearing organization may take into account a committed line of credit or similar facility for the purpose of meeting the remainder of the requirement of this paragraph (e) (subject to the limitation in paragraph (e)(3) of this section).

(iv) A derivatives clearing organization is not subject to paragraph (e)(1)(ii) of this section for fully collateralized positions.

(2) The financial resources allocated by the derivatives clearing organization to meet the requirements of paragraph (a)(2) of this section must include unencumbered, liquid financial assets (*i.e.,* cash and/or highly liquid securities) sufficient to enable the derivatives clearing organization to cover its operating costs for a period of at least six months. If the financial resources allocated to meet the requirements of paragraph (a)(2) of this section do not include such assets in a sufficient amount, the derivatives clearing organization may take into account a committed line of credit or similar facility for the purpose of meeting the requirements of this paragraph (subject to the limitation in paragraph (e)(3) of this section).

(3) A committed line of credit or similar facility may be allocated, in whole or in part, to satisfy the requirements of either paragraph (e)(1)(ii) or (e)(2) of this section, but not both paragraphs.

(4)(i) Assets in a guaranty fund shall have minimal credit, market, and liquidity risks and shall be readily accessible on a same-day basis;

* * * * *

(f) * * *

(1) *Quarterly reporting.* Each fiscal quarter, or at any time upon Commission request, a derivatives clearing organization shall:

(i) * * *

(A) The amount of financial resources necessary to meet the requirements of paragraph (a) of this section and §§ 39.33(a) and 39.39(d), if applicable;

* * * * *

(ii) Provide the Commission with a financial statement, including the balance sheet, income statement, and statement of cash flows, prepared in accordance with U.S. generally accepted accounting principles, of the derivatives clearing organization; *provided, however,* that for a derivatives clearing organization that is incorporated or organized under the laws of any foreign country, the financial statement may be prepared in accordance with either U.S. generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board; and

(iii) Report to the Commission the value of each individual clearing member's guaranty fund deposit, if the derivatives clearing organization reports having guaranty fund deposits as a financial resource available to satisfy the requirements of paragraph (a)(1) of this section and §§ 39.33(a) and 39.39(d), if applicable.

(iv) The calculations required by this paragraph (f) shall be made as of the last business day of the derivatives clearing organization's fiscal quarter. The report shall be submitted not later than 17 business days after the end of the derivatives clearing organization's fiscal quarter, or at such later time as the Commission may permit, in its discretion, upon request by the derivatives clearing organization.

(2) *Annual reporting.* (i) A derivatives clearing organization shall submit to the Commission an audited year-end financial statement of the derivatives clearing organization calculated in accordance with U.S. generally accepted accounting principles; provided, however, that for a derivatives clearing organization that is incorporated or organized under the laws of any foreign country, the financial statement may be prepared in accordance with either U.S. generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board.

(ii) The report required by paragraph (f)(2)(i) of this section shall be submitted not later than 90 days after the end of the derivatives clearing organization's fiscal year, or at such later time as the Commission may permit, in its discretion, upon request by the derivatives clearing organization.

(iii) A derivatives clearing organization shall submit concurrently with the audited year-end financial statement required by paragraph (f)(2)(i) of this section:

(A) A reconciliation, including appropriate explanations, of its balance sheet in the audited year-end financial statement with the balance sheet in the derivatives clearing organization's financial statement for the last quarter of the fiscal year when material differences exist or, if no material differences exist, a statement so indicating; and

(B) Such further information as may be necessary to make the statements not misleading.

(3) *Other reporting.* (i) A derivatives clearing organization shall provide to the Commission as part of its first report under paragraph (f)(1) of this section, and in the event of any change thereafter:

(A) Sufficient documentation explaining the methodology used to compute its financial resources requirements under paragraph (a) of this section and §§ 39.33(a) and 39.39(d), if applicable; and

(B) Sufficient documentation explaining the basis for its determinations regarding the valuation and liquidity requirements set forth in paragraphs (d) and (e) of this section.

(ii) A derivatives clearing organization shall provide to the Commission copies of any agreements establishing or amending a credit facility, insurance coverage, or other arrangement evidencing or otherwise supporting the derivatives clearing organization's conclusions regarding its:

(A) Financial resources available to satisfy the requirements of paragraph (a) of this section and §§ 39.33(a) and 39.39(d), if applicable; and

(B) Liquidity resources available to satisfy the requirements of paragraph (e) of this section and § 39.33(c), if applicable.

(4) *Certification.* A derivatives clearing organization shall provide with each report submitted pursuant to this section a certification by the person responsible for the accuracy and completeness of the report that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the report is accurate and complete.

■ 13. In § 39.12, revise paragraphs (a) introductory text, (a)(1)(i), (a)(4) through (6), (b)(1) introductory text, and (b)(2) to read as follows:

§ 39.12 Participant and product eligibility.

(a) *Participant eligibility.* A derivatives clearing organization shall have appropriate admission and continuing participation requirements for clearing members of the derivatives clearing organization that are objective, publicly disclosed, and risk-based.

(1) * * *

(i) A derivatives clearing organization shall not have restrictive clearing member standards if less restrictive requirements that achieve the same objective and that would not materially increase risk to the derivatives clearing organization or clearing members could be adopted;

* * * * *

(4) *Monitoring.* A derivatives clearing organization shall have procedures to verify, on an ongoing basis, the compliance of each clearing member with each participation requirement of the derivatives clearing organization.

(5) *Reporting.* (i) A derivatives clearing organization shall require all clearing members, including non-futures commission merchants, to provide to the derivatives clearing organization periodic financial reports that contain any financial information that the derivatives clearing organization determines is necessary to assess whether participation requirements are being met on an ongoing basis.

(ii) A derivatives clearing organization shall require clearing members that are futures commission merchants to provide the financial reports that are specified in § 1.10 of this chapter to the derivatives clearing organization.

(iii) A derivatives clearing organization shall require clearing members that are not futures commission merchants to make the periodic financial reports provided pursuant to paragraph (a)(5)(i) of this section available to the Commission upon the Commission's request or, in lieu of imposing the requirement in this paragraph (a)(5)(iii), a derivatives clearing organization may provide such financial reports directly to the Commission upon the Commission's request.

(iv) A derivatives clearing organization shall have rules that require clearing members to provide to the derivatives clearing organization, in a timely manner, information that concerns any financial or business developments that may materially affect the clearing members' ability to continue to comply with participation requirements under this section.

(v) The requirements in paragraphs (a)(5)(i) and (iii) of this section shall not apply with respect to non-futures commission merchant clearing members of a derivatives clearing organization that only clear fully collateralized positions.

(6) *Enforcement.* A derivatives clearing organization shall have the ability to enforce compliance with its participation requirements and shall have procedures for the suspension and orderly removal of clearing members that no longer meet the requirements.

(b) * * *

(1) A derivatives clearing organization shall have appropriate requirements for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing, taking into account the derivatives clearing organization's ability to manage the risks associated with such agreements, contracts, or transactions. Factors to be considered in determining product eligibility include, but are not limited to:

* * * * *

(2) A derivatives clearing organization that clears swaps shall have rules providing that all swaps with the same terms and conditions, as defined by product specifications established under derivatives clearing organization rules, submitted to the derivatives clearing organization for clearing are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization.

* * * * *

■ 14. In § 39.13:

■ a. Revise paragraphs (b), (f), (g)(2)(i), (g)(3), and (g)(4)(i) introductory text;

■ b. Add paragraph (g)(7)(iii)

■ c. Revise paragraphs (g)(8) and (12) and (h)(1)(i) introductory text;

■ d. Add paragraph (h)(3)(iii);

■ e. Revise paragraphs (h)(5)(i) introductory text and (h)(5)(ii); and

■ f. Add paragraph (i).

The revisions and additions read as follows:

§ 39.13 Risk management.

* * * * *

(b) *Risk management framework.* A derivatives clearing organization shall have and implement written policies, procedures, and controls, approved by its board of directors, that establish an appropriate risk management framework that, at a minimum, clearly identifies and documents the range of risks to which the derivatives clearing organization is exposed, addresses the monitoring and management of the entirety of those risks, and provides a mechanism for internal audit. The risk management framework shall be regularly reviewed and updated as necessary.

* * * * *

(f) *Limitation of exposure to potential losses from defaults.* A derivatives

clearing organization shall limit its exposure to potential losses from defaults by its clearing members through margin requirements and other risk control mechanisms reasonably designed to ensure that:

(1) The operations of the derivatives clearing organization would not be disrupted; and

(2) Non-defaulting clearing members would not be exposed to losses that non-defaulting clearing members cannot anticipate or control.

(g) * * *

(2) * * *

(i) A derivatives clearing organization shall have initial margin requirements that are commensurate with the risks of each product and portfolio, including any unusual characteristics of, or risks associated with, particular products or portfolios.

* * * * *

(3) *Independent validation.* A derivatives clearing organization shall have its systems for generating initial margin requirements, including its theoretical models, reviewed and validated by a qualified and independent party on an annual basis. Where no material changes to the margin model have occurred, previous validations can be reviewed and affirmed as part of the annual review process. Qualified and independent parties may be independent contractors or employees of the derivatives clearing organization, or of an affiliate of the derivatives clearing organization, but shall not be persons responsible for development or operation of the systems and models being tested.

(4) * * *

(i) A derivatives clearing organization may allow reductions in initial margin requirements for related positions if the price risks with respect to such positions are significantly and reliably correlated. The price risks of different positions will only be considered to be reliably correlated if there is a conceptual basis for the correlation in addition to an exhibited statistical correlation. That conceptual basis may include, but is not limited to, the following:

* * * * *

(7) * * *

(iii) In conducting back tests of initial margin requirements, a derivatives clearing organization shall compare portfolio losses only to those components of initial margin that capture changes in market risk factors.

(8) *Customer margin*—(i) *Gross margin.* (A) During the end-of-day settlement cycle, a derivatives clearing organization shall collect initial margin on a gross basis for each clearing member's customer account(s) equal to the sum of the initial margin amounts that would be required by the derivatives clearing organization for each individual customer within that account if each individual customer were a clearing member.

(B) For purposes of calculating the gross initial margin requirement for each clearing member's customer account(s), a derivatives clearing organization shall have rules that require its clearing members to provide to the derivatives clearing organization reports each day setting forth end-of-day gross positions of each individual customer account within each customer origin of the clearing member.

(C) A derivatives clearing organization may not, and may not permit its clearing members to, net positions of different customers against one another.

(D) A derivatives clearing organization may collect initial margin for its clearing members' house accounts on a net basis.

(ii) *Customer initial margin requirements.* A derivatives clearing organization shall require its clearing members to collect customer initial margin at a level that is not less than 100 percent of the derivatives clearing organization's clearing initial margin requirements with respect to each product and portfolio and commensurate with the risk presented by each customer account. The derivatives clearing organization shall have reasonable discretion in determining clearing initial margin requirements for products or portfolios. The derivatives clearing organization shall also have reasonable discretion in determining whether and by how much customer initial margin requirements shall, at a minimum, exceed clearing initial margin requirements for categories of customers determined by the clearing member to have heightened risk profiles. The Commission may review such customer initial margin levels and require different levels if the Commission deems the levels insufficient to protect the financial integrity of the derivatives clearing organization or its clearing members.

* * * * *

(12) *Haircuts.* A derivatives clearing organization shall apply appropriate reductions in value to reflect credit, market, and liquidity risks (haircuts), to the assets that it accepts in satisfaction of initial margin obligations, taking into consideration stressed market conditions, and shall evaluate the appropriateness of the haircuts on at least a monthly basis.

* * * * *

(h) * * *

(1) * * *

(i) A derivatives clearing organization shall impose risk limits on each clearing member, by house origin and by each customer origin, in order to prevent a clearing member from carrying positions for which the risk exposure exceeds a specified threshold relative to the clearing member's and/or the derivatives clearing organization's financial resources. The derivatives clearing organization shall have reasonable discretion in determining:

* * * * *

(3) * * *

(iii) The requirements in paragraphs (h)(3)(i) and (ii) of this section do not apply with respect to clearing member accounts that hold only fully collateralized positions.

* * * * *

(5) * * *

(i) A derivatives clearing organization shall have rules that:

* * * * *

(ii) A derivatives clearing organization shall review the risk management policies, procedures, and practices of each of its clearing members, which address the risks that such clearing members may pose to the derivatives clearing organization, on a periodic basis, take appropriate action to address concerns identified in such reviews, and document such reviews and the basis for determining what action was appropriate to take.

* * * * *

(i) *Cross-margining.* (1) A derivatives clearing organization that seeks to implement or modify a cross-margining program with one or more clearing organizations shall submit rules for Commission approval pursuant to § 40.5 of this chapter. The submission shall include information sufficient for the Commission to understand the risks that would be posed by the program and the means by which the derivatives clearing organization would address and mitigate those risks.

(2) The Commission may request additional information in support of a rule submission filed under this paragraph (i), and may approve such rules in accordance with § 40.5 of this chapter.

■ 15. In § 39.15, revise the paragraph (b) subject heading, paragraph (b)(1), the paragraph (b)(2) subject heading, and paragraphs (b)(2)(i) introductory text, (b)(2)(i)(A), (D), (F), and (H) through (L), (b)(2)(ii) and (iii), (d) introductory text, and (e) to read as follows:

§ 39.15 Treatment of funds.

* * * * *

(b) *Customer funds*—(1) *Segregation.* A derivatives clearing organization shall comply with the applicable segregation requirements of section 4d of the Act and Commission regulations in this part, or any other applicable Commission regulation in this chapter or order requiring that customer funds and assets, including money, securities, and property, be segregated, set aside, or held in a separate account.

(2) *Commingling*—(i) *Cleared swaps account.* In order for a derivatives clearing organization and its clearing members to commingle customer positions in futures, options, foreign futures, foreign options, and swaps, or any combination thereof, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(f) of the Act, the derivatives clearing organization shall file rules for Commission approval pursuant to § 40.5 of this chapter. Such rule submission shall include, at a minimum, the following:

(A) Identification of the products that would be commingled, including product specifications or the criteria that would be used to define eligible products;

* * * * *

(D) Analysis of the liquidity of the respective markets for the eligible products, the ability of clearing members and the derivatives clearing organization to offset or mitigate the risk of such eligible products in a timely manner, without compromising the financial integrity of the account, and, as appropriate, proposed means for addressing insufficient liquidity;

* * * * *

(F) A description of the financial, operational, and managerial standards or requirements for clearing members that would be permitted to commingle eligible products;

* * * * *

(H) A description of the financial resources of the derivatives clearing organization, including the composition and availability of a guaranty fund with respect to the eligible products that would be commingled;

(I) A description and analysis of the margin methodology that would be applied to the commingled eligible products, including any margin reduction applied to correlated positions, and any applicable margin rules with respect to both clearing members and customers;

(J) An analysis of the ability of the derivatives clearing organization to manage a potential default with respect to any of the eligible products that would be commingled;

(K) A discussion of the procedures that the derivatives clearing organization would follow if a clearing member defaulted, and the procedures that a clearing member would follow if a customer defaulted, with respect to any of the commingled eligible products in the account; and

(L) A description of the arrangements for obtaining daily position data with respect to eligible products in the account.

(ii) *Futures account.* In order for a derivatives clearing organization and its clearing members to commingle customer positions in futures, options, foreign futures, foreign options, and swaps, or any combination thereof, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(a) of the Act, the derivatives clearing organization shall file rules for Commission approval pursuant to § 40.5 of this chapter. Such rule submission shall include, at a minimum, the information required under paragraph (b)(2)(i) of this section.

(iii) *Commission action.* The Commission may request additional information in support of a rule submission filed under paragraph (b)(2)(i) or (ii) of this section, and may approve such rules in accordance with § 40.5 of this chapter.

* * * * *

(d) *Transfer of customer positions.* A derivatives clearing organization shall have rules providing that the derivatives clearing organization will promptly transfer all or a portion of a customer's portfolio of positions, and related funds as necessary, from the carrying clearing member of the derivatives clearing organization to another clearing member of the derivatives clearing organization, without requiring the close-out and re-booking of the positions prior to the requested transfer, subject to the following conditions:

* * * * *

(e) *Permitted investments.* Funds and assets belonging to clearing members and their customers that are invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks. Any investment of customer funds or assets, including cleared swaps customer collateral, as defined in § 22.1 of this chapter, by a derivatives clearing organization shall comply with § 1.25 of this chapter.

■ 16. In § 39.16, revise paragraphs (a), (b), (c)(1), (c)(2) introductory text, (c)(2)(ii), (c)(2)(iii)(C), and (d)(1) and add paragraph (e) to read as follows:

§ 39.16 Default rules and procedures.

(a) *General.* A derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which clearing members become insolvent or default on the obligations of such clearing members to the derivatives clearing organization.

(b) *Default management plan.* A derivatives clearing organization shall maintain a current written default management plan that delineates the roles and responsibilities of its board of directors, its risk management committee, any other committee that a derivatives clearing organization may have that has responsibilities for default management, and the derivatives clearing organization's management, in addressing a default, including any necessary coordination with, or notification of, other entities and regulators. Such plan shall address any differences in procedures with respect to highly liquid products and less liquid products. A derivatives clearing organization shall conduct and document a test of its default management plan at least on an annual basis. The derivatives clearing organization shall include clearing members and participants in a test of its default management plan at least on an annual basis to the extent the plan relies on their participation.

(c) * * *

(1) A derivatives clearing organization shall have procedures that would permit the derivatives clearing organization to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a default on the obligations of a clearing member to the derivatives clearing organization.

(2) A derivatives clearing organization shall have rules that set forth its default procedures, including:

* * * * *

(ii) The actions that the derivatives clearing organization may take upon a default, which shall include public notice of a declaration of default on its website and the prompt transfer, liquidation, or hedging of the customer or house positions of the defaulting clearing member, as applicable, and which may include, in the discretion of the derivatives clearing organization, the auctioning or allocation of such positions to other clearing members;

(iii) * * *

(C) The derivatives clearing organization shall not require a clearing member to bid for a portion of, or accept an allocation of, the defaulting clearing member's positions that is not proportional to the size of the bidding or accepting clearing member's positions in the same product class at the derivatives clearing organization;

* * * * *

(d) * * *

(1) A derivatives clearing organization shall have rules that require a clearing member to provide prompt notice to the derivatives clearing organization if it becomes the subject of a bankruptcy petition, receivership proceeding, or the equivalent;

* * * * *

(e) *Fully collateralized positions.* A derivatives clearing organization may satisfy the requirements of paragraphs (a), (b), and (c) of this section by having rules that permit it to clear only fully collateralized positions.

■ 17. In § 39.17, revise paragraphs (a) introductory text, (a)(1) and (3), and (b) to read as follows:

§ 39.17 Rule enforcement.

(a) *General.* A derivatives clearing organization shall:

(1) Maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance (by itself and its clearing members) with the rules of the derivatives clearing organization and the resolution of disputes;

* * * * *

(3) Report to the Commission regarding rule enforcement activities and sanctions imposed against clearing members as provided in paragraph (a)(2) of this section, in accordance with § 39.19(c)(4)(xvi).

(b) *Authority to enforce rules.* The board of directors of the derivatives clearing organization may delegate responsibility for compliance with the requirements of paragraph (a) of this section to an appropriate committee, unless the responsibilities are otherwise required to be carried out by the chief compliance officer pursuant to the Act or this part.

■ 18. In § 39.19, revise paragraphs (a), (b), (c) introductory text, the paragraph (c)(1) subject heading, and paragraphs (c)(1)(i), (c)(1)(ii) introductory text, (c)(1)(ii)(C), and (c)(2) through (5) to read as follows:

§ 39.19 Reporting.

(a) *General.* A derivatives clearing organization shall provide to the Commission the information specified in this section and any other information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.

(b) *Submission of reports*—(1) *General requirement.* A derivatives clearing organization shall submit the information required by this section to the Commission in a format and manner specified by the Commission.

(2) *Certification.* When making a submission pursuant to this section, an employee of the derivatives clearing organization must certify that he or she is duly authorized to make such a submission on behalf of the derivatives clearing organization.

(3) *Time zones.* Unless otherwise specified by the Commission or its designee, any stated time in this section is Central time for information concerning derivatives clearing organizations located in that time zone, and Eastern time for information concerning all other derivatives clearing organizations.

(c) *Reporting requirements.* Each registered derivatives clearing organization shall provide to the Commission or other person as may be required or permitted by this paragraph (c) the information specified as follows:

(1) *Daily reporting.* (i) A derivatives clearing organization shall compile as of the end of each trading day, and submit to the Commission by 10:00 a.m. on the next business day, a report containing the following information related to all positions other than fully collateralized positions:

(A) Initial margin requirements and initial margin on deposit for each clearing member, by house origin and by each customer origin, and by each individual customer account;

(B) Daily variation margin, separately listing the mark-to-market amount collected from or paid to each clearing member, by house origin and by each customer origin, and by each individual customer account;

(C) All other daily cash flows relating to clearing and settlement including, but not limited to, option premiums and payments related to swaps such as coupon amounts, collected from or paid to each clearing member, by house origin and by each customer origin, and by each individual customer account; and

(D) End-of-day positions, including as appropriate the risk sensitivities and valuation data that the derivatives clearing organization generates, creates, or calculates in connection with managing the risks associated with such positions, for each clearing member, by house origin and by each customer origin, and by each individual customer account. The derivatives clearing organization shall identify each individual customer account using both a legal entity identifier and any internally-generated identifier, where available, within each customer origin for each clearing member.

(ii) The report shall contain the information required by paragraphs (c)(1)(i)(A) through (D) of this section for:

* * * * *

(C) All securities positions that are:

(*1*) Held in a customer account subject to section 4d of the Act; or

(*2*) Subject to a cross-margining agreement.

(2) *Quarterly reporting.* A derivatives clearing organization shall provide to the Commission each fiscal quarter, or at any time upon Commission request, a report of the derivatives clearing organization's financial resources as required by § 39.11(f)(1).

(3) *Annual reporting.* A derivatives clearing organization shall provide to the Commission each year:

(i) The annual report of the chief compliance officer required by § 39.10; and

(ii) Audited year-end financial statements of the derivatives clearing organization as required by § 39.11(f)(2).

(iii) [Reserved]

(iv) The reports required by this paragraph (c)(3) shall be filed not later than 90 days after the end of the derivatives clearing organization's fiscal year, or at such later time as the Commission may permit, in its discretion, upon request by the derivatives clearing organization.

(4) *Event-specific reporting*—(i) *Decrease in financial resources.* If there is a decrease of 25 percent or more in the total value of the financial resources available to satisfy the requirements under § 39.11(a)(1) or § 39.33(a), as applicable, either from the last quarterly report submitted under § 39.11(f) or from the value as of the close of the previous business day, a derivatives clearing organization shall report such decrease to the Commission no later than one business day following the day the 25 percent threshold was reached. The report shall include:

(A) The total value of the financial resources as of the close of business the day the 25 percent threshold was reached;

(B) If reporting a decrease in value from the previous business day, the total value of the financial resources immediately prior to the 25 percent decline;

(C) A breakdown of the value of each financial resource reported in each of

paragraphs (c)(4)(i)(A) and (B) of this section, calculated in accordance with the requirements of § 39.11(d) or § 39.33(b), as applicable, including the value of each individual clearing member's guaranty fund deposit if the derivatives clearing organization reports guaranty fund deposits as a financial resource; and

(D) A detailed explanation for the decrease.

(ii) *Decrease in liquidity resources.* If there is a decrease of 25 percent or more in the total value of the liquidity resources available to satisfy the requirements under § 39.11(e) or § 39.33(c), as applicable, either from the last quarterly report submitted under § 39.11(f) or from the value as of the close of the previous business day, a derivatives clearing organization shall report such decrease to the Commission no later than one business day following the day the 25 percent threshold was reached. The report shall include:

(A) The total value of the liquidity resources as of the close of business the day the 25 percent threshold was reached;

(B) If reporting a decrease in value from the previous business day, the total value of the liquidity resources immediately prior to the 25 percent decline;

(C) A breakdown of the value of each liquidity resource reported in each of paragraphs (c)(4)(ii)(A) and (B) of this section, calculated in accordance with the requirements of § 39.11(e) or § 39.33(c), as applicable, including the value of each individual clearing member's guaranty fund deposit if the derivatives clearing organization reports guaranty fund deposits as a liquidity resource; and

(D) A detailed explanation for the decrease.

(iii) *Decrease in ownership equity.* A derivatives clearing organization shall report to the Commission no later than two business days prior to an event which the derivatives clearing organization knows or reasonably should know will cause a decrease of 20 percent or more in ownership equity from the last reported ownership equity balance as reported on a quarterly or audited financial statement required to be submitted by paragraph (c)(2) or (c)(3)(ii), respectively, of this section; but in any event no later than two business days after such decrease in ownership equity for events that caused the decrease about which the derivatives clearing organization did not know and reasonably could not have known prior to the event. The report shall include:

(A) Pro forma financial statements reflecting the derivatives clearing organization's estimated future financial condition following the anticipated decrease for reports submitted prior to the anticipated decrease and current financial statements for reports submitted after such a decrease; and

(B) A detailed explanation for the decrease or anticipated decrease in the balance.

(iv) *Six-month liquid asset requirement.* A derivatives clearing organization shall notify the Commission immediately when the derivatives clearing organization knows or reasonably should know of a deficit in the six-month liquid asset requirement of § 39.11(e)(2).

(v) *Change in current assets.* A derivatives clearing organization shall notify the Commission no later than two business days after the derivatives clearing organization's current liabilities exceed its current assets. The notice shall include a balance sheet that reflects the derivatives clearing organization's current assets and current liabilities and an explanation as to the reason for the negative balance.

(vi) *Request to clearing member to reduce its positions.* A derivatives clearing organization shall notify the Commission immediately of a request by the derivatives clearing organization to one of its clearing members to reduce the clearing member's positions. The notice shall include:

(A) The name of the clearing member;

(B) The time the clearing member was contacted;

(C) The number of positions for futures and options, and for swaps, the number of outstanding trades and notional amount, by which the derivatives clearing organization requested the reduction;

(D) All products that are the subject of the request; and

(E) The reason for the request.

(vii) *Determination to transfer or liquidate positions.* A derivatives clearing organization shall notify the Commission immediately of a determination by the derivatives clearing organization that a position it carries for one of its clearing members must be liquidated immediately or transferred immediately, or that the trading of any account of a clearing member shall be only for the purpose of liquidation because that clearing member has failed to meet an initial or variation margin call or has failed to fulfill any other financial obligation to the derivatives clearing organization. The notice shall include:

(A) The name of the clearing member;

(B) The time the clearing member was contacted;

(C) The products that are subject to the determination;

(D) The number of positions for futures and options, and for swaps, the number of outstanding trades and notional amount, that are subject to the determination; and

(E) The reason for the determination.

(viii) *Default of a clearing member.* A derivatives clearing organization shall notify the Commission immediately of the default of a clearing member. An event of default shall be determined in accordance with the rules of the derivatives clearing organization. The notice of default shall include:

(A) The name of the clearing member;

(B) The products the clearing member defaulted upon;

(C) The number of positions for futures and options, and for swaps, the number of outstanding trades and notional amount, the clearing member defaulted upon; and

(D) The amount of the financial obligation.

(ix) *Change in ownership or corporate or organizational structure*—(A) *Reporting requirement.* A derivatives clearing organization shall report to the Commission any anticipated change in the ownership or corporate or organizational structure of the derivatives clearing organization or its parent(s) that would:

(*1*) Result in at least a 10 percent change of ownership of the derivatives clearing organization;

(*2*) Create a new subsidiary or eliminate a current subsidiary of the derivatives clearing organization; or

(*3*) Result in the transfer of all or substantially all of the assets of the derivatives clearing organization to another legal entity.

(B) *Required information.* The report shall include: A chart outlining the new ownership or corporate or organizational structure; a brief description of the purpose and impact of the change; and any relevant agreements effecting the change and corporate documents such as articles of incorporation and bylaws.

(C) *Time of report.* The report shall be submitted to the Commission no later than three months prior to the anticipated change, provided that the derivatives clearing organization may report the anticipated change to the Commission later than three months prior to the anticipated change if the derivatives clearing organization does not know and reasonably could not have known of the anticipated change three months prior to the anticipated change. In such event, the derivatives clearing

organization shall immediately report such change to the Commission as soon as it knows of such change.

(D) *Confirmation of change report.* The derivatives clearing organization shall report to the Commission the consummation of the change no later than two business days following the effective date of the change.

(x) *Change in key personnel.* A derivatives clearing organization shall report to the Commission no later than two business days following the departure or addition of persons who are key personnel as defined in § 39.2. The report shall include, as applicable, the name and contact information of the person who will assume the duties of the position permanently or the person who will assume the duties on a temporary basis until a permanent replacement fills the position.

(xi) *Change in legal name.* A derivatives clearing organization shall report to the Commission no later than two business days following a legal name change of the derivatives clearing organization.

(xii) *Change in credit facility funding arrangement.* A derivatives clearing organization shall report to the Commission no later than one business day after the derivatives clearing organization changes a credit facility funding arrangement it has in place, or is notified that such arrangement has changed, including but not limited to a change in lender, change in the size of the facility, change in expiration date, or any other material changes or conditions.

(xiii) *Change in liquidity funding arrangement.* A derivatives clearing organization shall report to the Commission no later than one business day after the derivatives clearing organization changes a liquidity funding arrangement it has in place, or is notified that such arrangement has changed, including but not limited to a change in provider, change in the size of the facility, change in expiration date, or any other material changes or conditions.

(xiv) *Change in settlement bank arrangements.* A derivatives clearing organization shall report to the Commission no later than three business days after the derivatives clearing organization enters into a new relationship with, or terminates a relationship with, any settlement bank used by the derivatives clearing organization or approved for use by the derivatives clearing organization's clearing members.

(xv) *Settlement bank issues.* A derivatives clearing organization shall report to the Commission no later than one business day after any material issues or concerns arise regarding the performance, stability, liquidity, or financial resources of any settlement bank used by the derivatives clearing organization or approved for use by the derivatives clearing organization's clearing members.

(xvi) *Sanctions against a clearing member.* A derivatives clearing organization shall provide notice to the Commission no later than two business days after the derivatives clearing organization imposes sanctions against a clearing member.

(xvii) *Financial condition and events.* A derivatives clearing organization shall provide to the Commission immediate notice after the derivatives clearing organization knows or reasonably should have known of:

(A) The institution of any legal proceedings which may have a material adverse financial impact on the derivatives clearing organization;

(B) Any event, circumstance or situation that materially impedes the derivatives clearing organization's ability to comply with this part and is not otherwise required to be reported under this section; or

(C) A material adverse change in the financial condition of any clearing member that is not otherwise required to be reported under this section.

(xviii) *Financial statements material inadequacies.* A derivatives clearing organization shall provide notice to the Commission within 24 hours if the derivatives clearing organization discovers or is notified by an independent public accountant of the existence of any material inadequacy in a financial statement, and within 48 hours after giving such notice provide a written report stating what steps have been and are being taken to correct the material inadequacy.

(xix) *Change in fiscal year.* A derivatives clearing organization shall report to the Commission no later than two business days after any change to the start and end dates of its fiscal year.

(xx) *Change in independent accounting firm.* A derivatives clearing organization shall report to the Commission no later than 15 days after any change in the derivatives clearing organization's independent public accounting firm. The report shall include the date of such change, the name and contact information of the new firm, and the reason for the change.

(xxi) *Major decision of the board of directors.* A derivatives clearing organization shall report to the Commission any major decision of the derivatives clearing organization's board of directors as required by § 39.24(a)(3)(i).

(xxii) *System safeguards.* A derivatives clearing organization shall report to the Commission:

(A) Exceptional events as required by § 39.18(g); or

(B) Planned changes as required by § 39.18(h).

(xxiii) *Margin model issues.* A derivatives clearing organization shall report to the Commission no later than one business day after any issue occurs with a DCO's margin model, including margin models for cross-margined portfolios, that materially affects the DCO's ability to calculate or collect initial margin or variation margin.

(xxiv) *Recovery and wind-down plans.* A derivatives clearing organization that is required to maintain recovery and wind-down plans pursuant to § 39.39(b) shall submit its plans to the Commission no later than the date on which the derivatives clearing organization is required to have the plans. A derivatives clearing organization that is not required to maintain recovery and wind-down plans pursuant to § 39.39(b), but which nonetheless maintains such plans, may choose to submit its plans to the Commission. A derivatives clearing organization that has submitted its recovery and wind-down plans to the Commission shall, upon making any revisions to the plans, submit the revised plans to the Commission along with a description of the changes and the reason for those changes.

(5) *Requested reporting.* A derivatives clearing organization shall provide upon request by the Commission and within the time specified in the request:

(i) Any information related to its business as a clearing organization, including information relating to trade and clearing details.

(ii) A written demonstration, containing supporting data, information and documents, that the derivatives clearing organization is in compliance with one or more core principles and relevant provisions of this part.

■ 19. In § 39.20, revise paragraphs (a) introductory text and (b)(2) to read as follows:

§ 39.20 Recordkeeping.

(a) *Requirement to maintain information.* A derivatives clearing organization shall maintain records of all activities related to its business as a derivatives clearing organization. Such records shall include, but are not limited to, records of:

* * * * *

(b) * * *

(2) *Exception for swap data.* A derivatives clearing organization that clears swaps must maintain swap data in accordance with the requirements of part 45 of this chapter.

■ 20. In § 39.21:

■ a. Revise paragraphs (a), (b), (c) introductory text, and (c)(3) through (7);

■ b. Add paragraphs (c)(8) and (9); and

■ c. Remove paragraph (d).

The revisions and additions read as follows:

§ 39.21 Public information.

(a) *General.* A derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization. In furtherance of the objective in this paragraph (a), a derivatives clearing organization shall have clear and comprehensive rules and procedures.

(b) *Availability of information.* A derivatives clearing organization shall make information concerning the rules and the operating and default procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.

(c) *Public disclosure.* A derivatives clearing organization shall make the following information readily available to the general public, in a timely manner, by posting such information on the derivatives clearing organization's website, unless otherwise permitted by the Commission:

* * * * *

(3) Information concerning its margin-setting methodology;

(4) The size and composition of the financial resource package available in the event of a clearing member default, updated as of the end of the most recent fiscal quarter or upon Commission request and posted as promptly as practicable after submission of the report to the Commission under § 39.11(f)(1)(i)(A);

(5) Daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the derivatives clearing organization, posted no later than the business day following the day to which the information pertains;

(6) The derivatives clearing organization's rulebook, including rules and procedures for defaults in accordance with § 39.16;

(7) A current list of all clearing members;

(8) A list of all swaps that the derivatives clearing organization will accept for clearing that identifies which swaps on the list are required to be cleared, in accordance with § 50.3(a) of this chapter; and

(9) Any other information that is relevant to participation in the clearing and settlement activities of the derivatives clearing organization.

■ 21. Revise § 39.22 to read as follows:

§ 39.22 Information sharing.

A derivatives clearing organization shall enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement, and shall use relevant information obtained from each such agreement in carrying out the risk management program of the derivatives clearing organization.

■ 22. Add § 39.24 to read as follows:

§ 39.24 Governance.

(a) *General.* (1) A derivatives clearing organization shall have governance arrangements that:

(i) Are written;

(ii) Are clear and transparent;

(iii) Place a high priority on the safety and efficiency of the derivatives clearing organization; and

(iv) Explicitly support the stability of the broader financial system and other relevant public interest considerations of clearing members, customers of clearing members, and other relevant stakeholders.

(2) The board of directors shall make certain that the derivatives clearing organization's design, rules, overall strategy, and major decisions appropriately reflect the legitimate interests of clearing members, customers of clearing members, and other relevant stakeholders.

(3) To the extent consistent with other statutory and regulatory requirements on confidentiality and disclosure:

(i) Major decisions of the board of directors shall be clearly disclosed to clearing members, other relevant stakeholders, and to the Commission; and

(ii) Major decisions of the board of directors having a broad market impact shall be clearly disclosed to the public.

(b) *Governance arrangement requirements.* A derivatives clearing organization shall have governance arrangements that:

(1) Are clear and documented;

(2) To an extent consistent with other statutory and regulatory requirements on confidentiality and disclosure, are disclosed, as appropriate, to the Commission, other relevant authorities, clearing members, customers of clearing members, owners of the derivatives clearing organization, and to the public;

(3) Describe the structure pursuant to which the board of directors, committees, and management operate;

(4) Include clear and direct lines of responsibility and accountability;

(5) Clearly specify the roles and responsibilities of the board of directors and its committees, including the establishment of a clear and documented risk management framework;

(6) Clearly specify the roles and responsibilities of management;

(7) Describe procedures pursuant to which the board of directors oversees the chief risk officer, risk management committee, and material risk decisions;

(8) Provide risk management and internal control personnel with sufficient independence, authority, resources, and access to the board of directors so that the operations of the derivatives clearing organization are consistent with the risk management framework established by the board of directors;

(9) Assign responsibility and accountability for risk decisions, including in crises and emergencies; and

(10) Assign responsibility for implementing the:

(i) Default rules and procedures required by §§ 39.16 and 39.35, as applicable;

(ii) System safeguard rules and procedures required by §§ 39.18 and 39.34, as applicable; and

(iii) Recovery and wind-down plans required by § 39.39, as applicable.

(c) *Fitness standards.* (1) A derivatives clearing organization shall establish and enforce appropriate fitness standards for:

(i) Directors;

(ii) Members of any disciplinary committee;

(iii) Members of the derivatives clearing organization;

(iv) Any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and

(v) Any other party affiliated with any individual or entity described in this paragraph.

(2) A derivatives clearing organization shall maintain policies to make certain that:

(i) The board of directors consists of suitable individuals having appropriate skills and incentives;

(ii) The performance of the board of directors and the performance of individual directors is reviewed on a regular basis; and

(iii) Managers have the appropriate experience, skills, and integrity necessary to discharge operational and risk management responsibilities.

■ 23. Add § 39.25 to read as follows:

§ 39.25 Conflicts of interest.

A derivatives clearing organization shall:

(a) Establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization;

(b) Establish a process for resolving such conflicts of interest; and

(c) Describe procedures for identifying, addressing, and managing conflicts of interest involving members of the board of directors.

■ 24. Add § 39.26 to read as follows:

§ 39.26 Composition of governing boards.

A derivatives clearing organization shall ensure that the composition of the governing board or board-level committee of the derivatives clearing organization includes market participants and individuals who are not executives, officers, or employees of the derivatives clearing organization or an affiliate thereof.

■ 25. In § 39.27, add paragraph (c)(3) to read as follows:

§ 39.27 Legal risk considerations.

* * * * *

(c) * * *

(3) The derivatives clearing organization shall ensure on an ongoing basis that the memorandum required in paragraph (b) of Exhibit R to appendix A to this part is accurate and up to date and shall submit an updated memorandum to the Commission promptly following all material changes to the analysis or content contained in the memorandum.

§ 39.32 [Removed and Reserved]

■ 26. Remove and reserve § 39.32.

■ 27. In § 39.33, revise paragraphs (a)(1) and (c)(1)(i) and add paragraph (d)(5) to read as follows:

§ 39.33 Financial resources requirements for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) * * *

(1) Notwithstanding the requirements of § 39.11(a)(1), each systemically important derivatives clearing organization and subpart C derivatives clearing organization that, in either case, is systemically important in multiple jurisdictions or is involved in activities with a more complex risk profile shall maintain financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined financial exposure to the derivatives clearing organization in extreme but plausible market conditions.

* * * * *

(c) * * *

(1) * * *

(i) Notwithstanding the provisions of § 39.11(e)(1)(ii), each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall maintain eligible liquidity resources, in all relevant currencies, that, at a minimum, will enable it to meet its intraday, same-day, and multiday obligations to perform settlements, as defined in § 39.14(a)(1), with a high degree of confidence under a wide range of stress scenarios that should include, but not be limited to, a default by the clearing member creating the largest aggregate liquidity obligation for the systemically important derivatives clearing organization or subpart C derivatives clearing organization in extreme but plausible market conditions.

* * * * *

(d) * * *

(5) A systemically important derivatives clearing organization with access to accounts and services at a Federal Reserve Bank, pursuant to section 806(a) of the Dodd-Frank Act, 12 U.S.C. 5465(a), shall use such accounts and services where practical.

* * * * *

■ 28. In § 39.36, revise paragraphs (a)(5)(ii), (a)(6), (b)(2)(ii), (d), and (e) to read as follows:

§ 39.36 Risk management for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) * * *

(5) * * *

(ii) Using the results to assess the adequacy of, and to adjust, its total amount of financial resources; and

(6) Use the results of stress tests to support compliance with the minimum financial resources requirement set forth in § 39.11(a)(1) or § 39.33(a), as applicable.

(b) * * *

(2) * * *

(ii) Testing of the ability of the models or model components to react appropriately using actual or hypothetical datasets and assessing the impact of different model parameter settings.

* * * * *

(d) *Margin model assessment.* Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall conduct, on at least an annual basis (or more frequently if there are material relevant market developments), an assessment of the theoretical and empirical properties of its margin model for all products it clears.

(e) *Independent validation.* Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall perform, on an annual basis, a full validation of its financial risk management model and its liquidity risk management model.

* * * * *

■ 29. In § 39.37, revise paragraphs (b) and (c) to read as follows:

§ 39.37 Additional disclosure for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

* * * * *

(b)(1) Review and update its responses disclosed as required by paragraph (a) of this section at least every two years and following material changes to the systemically important derivatives clearing organization's or subpart C derivatives clearing organization's system or the environment in which it operates. A material change to the systemically important derivatives clearing organization's or subpart C derivatives clearing organization's system or the environment in which it operates is a change that would significantly change the accuracy and usefulness of the existing responses; and

(2) Provide notice to the Commission of updates to its responses required by paragraph (b)(1) of this section following material changes no later than ten business days after the updates are made. Such notice shall be accompanied by a copy of the text of the responses that shows all deletions and additions made to the immediately preceding version of the responses;

(c) Disclose, publicly and to the Commission, relevant basic data on transaction volume and values consistent with the standards set forth in the Public Quantitative Disclosure Standards for Central Counterparties published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions;

* * * * *

■ 30. In § 39.39, revise paragraph (a)(2) to read as follows:

§ 39.39 Recovery and wind-down for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) * * *

(2) *Wind-down* means the actions of a systemically important derivatives clearing organization or subpart C derivatives clearing organization to effect the permanent cessation or sale or transfer of one or more services.

* * * * *

■ 31. Revise Appendix A to part 39 to read as follows:

Appendix A to Part 39—Form DCO Derivatives Clearing Organization Application for Registration

BILLING CODE 6351–01–P

OMB No. 3038-0076

COMMODITY FUTURES TRADING COMMISSION

FORM DCO

DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION

GENERAL INSTRUCTIONS

Intentional misstatements or omissions of fact may constitute federal criminal violations (7 U.S.C. 13 and 18 U.S.C. 1001) or grounds for disqualification from registration.

DEFINITIONS

Unless the context requires otherwise, all terms used in this Form DCO have the same meaning as in the Commodity Exchange Act ("Act"), and in the General Rules and Regulations of the Commodity Futures Trading Commission ("Commission") thereunder. All references to Commission regulations are found at 17 CFR Ch. I.

For the purposes of this Form DCO, the term "Applicant" shall include any applicant for registration as a derivatives clearing organization.

GENERAL INSTRUCTIONS

1. This Form DCO, which includes a Cover Sheet and required Exhibits (together, "Form DCO" or "application"), is to be filed with the Commission by all applicants for registration as a derivatives clearing organization, including applicants when amending a pending application, pursuant to Section 5b of the Act and the Commission's regulations thereunder. Upon the filing of an application for registration or an amendment to an application in accordance with the instructions provided herein, the Commission will publish notice of the filing and afford interested persons an opportunity to submit written data, views and comments concerning such application. No application for registration will be effective unless the Commission, by order, grants such registration.
2. Individuals' names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).
3. With respect to the executing signature, it must be manually signed by a duly authorized representative of the Applicant as follows: If the Form DCO is filed by a corporation, it must be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it must be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company's behalf; if filed by a partnership, it must be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association which is not a partnership, it must be signed in the name of such organization or association by the managing agent, *i.e.*, a duly authorized person who directs or manages or who participates in the directing or managing of its affairs.
4. If this Form DCO is being filed as an application for registration, all applicable items must be answered in full. If any item or Exhibit is inapplicable, this response must be affirmatively indicated by the designation "none," "not applicable," or "N/A," as appropriate.
5. Under section 5b of the Act and the Commission's regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Form DCO from any Applicant seeking registration as a derivatives clearing organization and from any registered derivatives clearing organization. Disclosure by the Applicant of the information specified in this Form DCO is mandatory prior to the start of the processing of an application for registration as a derivatives clearing

organization. The information provided in this Form DCO will be used for the principal purpose of determining whether the Commission should grant or deny registration to an Applicant.

The Commission may determine that additional information is required from the Applicant in order to process its application. An Applicant is therefore encouraged to supplement this Form DCO with any additional information that may be significant to its operation as a derivatives clearing organization and to the Commission's review of its application. A Form DCO which is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Form DCO, however, shall not constitute a finding that the Form DCO has been filed as required or that the information submitted is true, current or complete.

6. As provided in 17 CFR 39.3(a)(5), except in cases where the Applicant submits a request for confidential treatment with the Secretary of the Commission pursuant to the Freedom of Information Act and 17 CFR 145.9, information supplied in this application will be included routinely in the public files of the Commission and will be available for inspection by any interested person.

APPLICATION AMENDMENTS

1. 17 CFR 39.3(a)(4) requires an Applicant to promptly amend its application if it discovers a material omission or error in the application, or if there is a material change in the information contained in the application, including any supplement or amendment thereto.
2. Applicants, when filing this Form DCO for purposes of amending a pending application, must re-file an entire Cover Sheet, amended if necessary and including an executing signature, and attach thereto revised Exhibits or other materials marked to show changes, as applicable. The submission of an amendment to a pending application represents that the remaining items and Exhibits that are not amended remain true, current, and complete as previously filed.

WHERE TO FILE

This Form DCO must be filed with the Commission in the format and manner specified by the Commission.

COMMODITY FUTURES TRADING COMMISSION

FORM DCO
DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION

COVER SHEET

_____
Exact name of Applicant as specified in charter

_____
Address of principal executive offices

☐ If this is an **APPLICATION** for registration, complete in full and check here.

☐ If this is an **AMENDMENT** to a pending application, list below all items that are being amended and check here.

_____
_____
_____
_____

GENERAL INFORMATION

1. Name under which business is or will be conducted, if different than name specified above (include acronyms, if any):

_____

2. If name of derivatives clearing organization is being amended, state previous derivatives clearing organization name:

_____

3. Additional contact information:

_____
Website URL Main Phone Number

4. List of principal office(s) and address(es) where derivatives clearing organization activities are/will be conducted:

Office	Address
_____	_____
_____	_____

_____ _____

_____ _____

BUSINESS ORGANIZATION

5. If Applicant is a successor to a previously registered derivatives clearing organization, please complete the following:

   a. Date of succession _____

   b. Full name and address of predecessor registrant

   _____
   Name

   _____
   Street Address

   _____
   City State Country Zip Code

6. Applicant is a:

☐ Corporation

☐ Partnership (specify whether general or limited)

☐ Limited Liability Company

☐ Other form of organization (specify) _____

7. Date of formation: _____

8. Jurisdiction of organization: _____

   List all other jurisdictions in which Applicant is qualified to do business (including non-US jurisdictions):

_____

_____

   List all other regulatory licenses or registrations of Applicant (or exemptions from any licensing requirement) including with non-US regulators:

_____

_____

9. FEIN or other Tax ID#: _____

10. Fiscal Year End: _____

ADDITIONAL CONTACT INFORMATION

11. Provide contact information specifying name, title, phone numbers, mailing address and e-mail address for the following individuals:

a. The primary contact for questions and correspondence regarding the application

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

b. The individual responsible for handling questions regarding the Applicant's financial statements

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

c. The individual responsible for serving as the Chief Risk Officer of the Applicant pursuant to § 39.13 of the Commission's regulations

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

d. The individual responsible for serving as the Chief Compliance Officer of the Applicant pursuant to § 39.10 of the Commission's regulations

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

e.

The individual responsible for serving as the chief legal officer of the Applicant

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

12. Outside Service Providers: Provide contact information specifying name, title, phone numbers, mailing address and e-mail address for any outside service provider retained by the Applicant as follows:

a. Certified Public Accountant

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

b. Legal Counsel

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

c. Records Storage or Management

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

d. Business Continuity/Disaster Recovery

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

e. Professional consultants providing services related to this application

_____
Name and Title

_____
Office Phone Number Mobile Phone Number

_____
Mailing address E-mail Address

13. Applicant agrees and consents that the notice of any proceeding before the Commission in connection with this application may be given by sending such notice by certified mail to the person named below at the address given.

_____
Print Name and Title

_____
Street Address

_____
City State Country Zip Code

SIGNATURE/REPRESENTATION

14. Applicant has duly caused this application to be signed on its behalf by its duly authorized representative as of the _____ day of _____, 20_____. Applicant and the undersigned each represent hereby that, to the best of their knowledge, all information contained herein is true, current and complete in all material respects. It is understood that all required items and Exhibits are considered integral parts of this Form DCO and that the submission of any amendment represents that all unamended items and Exhibits remain true, current, and complete as previously filed.

_____
Name of Applicant

By:_____
Manual Signature of Duly Authorized Person

_____
Print Name and Title of Signatory

COMMODITY FUTURES TRADING COMMISSION

FORM DCO

DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION

EXHIBIT INSTRUCTIONS

1. The following Exhibits must be filed with the Commission by each Applicant seeking registration as a derivatives clearing organization pursuant to section 5b of the Act and the Commission's regulations thereunder.

2. The application must include a Table of Contents listing each Exhibit required by this Form DCO and indicating which, if any, Exhibits are inapplicable. For any Exhibit that is inapplicable, next to the Exhibit letter specify "none," "not applicable," or "N/A," as appropriate.

3. The Exhibits must be labeled as specified in this Form DCO. If any Exhibit requires information that is related to, or may be duplicative of, information required to be included in another Exhibit, Applicant may summarize such information and provide a cross-reference to the Exhibit that contains the required information.

4. If the information required in an Exhibit involves computerized programs or systems, Applicant must submit descriptions of system test procedures, tests conducted, or test results in sufficient detail to demonstrate the Applicant's ability to comply with the core principles specified in section 5b of the Act and the Commission's regulations thereunder (the "Core Principles"). With respect to each system test, Applicant must identify the methodology used and provide the computer software, programs, and data necessary to enable the Commission to duplicate each system test as it relates to the applicable Core Principle.

5. If Applicant seeks confidential treatment of any Exhibit or a portion of any Exhibit, Applicant must mark such Exhibit with a prominent stamp, typed legend, or other suitable form of notice on each page or portion of each page stating "Confidential Treatment Requested by [Applicant]." If such marking is impractical under the circumstances, a cover sheet prominently marked "Confidential Treatment Requested by [Applicant]" should be provided for each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this matter shall be individually marked with an identifying number and code so that they are separately identifiable. Applicant must also file a confidentiality request with the Secretary of the Commission in accordance with 17 CFR 145.9.

DESCRIPTION OF EXHIBITS

EXHIBIT A — GENERAL INFORMATION/COMPLIANCE

- Attach as **Exhibit A-1**, a regulatory compliance chart setting forth each Core Principle and providing citations to the Applicant's relevant rules, policies, and procedures that address each Core Principle, and a brief summary of the manner in which Applicant will comply with each Core Principle.

- Attach as **Exhibit A-2**, a copy of Applicant's rulebook. The rulebook must consist of all the rules necessary to carry out Applicant's role as a derivatives clearing organization. Applicant must certify that its rules constitute a binding agreement between Applicant and its clearing members and, in addition to any separate clearing member agreements, establish rights and obligations between Applicant and its clearing members.

- Attach as **Exhibit A-3**, a narrative summary of Applicant's proposed clearing activities including (i) the anticipated start date of clearing products (or, if Applicant is already clearing products, the anticipated start date of activities for which Applicant is seeking an amendment to its registration), and (ii) a description of the scope of Applicant's proposed clearing activities (*e.g.*, clearing for a designated contract market; clearing for a swap execution facility; clearing bilaterally executed products).

- Attach as **Exhibit A-4**, a detailed business plan setting forth, at a minimum, the nature of and rationale for Applicant's activities as a derivatives clearing organization, the context in which it is beginning or expanding its activities, and the nature, terms, and conditions of the products it will clear.

- Attach as **Exhibit A-5**, a list of the names of any person (i) who owns 5% or more of Applicant's stock or other ownership or equity interests; or (ii) who, either directly or indirectly, through agreement or otherwise, may control or direct the management or policies of Applicant. Provide as part of **Exhibit A-5** the full name and address of each such person, indicate the person's ownership percentage, and attach a copy of the agreement or, if there is no agreement, an explanation of the basis upon which such person exercises or may exercise such control or direction.

- Attach as **Exhibit A-6**, a list of Applicant's current officers, directors, governors, general partners, LLC managers, and members of all standing committees, as applicable, or persons performing functions similar to any of the foregoing, indicating for each:

    a. Name and Title (with respect to a director, such title must include participation on any committee of Applicant);

    b. Dates of commencement and, if appropriate, termination of present term of office or position;

    c. Length of time each such person has held the same office or position;

    d. Brief description of the business experience of each person over the last ten years;

    e. Any other current business affiliations in the financial services industry;

    f. If such person is not an employee of Applicant, list any compensation paid to the person as a result of his or her position at Applicant. For a director, describe any performance-based compensation;

    g. A certification for each such person that the individual would not be disqualified under section 8a(2) of the Act or § 1.63; and

    h. With respect to a director, indicate whether such director is an independent director, and whether such director is a market participant, and the basis for such a determination as to the director's status.

If another entity will operate or control the day-to-day business operations of the Applicant, attach for such entity all of the items indicated in **Exhibit A-6**.

- Attach as **Exhibit A-7**, a diagram of the entire corporate organizational structure of Applicant including the legal name of all entities within the organizational structure and the applicable percentage ownership among affiliated entities. Additionally, provide (i) a list of all jurisdictions in which Applicant or its affiliated entities are doing business; (ii) the registration status of Applicant and its affiliated entities, including pending applications or exemption requests and whether any applications or exemptions have been denied (*e.g.*, country, regulator, registration category, date of registration or request for exemption, date of denial, if applicable); and (iii) the address for legal service of process for Applicant (which cannot be a post office box) for each applicable jurisdiction.

- Attach as **Exhibit A-8**, a copy of the constituent documents, articles of incorporation or association with all amendments thereto, partnership or limited liability agreements, and existing bylaws, operating agreement, or instruments corresponding thereto, of Applicant. Provide a certificate of good standing or its equivalent for Applicant for each jurisdiction in which Applicant is doing business, including any foreign jurisdiction, dated within one month of the date of the Form DCO.

- Attach as **Exhibit A-9**, a brief description of any material pending legal proceeding(s) or governmental investigation(s) to which Applicant or any of its affiliates is a party or is subject, or to which any of its or their property is at issue. Include the name of the court or agency where the proceeding(s) is pending, the date(s) instituted, the principal parties involved, a description of the factual allegations in the complaint(s), the laws that were allegedly violated, and the relief sought. Include similar information as to any such proceeding(s) or any investigation known to be contemplated by any governmental agency.

- If Applicant intends to use the services of an outside service provider (including services of its clearing members or market participants), to enable Applicant to comply with any of the Core Principles, Applicant must submit as **Exhibit A-10** all agreements entered into or to be entered into between Applicant and the outside service provider, and identify (1) the services that will be provided; (2) the staff of the outside service provider who will provide the services (specifying (i) in which department or unit of the outside service provider they are employed, (ii) title, and (iii) if known, level of expertise); and (3) the Core Principles addressed by such arrangement. Each submitted agreement must include all attachments cited therein. If a submitted agreement is not final and executed, the Applicant must submit evidence that constitutes reasonable assurance that such services will be provided as soon as operations require.

- Attach as Exhibit **A-11**, documentation that demonstrates compliance with the Chief Compliance Officer ("CCO") requirements set forth in § 39.10(c), including but not limited to:

    a. Evidence of the designation of an individual to serve as Applicant's CCO with full responsibility and authority to develop and enforce appropriate compliance policies and procedures;

    b. A description of the background and skills of the person designated as the CCO and a certification that the individual would not be disqualified under section 8a(2) or 8a(3) of the Act;

    c. Identification of to whom the CCO reports (*i.e.*, the senior officer of the derivatives clearing organization, the senior officer responsible for the derivative clearing organization's clearing activities, or the Board of Directors of the derivatives clearing organization);

    d. Any plan of communication or regular or special meetings between the CCO and the Board of Directors or senior officer as appropriate;

    e. A job description setting forth the CCO's duties;

    f. Procedures for the remediation of noncompliance issues; and

g. A copy of Applicant's written compliance policies and procedures (including a code of ethics and conflict of interest policy).

- Attach as Exhibit **A-12**, a description of Applicant's enterprise risk management program, and how it complies with the requirements set forth in § 39.10(d).

EXHIBIT B — FINANCIAL RESOURCES

- Attach as **Exhibit B**, documents that demonstrate compliance with the financial resources requirements set forth in § 39.11 of the Commission's regulations, including but not limited to:

a. General – Provide as **Exhibit B-1**:

(1) The most recent year-end audited financial statements of Applicant calculated in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"), including the balance sheet, income statement, statement of cash flows, notes to the financial statements, and an independent auditor's report issued by a certified public accountant, dated as of the end of Applicant's last fiscal year-end prior to the date of filing the Form DCO. If Applicant does not have its own year-end audited financial statements, it may submit the audited financial statements of its direct parent company, dated as of the end of the direct parent company's last fiscal year-end prior to the date of filing the Form DCO. Applicant should be aware that once it is registered as a derivatives clearing organization it must submit its own year-end audited financial statements, as required by § 39.11(f)(2)(i), and the cost of such audit must be included in Applicant's calculation of its total projected operating costs in Exhibit B-3, as described in paragraph c(5) below;

(2) If Applicant is unable to submit a copy of its own audited financial statements or the audited financial statements of its direct parent company, as required by paragraph a(1) above, Applicant must provide its year-end financial statements calculated in accordance with U.S. GAAP, including the balance sheet, income statement, statement of cash flows, and notes to the financial statements, dated as of the end of Applicant's last fiscal year-end prior to the date of filing the Form DCO. These year-end financial statements must be accompanied by an independent accountant's review report issued by a certified public accountant;

(3) If the audited or reviewed financial statements submitted in accordance with either paragraph a(1) or paragraph a(2) above are not dated as of the end of Applicant's last fiscal quarter prior to the date of filing the Form DCO, Applicant must also provide a set of Applicant's quarterly unaudited financial statements, dated as of the end of Applicant's last fiscal quarter prior to the date of filing the Form DCO;

(4) If Applicant is incorporated or organized under the laws of any foreign country, it may submit the financial statements described above prepared in accordance with either U.S.GAAP or the International Financial Reporting Standards ("IFRS") issued by the International Accounting Standards Board. Applicant should be aware that once it is registered as a derivatives clearing organization it must submit financial statements prepared in accordance with U.S. GAAP or IFRS, as required by § 39.11(f)(1) and (f)(2);

(5) If Applicant is a start-up or will commence operations after it is registered as a derivatives clearing organization, Applicant must submit a set of pro-forma financial statements, including the balance sheet, income statement, and statement of cash flows, dated as of the first month-end after Applicant's

expected start date. The set of pro-forma statements must include a narrative description of how the estimates were determined;

(6) A narrative description of how Applicant will fund its financial resources obligations on the first day of its operation as a registered derivatives clearing organization; and

(7) Applicant must complete the form that is used by registered derivatives clearing organizations for quarterly reports under § 39.11(f)(1), as of the date of the most recent financial statements provided in Exhibit B-1. If Applicant is a start-up, Applicant must complete the form using estimated figures and must provide a narrative description of how the estimates were determined. The Division of Clearing and Risk will provide the current form to Applicant, upon request.

b. Default Resources – Provide as **Exhibit B-2**:

(1) A calculation of the financial resources needed to enable Applicant to meet its requirements under § 39.11(a)(1), as of the date of the most recent financial statements provided in Exhibit B-1. Applicant must provide hypothetical default scenarios designed to reflect a variety of market conditions, and the assumptions and variables underlying the scenarios must be explained. All results of the analysis must be included. This calculation requires a start-up enterprise to estimate its largest anticipated financial exposure and explain the basis for such estimate;

(2) Evidence of unencumbered assets sufficient to satisfy § 39.11(a)(1), as of the date of the most recent financial statements provided in Exhibit B-1. For example, this may be demonstrated by audited financial statements or a copy of a bank balance statement(s), custodian statement(s), or statement(s) from any other institution holding such assets for each type of financial resource. A start-up enterprise may not make this demonstration through audited financial statements. If relying on § 39.11(b)(1)(v), such other resources must be thoroughly explained. If Applicant intends to use a committed line of credit or similar facility to meet the liquidity requirement pursuant to § 39.11(e)(1)(iii), Applicant must provide a copy of the applicable credit agreement(s). If relying on § 39.11(b)(1)(i) and/or (v), Applicant cannot also count these assets when demonstrating its compliance with its operating resources requirement under § 39.11(a)(2) and Applicant must detail the amounts or percentages of such assets that apply to each financial resource requirement;

(3) A demonstration that Applicant can perform the monthly calculations required by § 39.11(c)(1);

(4) A demonstration that Applicant's financial resources are sufficiently liquid as required by § 39.11(e)(1), as of the date of the most recent financial statements provided in Exhibit B-1;

(5) A demonstration of how Applicant will be able to maintain, at all times, the level of resources required by § 39.11(a)(1); and

(6) A demonstration of how default resources financial information will be updated and reported to clearing members and the public under § 39.21, and to the Commission as required by § 39.11(f)(1) and § 39.19.

c. Operating Resources – Provide as **Exhibit B-3**:

(1) A calculation of the financial resources needed to enable Applicant to meet its requirements under § 39.11(a)(2), as of the date of the most recent financial statements provided in Exhibit B-1;

(2) Evidence of assets sufficient to satisfy the amount required under § 39.11(a)(2), as of the date of the most recent financial statements provided in Exhibit B-1. For example, this may be demonstrated by audited financial statements or a copy of a bank balance statement(s), custodian statement(s), or statement(s) from any other institution holding such assets, in the name of Applicant, for each type of financial resource. A start-up enterprise may not make this demonstration through audited financial statements. If relying on § 39.11(b)(2)(ii), such other resources must be thoroughly explained. If Applicant intends to use a committed line of credit or similar facility to meet the liquidity requirement pursuant to § 39.11(e)(2), Applicant must provide a copy of the applicable credit agreement(s). If relying on § 39.11(b)(2)(i) or (ii), Applicant cannot also count these assets when demonstrating its compliance with meeting its default resources requirement under § 39.11(a)(1) and Applicant must detail the amounts or percentages of such assets that apply to each financial resource requirement;

(3) A narrative statement demonstrating the adequacy of Applicant's physical infrastructure to carry out business operations, which includes a principal executive office (separate from any personal dwelling) with a street address (not merely a post office box number). For its principal executive office and other facilities Applicant plans to occupy in carrying out its functions as a derivatives clearing organization, a description of the space (*e.g.*, location and square footage), use of the space (*e.g.*, executive office, data center), and the basis for Applicant's right to occupy the space (*e.g.*, lease, agreement with parent company to share leased space);

(4) A narrative statement demonstrating the adequacy of the technological systems necessary to carry out Applicant's business operations, including a description of Applicant's information technology and telecommunications systems and a timetable for full operability;

(5) A calculation pursuant to § 39.11(c)(2), including the total projected operating costs for Applicant's first year of operation as a derivatives clearing organization, calculated on a monthly basis with an explanation of the basis for calculating each cost and a discussion of the type, nature, and number of the various costs included;

(6) A demonstration that Applicant's financial resources are sufficiently liquid and unencumbered, as required by § 39.11(e)(2), as of the date of the most recent financial statements provided in Exhibit B-1;

(7) A demonstration of how Applicant will maintain, at all times, the level of resources required by § 39.11(a)(2) with an explanation of asset valuation methodology and calculation of projected revenue, if applicable; and

(8) A demonstration of how financial information for operating resources will be updated and reported to clearing members and the public under § 39.21, and to the Commission as required by § 39.11(f)(1) and § 39.19.

d. Human Resources – Provide as **Exhibit B-4**:

(1) An organizational chart showing Applicant's current and planned staff by position and title, including key personnel (as such term is defined in § 39.2) and, if applicable, managerial staff reporting to key personnel.

(2) A discussion and description of the staffing requirements needed to fulfill all operations and associated functions, tasks, services, and areas of supervision necessary to operate Applicant on a day-to-day basis; and

(3) The names and qualifications of individuals who are key personnel or other managerial staff who will carry out the operations and associated functions, tasks, services, and supervision needed to run the Applicant on day-to-day basis. In particular, Applicant must identify such individuals who are responsible for risk management, treasury, clearing operations and compliance (and specify whether each such person is an employee or consultant/agent).

EXHIBIT C — PARTICIPANT AND PRODUCT ELIGIBILITY

- Attach as **Exhibit C**, documents that demonstrate compliance with the participant and product eligibility requirements set forth in § 39.12 of the Commission's regulations, including but not limited to:

a. Participant Eligibility – Provide as **Exhibit C-1**, an explanation of the requirements for becoming a clearing member and how those requirements satisfy § 39.12 and, where applicable, support Applicant's compliance with other Core Principles. Applicant must address how its participant eligibility requirements comply with the core principles and regulations thereunder for financial resources, risk management, and operational capacity. The explanation also must include:

(1) A final version of the membership agreement between Applicant and its clearing members that sets forth the full scope of respective rights and obligations;

(2) A discussion of how Applicant will monitor for and enforce compliance with its eligibility criteria, especially minimum financial requirements;

(3) An explanation of how the eligibility criteria are objective and allow for fair and open access to Applicant. Applicant must include an explanation of the differences between various classes of membership or participation that might be based on different levels of capital and/or creditworthiness. Applicant must also include information about whether any differences exist in how Applicant will monitor and enforce the obligations of its various clearing members including any differences in access, privilege, margin levels, position limits, or other controls;

(4) If Applicant allows intermediation, Applicant must describe the requirements applicable to those who may act as intermediaries on behalf of customers or other market participants;

(5) A description of the program for monitoring the financial status of the clearing members on an ongoing basis;

(6) The procedures that Applicant will follow in the event of the bankruptcy or insolvency of a clearing member, which did not result in a default to Applicant;

(7) A description of whether and how Applicant would adjust clearing member participation under continuing eligibility criteria based on the financial, risk, or operational status of a clearing member;

(8) A discussion of whether Applicant's clearing members will be required to be registered with the Commission; and

(9) A list of current or prospective clearing members. If a current or prospective clearing member is a Commission registrant, Applicant must identify the member's designated self-regulatory organization.

b. Product Eligibility – Provide as **Exhibit C-2**, an explanation of the criteria used to determine the eligibility of products submitted for clearing, including:

(1) The regulatory status of each market on which a contract to be cleared by Applicant is traded (*e.g.*, designated contract market, swap execution facility, not a registered market), and whether the market for which Applicant clears intends to join the Joint Audit Committee. For bilaterally executed agreements, contracts, or transactions not traded on a registered market, Applicant must describe the nature of the related market and its interest in having the particular bilaterally executed agreement, contract, or transaction cleared;

(2) The criteria, and the factors considered in establishing the criteria, for determining the types of products that will be cleared;

(3) An explanation of how the criteria for deciding what products to clear take into account the different risks inherent in clearing different agreements, contracts, or transactions and how those criteria affect maintenance of assets to support the guarantee function in varying risk environments;

(4) A precise list of all the agreements, contracts, or transactions to be covered by Applicant's registration order, including the terms and conditions of all agreements, contracts, or transactions;

(5) A forecast of expected volume and open interest at the outset of clearing operations as a derivatives clearing organization, after six months, and after one year of operation as a derivatives clearing organization; and

(6) The mechanics of clearing each contract, such as reliance on exchange for physical, exchange for swap, or other substitution activity; whether the contracts are matched prior to submission for clearing or after submission; and other aspects of clearing mechanics that are relevant to understanding the products that would be eligible for clearing.

EXHIBIT D — RISK MANAGEMENT

- Attach as **Exhibit D**, documents that demonstrate compliance with the risk management requirements set forth in § 39.13 of the Commission's regulations, including but not limited to:

a. Risk Management Framework – Provide as **Exhibit D-1**, a copy of Applicant's written policies, procedures, and controls, as approved by Applicant's Board of Directors, that establish Applicant's risk management framework as required by § 39.13(b). Applicant must also provide a description of the composition and responsibilities of Applicant's Risk Management Committee.

b. Measuring Risk – Provide as **Exhibit D-2**, a narrative explanation of how Applicant has projected and will continue to measure its counterparty risk exposure, including:

(1) A description of the risk-based margin calculation methodology;

(2) The assumptions upon which the methodology was designed, including the risk analysis tools and procedures employed in the design process;

(3) An explanation as to whether other margining methodologies were considered and, if so, why they were not chosen;

(4) A demonstration of the margin methodology as applied to real or hypothetical clearing scenarios;

(5) A description of the data sources for inputs used in the methodology, *e.g.*, historical price data reflecting market volatility over various periods of time;

(6) A description of the sources of price data for the measurement of current exposures and the valuation models for addressing circumstances where pricing data is not readily available or reliable;

(7) The frequency and circumstances under which the margin methodology will be reviewed and the criteria for deciding how often to review and whether to modify a margin methodology;

(8) An independent validation of Applicant's systems for generating initial margin requirements, including its theoretical models;

(9) The frequency of measuring counterparty risk exposures (mark to market), whether counterparty risk exposures are routinely measured on an intraday basis, whether Applicant has the operational capacity to measure counterparty risk exposures on an intraday basis, and the circumstances under which Applicant would conduct a non-routine intraday measurement of counterparty risk exposures;

(10) Preliminary forecasts regarding future counterparty risk exposure and assumptions upon which such forecasts of exposure are based;

(11) A description of any systems or software that Applicant will require clearing members to use in order to margin their positions in their internal bookkeeping systems, and whether and under what terms and conditions Applicant will provide such systems or software to clearing members; and

(12) A description of the extent to which counterparty risk can be offset through the clearing process (*i.e.*, the limitations, if any, on Applicant's duty to fulfill its obligations as the buyer to every seller and the seller to every buyer).

c. Limiting Risk – Provide as **Exhibit D-3**, a narrative discussion addressing the specifics of Applicant's clearing activities, including:

(1) How Applicant will collect financial information about its clearing members and other traders or market participants, monitor price movements, and mark to market, on a daily basis, the products and/or portfolios it clears;

(2) How Applicant will monitor accounts carried by clearing members, the accumulation of positions by clearing members and other market participants, and compliance with risk limits; and how it will use large trader information;

(3) How Applicant will determine variation margin levels and outstanding initial margin due;

(4) How Applicant will identify unusually large pays on a proactive basis before they occur;

(5) Whether and how Applicant will compare price moves and position information to historical patterns and to the financial information collected from its clearing members; and how it will identify unusually large pays on a daily basis;

(6) How Applicant will use various risk tools and procedures such as: (i) value-at-risk calculations; (ii) stress testing; (iii) back testing; and/or (iv) other risk management tools and procedures. If Applicant is currently clearing products for which it is seeking registration as a derivatives clearing organization, provide back testing results for actual portfolios containing each such product, which demonstrate margin coverage at least at the 99 percent confidence level over the previous 252 trading days;

(7) How Applicant will communicate with clearing members, settlement banks, other derivatives clearing organizations, designated contract markets, swap execution facilities, major swap participants, swap data repositories, and other entities in emergency situations or circumstances that might require immediate action by the Applicant;

(8) How Applicant will monitor risk outside of its business hours;

(9) How Applicant will review its clearing members' risk management practices;

(10) Whether Applicant will impose credit limits and/or employ other risk filters (such as automatic system denial of entry of trades under certain conditions);

(11) Plans for handling "extreme market volatility" and how Applicant defines that term;

(12) An explanation of how Applicant will be able to offset positions in order to manage risk including: (i) ensuring both Applicant and clearing members have the operational capacity to do so; and (ii) liquidity of the relevant market, especially with regard to bilaterally executed products;

(13) Plans for managing accounts that are "too big" to liquidate and for conducting "what if" analyses on these accounts;

(14) If options are involved, how Applicant will manage the different and more complex risk presented by these products;

(15) If Applicant intends to clear swaps, whether and how often Applicant will offer multilateral portfolio compression exercises for its clearing members; and

(16) If Applicant intends to clear credit default swaps, credit default futures, and any derivatives that reference either credit default swaps or credit default futures, how Applicant will manage the unique risks associated with clearing

these products, including but not limited to liquidity risk, currency risk, seasonable risk, compounding risk, jump-to-default risk or similar jump risk.

d. Existence of collateral (funds and assets) to apply to losses resulting from realized risk – Provide as **Exhibit D-4**:

(1) An explanation of the factors, process, and methodology used for calculating and setting required collateral levels, the required inputs, the appropriateness of those inputs, and an illustrative example;

(2) An analysis supporting the sufficiency of Applicant's collateral levels for capturing all or most price moves that may take place in one settlement cycle;

(3) A description of how Applicant will value open positions and collateral assets;

(4) A description and explanation of the forms of assets allowed as collateral, why they are acceptable, and whether there are any haircuts or concentration limits or charges on certain kinds of assets, including how often any such haircuts and concentration limits or charges are reviewed;

(5) An explanation of how and when Applicant will collect collateral, whether and under what circumstances it will collect collateral on an intraday basis, and what will happen if collateral is not received in a timely manner. Include a proposed collateral collection schedule based on changes in market positions and collateral values; and

(6) If options are involved, a full explanation of how Applicant will manage the associated risk through the use of collateral including, if applicable, a discussion of Applicant's option pricing model, how it establishes its implied volatility scan range, and other matters related to the complex matter of managing the risk associated with the clearing of option contracts.

EXHIBIT E — SETTLEMENT PROCEDURES

- Attach as **Exhibit E**, documents that demonstrate compliance with the settlement procedures requirements set forth in § 39.14 of the Commission's regulations, including but not limited to:

a. Settlement – Provide as **Exhibit E-1**, a full description of the daily process of settling financial obligations on all open positions being cleared. This must include:

(1) Procedures for completing settlements on a timely basis during normal market conditions (and no less frequently than once each business day);

(2) Procedures for completing settlements on a timely basis in varying market circumstances including in the event of a default by the clearing member creating the largest financial exposure for Applicant in extreme but plausible market conditions;

(3) A description of how contracts will be marked to market on at least a daily basis;

(4) Identification of the settlement banks used by Applicant (including identification of the lead settlement bank, if applicable) and a copy of Applicant's settlement bank agreement(s). Such settlement bank agreements must (i) outline daily cash settlement procedures, (ii) state clearly when settlement fund transfers will occur, (iii) provide procedures for settlements on

bank holidays when the markets are open, and (iv) ensure that settlements are final when effected;

(5) Identification of settlement banks that Applicant will allow its clearing members to use for margin calls and variation settlements;

(6) A description of the criteria and review process used by Applicant when selecting settlement banks to be used by the Applicant or its clearing members, including criteria addressing the capitalization, creditworthiness, access to liquidity, operational reliability, and regulation or supervision of such settlement banks;

(7) Procedures for monitoring the continued appropriateness of each approved settlement bank, including a description of how Applicant monitors the full range and concentration of its exposures to each settlement bank;

(8) The specific means by which settlement instructions are communicated from Applicant to the settlement bank(s);

(9) A timetable showing the flow of funds associated with the settlement of financial obligations with respect to all cleared products for a 24-hour period or such other settlement timeframe specified with respect to a particular product; this may be presented in the form of a chart, as in the following example:

FORM DCO - SAMPLE SETTLEMENT CYCLE CHART

[Specify U.S. Dollar or other currency as applicable]

TRADE DATE = T [INSERT TIME ZONE] [INSERT EXACT TIMES BELOW]	EXAMPLE OF SETTLEMENT ACTIVITY FOR WHICH TIMES SHOULD BE PROVIDED
T: _____ pm	Last market closes (end of regular trading hours).
T: Approx. ____ pm	DCO/DCM/SEF establishes daily settlement price for each product based on information generated by its [INSERT NAME OF APPLICABLE CLEARING SYSTEM].
T: By _____ pm	Clearing members' position information for intraday settlement is obtained from DCO's clearing system.
T+1: Approx. ____ am	DCO provides daily initial margin (IM) and settlement variation/option premium (SVOP) amounts to clearing members and banks.
T+1: By ____ am	Banks commit to pay daily IM and SVOP amounts.
T+1: Approx. ____ am	Banks pay daily IM and SVOP amounts from clearing members to DCO.
T+1: Approx. __ am	Banks pay daily IM and SVOP amounts from DCO to clearing members.
T: Approx. ____ pm	DCO/DCM/SEF determines prices for intraday settlement.
T: Approx. ____ pm	Clearing members' position information for intraday settlement is obtained from DCO's clearing system.
T: By approx. ____ pm	DCO provides intraday IM and SVOP amounts to banks and clearing members.
T: By ____ pm	Banks commit to pay intraday IM and SVOP amounts.
T: Approx. ____ pm	Banks pay intraday IM and SVOP amounts from clearing members to DCO.

T: Approx. ____ pm	Banks pay intraday IM and SVOP amounts from DCO to clearing members.

(10) A description of what happens in the event that there are insufficient funds in a clearing member's settlement account;

(11) An explanation of how and when Applicant will collect variation margin, whether and under what circumstances it will collect variation margin on an intraday basis, what will happen if variation margin is not received in a timely manner, and a proposed variation margin collection schedule based on changes in market prices;

(12) All the information above, to the extent relevant, for any products cleared that may be denominated in a foreign currency; and

(13) With respect to physical settlements, identify Applicant's rules that clearly state each obligation of Applicant with respect to physical deliveries, and explain how Applicant intends to identify and manage risks arising from physical settlement.

b. Recordkeeping – Provide as **Exhibit E-2**, a full description of the following:

(1) The nature and quality of the information collected concerning the flow of funds involved in clearing and settlement; and

(2) How such information will be recorded, maintained, and accessed.

c. Relationships with other clearing organizations – Provide as **Exhibit E-3**, a description of Applicant's relationships with other derivatives clearing organizations, clearing agencies, financial market utilities, or foreign entities that perform similar functions, including how compliance with the terms and conditions of agreements or arrangements with such other entities will be satisfied, *e.g.*, any netting or offset arrangements, cross-margining, portfolio margining, linkage, common banking, common clearing programs or limited guaranty agreements or arrangements.

EXHIBIT F — TREATMENT OF FUNDS

- Attach as **Exhibit F**, documents that demonstrate compliance with the treatment of funds requirements set forth in § 39.15 of the Commission's regulations, including but not limited to:

a. Safe custody – Provide as **Exhibit F-1**, documents that demonstrate:

(1) How Applicant will ensure the safekeeping of funds and assets belonging to clearing members and their customers in depositories and how Applicant will minimize the risk of loss or of delay in accessing such funds and assets;

(2) The depositories that will hold such funds and assets and any written agreements between or among such depositories, Applicant, or its clearing members regarding the legal status of the funds and assets and the specific conditions or prerequisites for movement of the funds and assets; and

(3) How Applicant will limit the concentration of risk in depositories where such funds and assets are deposited.

b. Segregation of customer and proprietary funds and assets – Provide as **Exhibit F-2**, documents that demonstrate:

(1) The appropriate segregation of customer funds and assets and associated acknowledgment documentation, including the acknowledgment letters required under §§ 1.20 and/or 22.5, as applicable, for each bank or trust company that Applicant will use for the deposit of customer funds and assets; and

(2) Requirements or restrictions regarding commingling customer funds and assets with proprietary funds and assets, obligating customer funds and assets for any purpose other than to purchase, clear, and settle the products Applicant is clearing, procedures regarding customer funds and assets which are subject to cross-margin or similar agreements, and any other aspects of the segregation of customer funds and assets.

c. Investment standards – Provide as **Exhibit F-3**, documents that demonstrate:

(1) Policies and procedures to ensure that funds and assets belonging to clearing members and their customers would only be invested in instruments with minimal credit, market, and liquidity risks, and that any investment of customer funds or assets would comply with the requirements of § 1.25; and

(2) How Applicant will obtain and keep associated records and data regarding the details of such investments.

EXHIBIT G — DEFAULT RULES AND PROCEDURES

- Attach as **Exhibit G**, documents that demonstrate compliance with the default rules and procedures requirements set forth in § 39.16 of the Commission's regulations, including but not limited to:

a. Default Management Plan – Applicant must provide a copy of its written default management plan which must contain all of the information required by § 39.16(b), along with Applicant's most recently documented results of a test of its default management plan.

b. Definition of default – Applicant must describe or otherwise document:

(1) The events (activities, lapses, or situations) that will constitute a clearing member default;

(2) What action Applicant can take upon a default and how Applicant will otherwise enforce the rules applicable in the event of default, including the steps and the sequence of the steps that will be followed. Identify whether a Default Management Committee exists and, if so, its role in the default process; and

(3) An example of a hypothetical default scenario and the results of the default management process used in the scenario.

c. Remedial action – Applicant must describe or otherwise document:

(1) The authority and methods by which Applicant may take appropriate action in the event of the default of a clearing member which may include, among other things, liquidating positions, hedging, auctioning, allocating (including any obligations of clearing members to participate in auctions or to accept allocations), and transferring of customer accounts to another clearing member (including an explanation of the movement of positions and collateral on deposit); and

(2) Actions taken by a clearing member or other events that would put a clearing member on Applicant's "watch list" or similar device.

d. Process to address shortfalls – Applicant must describe or otherwise document:

(1) Procedures for the prompt application of Applicant and/or clearing member financial resources to address monetary shortfalls resulting from a default;

(2) How Applicant will make publicly available its default rules including a description of the priority of application of financial resources in the event of default (*i.e.*, the "waterfall"); and

(3) How Applicant will take timely action to contain losses and liquidity pressures and to continue to meet each obligation of Applicant.

e. Use of cross-margin programs – Describe or otherwise document, as applicable, how cross-margining programs will provide for fair and efficient means of covering losses in the event of a default of any clearing member participating in the program.

f. Customer priority rule – Describe or otherwise document rules and procedures regarding priority of customer accounts over proprietary accounts of defaulting clearing members and, where applicable, specifically in the context of specialized margin reduction programs such as cross-margining or common banking arrangements with other derivatives clearing organizations, clearing agencies, financial market utilities, or foreign entities that perform similar functions.

EXHIBIT H — RULE ENFORCEMENT

- Attach as **Exhibit H**, documents that demonstrate compliance with the rule enforcement requirements set forth in § 39.17 of the Commission's regulations, including but not limited to:

a. Surveillance – Describe or otherwise document arrangements and resources for the effective monitoring of compliance with Applicant's rules.

b. Enforcement – Describe or otherwise document:

(1) Arrangements and resources for enforcing compliance with Applicant's rules and addressing instances of non-compliance, including disciplinary tools such as limiting, suspending, or terminating a clearing member's access or member privileges; and

(2) The standards and any procedural protections Applicant will follow in imposing any such enforcement measure.

c. Dispute resolution – Describe or otherwise document arrangements and resources for resolution of disputes between clearing members and Applicant.

EXHIBIT I — SYSTEM SAFEGUARDS

- Attach as **Exhibit I**, documents that demonstrate compliance with the system safeguards requirements set forth in § 39.18 of the Commission's regulations, including but not limited to:

a. A description of Applicant's program of risk analysis and oversight with respect to its operations and automated systems. This program must be designed to ensure daily processing, clearing, and settlement of transactions and address each of the following categories of risk:

(1) Information security;

(2) Business continuity-disaster recovery planning and resources;

(3) Capacity and performance planning;

(4) Systems operations;

(5) Systems development and quality assurance; and

(6) Physical security and environmental controls.

b. An explanation of how Applicant will establish and maintain resources that allow for the fulfillment of its program of risk analysis and oversight with respect to its operations and automated systems, and a description of such resources, including:

(1) A description of how Applicant will periodically verify that its resources are adequate to ensure daily processing, clearing, and, settlement;

(2) A demonstration that Applicant's automated systems are reliable, secure, and have (and will continue to have) adequate scalable capacity;

(3) A description of the physical, technological and personnel resources and procedures used by Applicant as part of its business continuity and disaster recovery plan, and support for the conclusion that these resources are sufficient to enable the Applicant to resume daily processing, clearing, and settlement no later than the next business day following a disruption; and

(4) A statement identifying which such resources are Applicant's own resources and which are provided by a service provider (outsourced). For resources that are outsourced, provide (i) all contracts governing the outsourcing arrangements, including all schedules and other supplemental materials, and (ii) a demonstration that Applicant employs personnel with the expertise necessary to enable them to supervise the service provider's delivery of the services.

c. An explanation of how Applicant will ensure the proper functioning of its systems, including its program for the periodic objective testing and review of its systems and back-up facilities (including all of its own and outsourced resources), and verification that all such resources will work effectively together;

d. Identification of the persons conducting the testing, including information as to their qualifications and independence;

e. A description of Applicant's emergency procedures, including a copy of its written plan for business continuity and disaster recovery and a description of how Applicant will coordinate its business continuity and disaster recovery plan (including testing) with its clearing members and providers of essential services such as telecommunications, power, and water; and

f. A description of how Applicant will report exceptional events and planned changes to the Commission as required by §§ 39.18(g) and 39.18(h).

EXHIBIT J — REPORTING

- Attach as **Exhibit J**, documents that demonstrate compliance with the reporting requirements set forth in § 39.19 of the Commission's regulations, including but not limited to:

a. A description of how Applicant will make available to Commission staff all the information Commission staff needs in order to carry out effective oversight, *e.g.*,

the internal staff procedures Applicant will follow to provide such information. If the laws or regulations of any foreign country in which Applicant is incorporated or organized require any approval(s) by a foreign regulatory authority with respect to the provision of any information to the Commission, Applicant must submit evidence that such approval(s) have been obtained.

b. A representation that the Applicant will submit the information required to satisfy the daily, quarterly, annual, event-specific, and requested reporting requirements specified in § 39.19(c) of the Commission's regulations, in the format and manner and within the time specified by the Commission.

EXHIBIT K — RECORDKEEPING

- Attach as **Exhibit K**, documents that demonstrate compliance with the recordkeeping requirements set forth in § 39.20 of the Commission's regulations, including but not limited to:

  a. Applicant's recordkeeping and record retention policies and procedures;

  b. The different activities related to the entity as a derivatives clearing organization for which it must maintain records;

  c. The manner in which records relating to swaps and swap data are gathered and maintained; and

  d. How Applicant will satisfy the performance standards of § 1.31 as applicable to derivatives clearing organizations, including:

    (1) What "full" or "complete" will encompass with respect to each type of book or record that will be maintained;

    (2) The form and manner in which books or records will be compiled and maintained with respect to each type of activity for which such books or records will be kept;

    (3) Confirmation that books and records will be open to inspection by any representative of the Commission or of the U.S. Department of Justice;

    (4) How long books and records will be readily available and how they will be made readily available during the first two years; and

  e. How long books and records will be maintained (and confirmation that, in any event, they will be maintained as required in § 1.31).

EXHIBIT L — PUBLIC INFORMATION

- Attach as **Exhibit L**, documents that demonstrate compliance with the public information requirements set forth in § 39.21 of the Commission's regulations, including but not limited to:

  a. Applicant's procedures for making its rulebook, a list of all current clearing members, and all other information listed in § 39.21(c) readily available to the general public, in a timely manner, by posting such information on Applicant's website;

  b. The URLs for Applicant's website for each item listed in § 39.21(c)(1) through (c)(9).

  c. Any other information routinely made available to the public by Applicant;

d. How Applicant will make information available to clearing members and market participants in order to allow such persons to become familiar with Applicant's procedures before participating in clearing operations; and

e. How clearing members will be informed of their specific rights and obligations preceding a default and upon a default, and of the specific rights, options, and obligations of Applicant preceding and upon a clearing member's default.

EXHIBIT M — INFORMATION SHARING

- Attach as **Exhibit M**, documents that demonstrate compliance with the information sharing requirements set forth in § 39.22 of the Commission's regulations, including but not limited to:

a. The appropriate and applicable information sharing agreements to which Applicant is, or intends to be, a party including any domestic or international information-sharing agreements or arrangements, whether formal or informal, which involve or relate to Applicant's operations, especially as it relates to measuring and addressing counterparty risk;

b. A description of the types of information expected to be shared and how that information will be shared;

c. An explanation as to how information obtained pursuant to any information-sharing agreements or arrangements would be used to further the objectives of Applicant's risk management program and any of its surveillance programs including financial surveillance and continuing eligibility of its clearing members; and

d. An explanation as to how Applicant expects to obtain accurate information pursuant to the information-sharing agreement or arrangement and the mechanisms or procedures which would allow for timely use and application of all information.

EXHIBIT N — ANTITRUST CONSIDERATIONS

- Attach as **Exhibit N**, documents that demonstrate compliance with the antitrust considerations requirements set forth in § 39.23 of the Commission's regulations, including but not limited to policies or procedures to ensure compliance with the antitrust considerations requirements.

EXHIBIT O — GOVERNANCE

- Attach as **Exhibit O**, documents that demonstrate compliance with the governance fitness standards requirements set forth in § 39.24 of the Commission's regulations, including but not limited to:

a. A copy of:

(1) The charter (or mission statement) of Applicant (if not attached as **Exhibit A-8**);

(2) The charter (or mission statement) of Applicant's Board of Directors, each committee composed entirely or in part of members of the Board of Directors (including any Executive Committee), as well as each other committee that has the authority to amend or constrain actions of Applicant's Board of Directors (if not attached as **Exhibit A-8**);

(3) If another entity "operates" the Applicant, the charter (or mission statement) of such entity's Board of Directors (if not attached as **Exhibit A-8**); and a description of the manner in which the Applicant will ensure that such entity's officers, directors, employees, and agents and such entity's books and records

shall be subject to the authority of the Commission pursuant to the Act and the Commission's regulations thereunder; and

(4) An internal organizational chart showing the lines of responsibility and accountability for each operational unit.

b. A description of how Applicant's governance arrangements place a high priority on Applicant's safety and efficiency and explicitly support the stability of the broader financial system and other relevant public interest considerations of clearing members, customers of clearing members, and other relevant stakeholders;

c. A description of how the Board of Directors makes certain that Applicant's design, rules, overall strategy, and major decisions appropriately reflect the legitimate interests of clearing members, customers of clearing members, and other relevant stakeholders;

d. A description of how major decisions of the Board of Directors are clearly disclosed to clearing members and other relevant stakeholders, and will be disclosed to the Commission, and how major decisions of the Board of Directors having a broad market impact are clearly disclosed to the public, to the extent consistent with other statutory and regulatory requirements on confidentiality and disclosure;

e. A description of how Applicant's governance arrangements are disclosed, as appropriate, to clearing members, customers of clearing members, Applicant's owners, and the public, and will be disclosed to the Commission, to the extent consistent with other statutory and regulatory requirements on confidentiality and disclosure;

f. A description of how Applicant's governance arrangements: (1) describe the structure pursuant to which the Board of Directors, committees, and management operate; (2) include clear and direct lines of responsibility and accountability; (3) clearly specify the roles and responsibilities of the Board of Directors and its committees, including the establishment of a clear and documented risk management framework; and (4) clearly specify the roles and responsibilities of management;

g. A description of the procedures pursuant to which Applicant's Board of Directors oversees Applicant's chief risk officer, risk management committee, and material risk decisions;

h. A description of how Applicant provides risk management, internal control, and internal audit personnel with sufficient independence, authority, resources, and access to the Board of Directors so that the operations of Applicant are consistent with its risk management framework;

i. A description of how Applicant's governance arrangements assign responsibility and accountability for risk decisions, including in crises and emergencies, and assign responsibility for implementing default rules and procedures, system safeguard rules and procedures, and as applicable, recovery and wind-down plans;

j. A description of the fitness standards applicable to members of the Board of Directors, members of any disciplinary committee, clearing members, any other individual or entity with direct access to settlement or clearing activities, and any party affiliated with any of the above individuals or entities, including a description or other documentation explaining how Applicant will collect and verify information that supports compliance with the fitness standards and how Applicant will enforce compliance with such standards; and

k. A description of how Applicant will make certain that: (1) its Board of Directors consists of suitable individuals having appropriate skills and incentives; (2) the performance of the Board of Directors and individual directors are reviewed on a regular basis; and (3) managers have the appropriate experience, skills, and integrity necessary to discharge operational and risk management responsibilities.

EXHIBIT P — CONFLICTS OF INTEREST

- Attach as **Exhibit P**, documents that demonstrate compliance with the conflicts of interest requirements set forth in § 39.25 of the Commission's regulations, including but not limited to:

a. A description of Applicant's rules to minimize conflicts of interest in its decision-making process and how it enforces those rules;

b. A description of Applicant's process for resolving such conflicts of interest or for making fair and non-biased decisions in the event of a conflict of interest; and

c. A description of Applicant's procedures for identifying, addressing, and managing conflicts of interest involving members of its Board of Directors.

EXHIBIT Q — COMPOSITION OF GOVERNING BOARDS

- Attach as **Exhibit Q**, documents that demonstrate compliance with the composition of governing boards requirements set forth in § 39.26, including but not limited to documentation describing the composition of Applicant's Board of Directors, including the number of market participants.

EXHIBIT R — LEGAL RISK CONSIDERATIONS

- Attach as **Exhibit R**, documents that demonstrate compliance with the legal risk considerations requirements set forth in § 39.27 of the Commission's regulations, including but not limited to:

a. A discussion of how Applicant operates pursuant to a well-founded, transparent, and enforceable legal framework that addresses each aspect of the activities of Applicant. The framework must provide for Applicant to act as a counterparty, including, as applicable:

(1) Novation;

(2) Netting arrangements;

(3) Applicant's interest in collateral (including margin);

(4) The steps that Applicant can take to address a default of a clearing member, including but not limited to, the unimpeded ability to liquidate collateral and close out or transfer positions in a timely manner;

(5) Finality of settlement and funds transfers that are irrevocable and unconditional when effected (no later than when Applicant's accounts are debited and credited); and

(6) Other significant aspects of Applicant's operations, risk management procedures, and related requirements.

b. If Applicant provides, or will provide, clearing services outside the United States, Applicant must provide a memorandum from local counsel analyzing insolvency issues in the foreign jurisdiction where Applicant is based, which should describe or otherwise document:

(1) The manner in which Applicant's clearing rules and procedures pertaining to customer funds ("FCM Clearing Rules") segregate such funds, in accordance with section 4d of the Act and the Commission's regulations ("ring-fence");

(2) The basis for the conclusion that the arrangements to ring-fence customer funds set forth in the FCM Clearing Rules would be effective, under any relevant non-U.S. law or regulation, in the insolvency of a futures commission merchant ("FCM") clearing member or of the Applicant itself, including how such customer funds would not, therefore, form part of the general estate for distribution to the unsecured creditors of an insolvent FCM clearing member or of the Applicant;

(3) The basis for the conclusion that the laws of the jurisdiction in which Applicant is domiciled and the laws of any other relevant jurisdiction (*e.g.*, other jurisdictions in which customer funds may be held) support the enforceability of the FCM Clearing Rules;

(4) The basis for the conclusion that a local court or insolvency official in the jurisdiction in which Applicant is domiciled (and any other relevant jurisdiction) respect the choice of U.S. law in governing specific aspects of the FCM Clearing Rules to determine the extent of rights that Applicant has with respect to customer funds and be bound to follow the FCM Clearing Rules with respect to customer funds. The memorandum should explain whether the application of U.S. law to customer funds would contravene any public policy in the jurisdiction in which Applicant is domiciled (or any other relevant jurisdiction);

(5) The basis for the conclusion that the FCM Clearing Rules are enforceable (*i.e.,* the conclusion that the Applicant may take default action, pursuant to the FCM Clearing Rules, discretely against each FCM clearing member in respect of FCM customer accounts without interference from the law of insolvency applicable to the FCM clearing member or to Applicant); and

(6) The basis for the conclusion that following the default of an FCM clearing member or of the Applicant, Applicant will be able to comply with the provisions of the U.S. Bankruptcy Code and Commission regulations with respect to the pro rata distribution requirements set forth therein, as well as comply with any relevant order or direction by a U.S. court (including a bankruptcy court) regarding the distribution of customer funds.

In all cases, the memorandum must include separate discussions of the legal analysis and conclusions with respect to: (a) the default of the Applicant, and (b) the default of an FCM clearing member.

■ 32. Revise Appendix B to part 39 to read as follows:

Appendix B to Part 39—Subpart C Election Form

COMMODITY FUTURES TRADING COMMISSION

SUBPART C ELECTION FORM

GENERAL INSTRUCTIONS: Intentional misstatements or omissions of fact may constitute federal criminal violations (7 U.S.C. 13 and 18 U.S.C. 1001).

DEFINITIONS

Unless the context requires otherwise, all terms used in this Subpart C Election Form have the same meaning as in the Commodity Exchange Act ("Act"), and in the General Rules and Regulations of the Commodity Futures Trading Commission ("Commission") thereunder. All references to Commission regulations are found at 17 CFR Ch. I.

For purposes of this Subpart C Election Form, the term "Applicant" shall mean a derivatives clearing organization that is filing this Subpart C Election Form with a Form DCO as part of an application for registration as a derivatives clearing organization pursuant to section 5b of the Act and 17 CFR 39.3(a).

GENERAL INSTRUCTIONS

1. Any derivatives clearing organization requesting an election to become subject to subpart C of part 39 of the Commission's regulations must file this Subpart C Election Form. The Subpart C Election Form includes the election to be subject to the provisions of subpart C of part 39 of the Commission's regulations, certain required certifications, disclosures, and exhibits, and any supplements or amendments thereto filed pursuant to 17 CFR 39.31(b) or (c) (collectively, the "Subpart C Election Form").

2. Any derivatives clearing organization wishing to request an extension of up to one year to comply with any of the provisions of 17 CFR 39.34, 17 CFR 39.35 or 17 CFR 39.39, pursuant to 17 CFR 39.34(d) or 17 CFR 39.39(f) must do so prior to filing this Subpart C Election Form. Such requests shall become part of this Subpart C Election Form.

3. Individuals' names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).

4. The signatures required in this Subpart C Election Form shall be the manual signatures of a duly authorized representative of the derivatives clearing organization as follows: If the Subpart C Election Form is filed by a corporation, it must be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it must be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company's behalf; if filed by a partnership, it must be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association which is not a partnership, it must be signed in the name of such organization or association by the managing agent, *i.e.*, a duly authorized person who directs or manages or who participates in the directing or managing of its affairs.

5. All applicable items must be answered in full.

6. Under section 5b of the Act and the Commission's regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Subpart C Election Form from any Applicant seeking registration as a derivatives clearing organization and from any registered derivatives clearing organization.

7. Disclosure of the information specified in this Subpart C Election Form is mandatory prior to the processing of the election to become a derivatives clearing organization subject to the provisions of

subpart C of part 39 of the Commission's regulations. The Commission may determine that additional information is required in order to process such election.

8. A Subpart C Election Form that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Subpart C Election Form, however, shall not constitute a finding that the Subpart C Election Form is acceptable as filed or that the information is true, current or complete.

9. As provided in 17 CFR 39.31(d), except in cases where a derivatives clearing organization submits a request for confidential treatment with the Secretary of the Commission pursuant to the Freedom of Information Act and 17 CFR 145.9, information supplied in this Subpart C Election Form will be included routinely in the public files of the Commission and will be made available for inspection by any interested person.

APPLICATION AMENDMENTS

1. 17 CFR 39.31(b)(3) and (c)(4) require a derivatives clearing organization that has submitted a Subpart C Election Form to promptly amend its Subpart C Election Form if it discovers a material omission or error in, or if there is a material change in, the information provided to the Commission in the Subpart C Election Form or other information provided in connection with the Subpart C Election Form.

2. When amending a Subpart C Election Form, a derivatives clearing organization must re-file the Election and Certifications page, amended if necessary, and including all required executing signatures, and attach thereto revised exhibits or other materials marked to show changes, as applicable.

WHERE TO FILE

1. This Subpart C Election Form must be filed electronically with the Secretary of the Commission in the format and manner specified by the Commission.

2. Any supplemental information must be filed electronically with the Division of Clearing and Risk, or any successor division, in the format and manner specified by the Commission.

COMMODITY FUTURES TRADING COMMISSION

SUBPART C ELECTION FORM

ELECTION AND CERTIFICATIONS

_____

Exact Name of the Derivatives Clearing Organization
(as set forth in its charter, if an Applicant,
or as set forth in its most recent order of registration, if registered with the Commission)

☐ Check here and complete sections 1 and 3 below, if the organization is an Applicant.

☐ Check here and complete sections 2 and 3 below, if the organization currently is registered with the Commission as a derivatives clearing organization.

1. The derivatives clearing organization named above hereby elects to become subject to the provisions of subpart C of part 39 of the Commission's regulations in the event that the Commission approves its application for registration as a derivatives clearing organization.

   The derivatives clearing organization and the undersigned each certify that, in the event that the Commission approves the derivatives clearing organization's application for registration and permits its election to become subject to subpart C of part 39 of the Commission's regulations:

   a. The derivatives clearing organization will be in compliance with such regulations as of the date set forth in the notice thereof provided by the Commission pursuant to 17 CFR 39.31(c)(2), except to the limited extent that the Commission has granted the derivatives clearing organization an extension of time to comply with: (1) specified provisions of 17 CFR 39.34, pursuant to 17 CFR 39.34(d); and/or (2) specified provisions of 17 CFR 39.35 and/or 17 CFR 39.39, pursuant to 17 CFR 39.39(f);

   b. The derivatives clearing organization will be in compliance with all provisions of 17 CFR 39.34, 39.35 and/or 39.39 for which the Commission, pursuant to 17 CFR 39.34(d) and/or 17 CFR 39.39(f), has granted an extension of time to comply in accordance with the terms of such extensions; and

   c. The derivatives clearing organization will remain in compliance with the provisions contained in subpart C of part 39 of the Commission's regulations until this election is rescinded pursuant to 17 CFR 39.31(e).

_____
Name of Derivatives Clearing Organization

By:_____
Manual Signature of Duly Authorized Person

_____
Print Name and Title of Signatory

2. The derivatives clearing organization named above hereby elects to become subject to the provisions of subpart C of part 39 of the Commission's regulations as of:

_____ ("Effective Date")
[insert date, which must be **at least 10 business days after the date this Subpart C Election Form is filed with the Commission**].

The derivatives clearing organization and the undersigned each certify that:

a. As of the Effective Date set forth above, the derivatives clearing organization shall be in compliance with subpart C of part 39 of the Commission's regulations, except to the limited extent that the Commission has granted the derivatives clearing organization an extension of time to comply with: (1) specified provisions of 17 CFR 39.34, pursuant to 17 CFR 39.34(d); and/or (2) specified provisions of 17 CFR 39.35 and/or 17 CFR 39.39, pursuant to 17 CFR 39.39(f);

b. The derivatives clearing organization will be in compliance with all provisions of 17 CFR 39.34, 39.35 and/or 39.39 for which the Commission, pursuant to 17 CFR 39.34(d) and/or 17 CFR 39.39(f), has granted an extension of time to comply in accordance with the terms of such extensions; and

c. The derivatives clearing organization will remain in compliance with provisions contained in subpart C of part 39 of the Commission's regulations until this election is rescinded pursuant to 17 CFR 39.31(e).

_____
Name of Derivatives Clearing Organization

By:_____
Manual Signature of Duly Authorized Person

_____
Print Name and Title of Signatory

3. The derivatives clearing organization named above has duly caused this Subpart C Election Form (which includes, as an integral part thereof, the Election and Certifications and all Disclosures and Exhibits) to be signed on its behalf by its duly authorized representative as of the _____ day of _____, 20_____. The derivatives clearing organization and the undersigned each represent hereby that, to the best of their knowledge, all information contained in this Subpart C Election Form is true, current and complete in all material respects. It is understood that all required items including, without limitation, the Election and Certifications and Disclosures and Exhibits, are considered integral parts of this Subpart C Election Form.

_____
Name of Derivatives Clearing Organization

By:_____
Manual Signature of Duly Authorized Person

_____
Print Name and Title of Signatory

COMMODITY FUTURES TRADING COMMISSION

PART 39, SUBPART C ELECTION FORM

DISCLOSURES AND EXHIBITS

Each derivatives clearing organization that requests an election to become subject to the provisions set forth in subpart C of part 39 of the Commission's regulations shall provide the Disclosures and Exhibits set forth below:

DISCLOSURES:

The derivatives clearing organization shall publish on its website in a readily identifiable location, the following documents that are required to be completed pursuant to 17 CFR 39.37:

1. The derivatives clearing organization's responses to the Disclosure Framework for Financial Market Infrastructures ("Disclosure Framework"), published by the Committee on Payments and Market Infrastructure ("CPMI") and the Board of the International Organization of Securities Commissions ("IOSCO"). The derivatives clearing organization's responses must be completed in accordance with section 2.0 and Annex A of the Disclosure Framework and must fully explain how the derivatives clearing organization observes the Principles for Financial Market Infrastructures ("PFMIs") published by CPMI-IOSCO.

   Provide the URL to the specific page on the derivatives clearing organization's website where its responses to the Disclosure Framework may be found:

   _____

2. The most recent quantitative disclosure prepared by the derivatives clearing organization that satisfies the Public Quantitative Disclosure Standards for Central Counterparties published by CPMI-IOSCO ("Quantitative Disclosure").

   If applicable, provide the URL to the specific page on the derivatives clearing organization's website where its Quantitative Disclosure may be found:

   _____

EXHIBITS:

EXHIBIT INSTRUCTIONS:

1. The derivatives clearing organization must include a Table of Contents listing each Exhibit required by this Subpart C Election Form.

2. If the derivatives clearing organization is an Applicant, in its Form DCO, the derivatives clearing organization may summarize such information and provide a cross-reference to the Exhibit in this Subpart C Election Form that contains the required information.

The derivatives clearing organization shall provide the following Exhibits to this Subpart C Election Form:

EXHIBIT A – COMPLIANCE WITH SUBPART C

Attach, as **Exhibit A**, a regulatory compliance chart that sets forth citations to the relevant rules, policies, and procedures of the derivatives clearing organization that address §§ 39.32-39.39 of the Commission's regulations and a narrative summary of the manner in which the derivatives clearing organization will comply with each regulation.

The narrative summary shall: (a) specifically and meaningfully explain the manner in which the derivatives clearing organization will comply with each such regulation; (b) sufficiently integrate references to documents contained in the exhibits to this Subpart C Election Form to clearly convey the derivatives clearing organization's policies and procedures with respect to each regulation; and (c) readily identify within such exhibits those derivatives clearing organization rules and governing documents that support the certifications set forth in this Subpart C Election Form. The narrative summary may be included as part of the compliance chart required by Exhibit A or a separate document within Exhibit A.

All citations and compliance summaries shall be separated by individual regulation and shall be clearly labeled with the corresponding regulation.

EXHIBIT B – FINANCIAL RESOURCES

Attach, as **Exhibit B**, information and documents that demonstrate compliance with the financial resource requirements set forth in § 39.33 of the Commission's regulations, including but not limited to:

a. Valuation of financial resources – Attach as **Exhibit B-1**, a demonstration that assessments for additional guaranty fund contributions (*i.e.*, guaranty fund contributions that are not prefunded) are not included in calculating the financial resources available to meet the derivatives clearing organization's obligations under § 39.33(a) or § 39.11(a)(1).

b. Liquidity resources – Attach as **Exhibit B-2**, a demonstration that the derivatives clearing organization maintains eligible liquidity resources as required under § 39.33(c).

c. Liquidity providers – Attach as **Exhibit B-3**, a demonstration that the derivatives clearing organization's liquidity providers meet the requirements as set forth in § 39.33(d).

d. Documentation of financial resources and liquidity resources – Attach as **Exhibit B-4**, a demonstration that the derivatives clearing organization documents its supporting rationale for, and has appropriate governance arrangements relating to, the amount of total financial resources it maintains pursuant to § 39.33(a) and the amount of total liquidity resources it maintains pursuant to § 39.33(c).

EXHIBIT C – SYSTEM SAFEGUARDS

Attach, as **Exhibit C**, information and documents that demonstrate compliance with the system safeguards requirements set forth in § 39.34 of the Commission's regulations, including but not limited to:

a. Attach as **Exhibit C-1**, a demonstration that, notwithstanding § 39.18(c)(2), the business continuity and disaster recovery plan described in § 39.18(c)(1) and the physical, technological, and personnel resources described in § 39.18(c)(1) enable the derivatives clearing organization to recover its operations and resume daily processing, clearing, and settlement no later than two hours following the disruption, for any disruption including a wide-scale disruption.

b. Attach as **Exhibit C-2**, a demonstration that the derivatives clearing organization maintains a degree of geographic dispersal of physical, technological and personnel resources consistent with the requirements set forth in § 39.34(b).

c. Attach as **Exhibit C-3**, a demonstration that the derivatives clearing organization conducts regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve the required recovery time objective in the event of a wide-scale disruption, and that the provisions of § 39.18(e) apply to such testing.

EXHIBIT D – DEFAULT RULES AND PROCEDURES FOR UNCOVERED LOSSES OR SHORTFALLS

Attach, as **Exhibit D**, information and documents that demonstrate compliance with the requirements for default rules and procedures for uncovered losses or shortfalls set forth in § 39.35 of the Commission's regulations, including but not limited to:

a. Allocation of uncovered credit losses – Attach as **Exhibit D-1**, a demonstration that the derivatives clearing organization has explicit rules and procedures that address fully any loss arising from any individual or combined default relating to any clearing member's obligations to the derivatives clearing organization.

b. Allocation of uncovered liquidity shortfalls – Attach as **Exhibit D-2**, a demonstration that the derivatives clearing organization has established rules and/or procedures that enable it to promptly meet all of its settlement obligations, on a same day and, as appropriate, intraday and multiday basis, in the context of the occurrence of the scenarios set forth in § 39.35(b)(1)(i) and (ii). The derivatives clearing organization must demonstrate how such rules and procedures comply with the requirements of § 39.35(b)(2).

EXHIBIT E – RISK MANAGEMENT

Attach, as **Exhibit E**, information and documents that demonstrate compliance with the risk management requirements set forth in § 39.36 of the Commission's regulations, including but not limited to:

a. Stress tests of financial resources – Attach as **Exhibit E-1**, a demonstration that the derivatives clearing organization conducts stress tests of its financial resources in accordance with the standards and practices set forth in § 39.36(a);

b. Sensitivity analysis of margin model – Attach as **Exhibit E-2**, a demonstration that the derivatives clearing organization conducts on a monthly basis or more frequently as appropriate, a sensitivity analysis of its margin models to analyze and monitor model performance and overall margin coverage. The derivatives clearing organization shall demonstrate that the sensitivity analysis is conducted on both actual and hypothetical positions and in accordance with the requirements set forth in § 39.36(b)(2) and (3);

c. Stress tests of liquidity resources – Attach as **Exhibit E-3**, a demonstration that the derivatives clearing organization conducts stress tests of its liquidity resources in accordance with the standards and practices set forth in § 39.36(c);

d. Theoretical and empirical properties – Attach as **Exhibit E-4**, a demonstration that the derivatives clearing organization conducts an assessment of the theoretical and empirical properties of its margin model for all products it clears;

e. Validation – Attach as **Exhibit E-5**, a demonstration that the derivatives clearing organization conducts on an annual basis, a full validation of its financial risk

management model and its liquidity risk management model in accordance with the requirements set forth in § 39.36(e);

f. Custody and investment risk – Attach as **Exhibit E-6**, a demonstration that the custody and investment arrangements of the derivatives clearing organization's own funds and assets are subject to the same requirements as those specified in § 39.15 for the funds and assets of clearing members, and apply to the derivatives clearing organization's own funds and assets to the same extent as if such funds and assets belonged to clearing members; and

g. Settlement banks – Attach as **Exhibit E-7**, a demonstration that the derivatives clearing organization, monitors, manages, and limits its credit and liquidity risks arising from its settlement banks; establishes and monitors adherence to strict criteria for its settlement banks that take account of, among other things, their regulation and supervision, creditworthiness, capitalization, access to liquidity, and operational reliability; and monitors and manages the concentration of credit and liquidity exposures to its settlement banks.

EXHIBIT F – RECOVERY AND WIND-DOWN

Attach, as **Exhibit F**, information and documents that demonstrate compliance with the recovery and wind-down requirements set forth in § 39.39 of the Commission's regulations, including but not limited to:

a. Recovery and wind-down plans – Attach as **Exhibit F-1**, a demonstration that the derivatives clearing organization has separate plans that set forth in detail: recovery or orderly wind-down, necessitated by uncovered credit losses or liquidity shortfalls, and recovery or orderly wind-down, necessitated by general business risk, operational risk, or any other risk that threatens the derivatives clearing organization's viability as a going concern. The demonstration shall also include how the plans comply with the requirements of §39.39(c).

b. Financial resources to support recovery – Attach as **Exhibit F-2**, a narrative summary that demonstrates how the financial statements filed with the Commission pursuant to §§ 39.11 and 39.33 demonstrate that the derivatives clearing organization maintains sufficient unencumbered liquid financial assets, funded by the equity of its owners, to implement its recovery or wind-down plans. The narrative summary shall include a description of how the derivatives clearing organization complies with the requirements of § 39.39(d).

c. Additional financial resources – Attach as **Exhibit F-3**, a demonstration that the derivatives clearing organization maintains viable plans for raising additional financial resources as required under § 39.39(e).

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PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 33. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a, 13(c), 13(d), 13(e), and 16(b).

■ 34. In § 140.94, revise paragraphs (c)(1) and (c)(4) through (13) to read as follows:

§ 140.94 Delegation of authority to the Director of the Division of Swap Dealer and Intermediary Oversight and the Director of the Division of Clearing and Risk.

* * * * *

(c) * * *

(1) The authority to review applications for registration as a derivatives clearing organization filed with the Commission under § 39.3(a)(1) of this chapter, to determine that an application is materially complete pursuant to § 39.3(a)(2) of this chapter, to request additional information in support of an application pursuant to § 39.3(a)(3) of this chapter, to extend the review period for an application pursuant to § 39.3(a)(6) of this chapter, to stay the running of the 180-day review period if an application is incomplete pursuant to § 39.3(b)(1) of this chapter, to review requests for amendments to orders of registration filed with the Commission under § 39.3(d)(1) of this chapter, to request additional information in support of a request for an amendment to an order of registration pursuant to § 39.3(d)(2) of this chapter, and to request additional information in support of a rule submission pursuant to § 39.3(g)(3) of this chapter;

* * * * *

(4) All functions reserved to the Commission in § 39.10(c)(4)(iv) of this chapter;

(5) All functions reserved to the Commission in § 39.11(b)(1)(v), (b)(2)(ii), (c)(1) and (3), and (f)(1), and (2) of this chapter;

(6) All functions reserved to the Commission in § 39.12(a)(5)(iii) of this chapter;

(7) All functions reserved to the Commission in § 39.13(g)(8)(ii), (h)(1)(i)(C), (h)(1)(ii), (h)(3)(i) and (ii), and (h)(5)(i)(C) of this chapter;

(8) The authority to request additional information in support of a rule submission under §§ 39.13(i)(2) and 39.15(b)(2)(iii) of this chapter;

(9) All functions reserved to the Commission in § 39.19(c)(2), (c)(3)(iv), and (c)(5) of this chapter;

(10) All functions reserved to the Commission in § 39.20(a)(5) of this chapter;

(11) All functions reserved to the Commission in § 39.21(c) of this chapter;

(12) All functions reserved to the Commission in § 39.31 of this chapter; and

(13) The authority to approve the requests described in §§ 39.34(d) and 39.39(f) of this chapter.

* * * * *

Issued in Washington, DC, on December 20, 2019, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

Appendices to Derivatives Clearing Organization General Provisions and Core Principles—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Heath P. Tarbert

Clearinghouses—often called central counterparties or CCPs—are what make our futures, options, and much of our swaps markets work. Once a buyer and seller enter into a derivatives trade, the CCP takes on each party's credit risk for the duration of the contract. Hundreds of thousands of trades occur in the United States because market participants never need to worry about counterparties not making good on their payment obligations. The entire risk of an exchange or even several exchanges is centralized within a given CCP. As a consequence, CCPs are the ''risk controllers'' [1] that stand at the very epicenter of our markets.

As Chairman, I have emphasized that one of the most critical responsibilities of the CFTC is supervising CCPs on a daily basis.[2] When the term ''prudential regulators'' is thrown around in Washington, the CFTC is usually excluded from the list. Nothing could be more misleading. The CFTC's role as the nation's prudential regulator for derivatives clearinghouses is part of the reason American CCPs are undoubtedly the strongest and most resilient in the world.[3]

Part 39 of our regulations implements our statutory principles-based framework for the supervision and regulation of derivatives clearinghouses.[4] Our framework focuses on all key aspects of CCP operations, including financial resources, member eligibility, risk management, and system safeguards. It is incumbent upon us to revise Part 39 at regular intervals to ensure it remains up-to-date as technology and other market-driven changes come to the fore.

I am therefore pleased to support the final amendments to Part 39 before the Commission today. The final amendments [5] represent the codification of close to a decade of best practices and procedures adopted by CCPs in accordance with our core principles. In promulgating these amendments, we are also making good on our promise to strengthen the regulation of CCPs and to make our regulations more transparent to all market participants.

Appendix 3—Statement of Commissioner Brian D. Quintenz

I am pleased to support today's final rule that amends the Commission's regulations governing derivatives clearing organizations (DCOs).[1]

Before highlighting aspects of the final rule, I would like to review the importance of central clearing, DCOs, and the Commission's oversight over these institutions. DCOs play a truly crucial role in the futures and swap markets by serving as a central counterparty to every transaction that they clear. When a transaction is cleared, the DCO guarantees performance of the contract until final settlement so that market participants do not bear counterparty credit risk to each other. The DCO sets collateral and daily-mark-to-market requirements, according to rules enforced by the CFTC, and otherwise maintains the financial integrity of cleared transactions, under CFTC-supervision. The CFTC's Division of Clearing and Risk (DCR) regularly examines DCOs for compliance with the Commission's regulations; reviews new DCO rules; and assesses how DCOs manage market and liquidity risks.

Central clearing has long been a hallmark of the futures market, dating back to the 1920s and functioning extremely well since then. Following Congress' 2010 amendments to the Commodity Exchange Act (CEA),[2] CFTC-regulated DCOs began clearing interest rate swaps and credit default swaps pursuant to revised statutory core principles [3] and revised CFTC DCO regulations.[4] Sixteen

[1] *See* Peter Norman, The Risk Controllers: Central Counterparty Clearing in Globalized Financial Markets, John Wiley and Sons, Ltd. (2011).

[2] *See* Chairman Heath P. Tarbert, ''Why the CFTC is the most important regulator you've never heard of,'' Fox Business (July 29, 2019), available at: *https://www.foxbusiness.com/financials/why-the-cftc-is-the-most-important-regulator-youve-never-heard-of.*

[3] *Id.*

[4] 17 CFR part 39.

[5] As important as these amendments are, they do not address a number of emergent issues relating to CCP risk, governance, and default procedures. Many of these important issues will soon be taken up by the CCP Risk and Governance Subcommittee of our Market Risk Advisory Committee. I look forward to their consideration and the public discussion that it will foster.

[1] The CFTC's regulations for DCOs are codified in part 39 (17 CFR part 39).

[2] Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010).

[3] Sec. 5b of the CEA.

[4] The current version of the CFTC's DCO regulations was promulgated in 2011 (DCO General

DCOs, located in the U.S., Canada, the U.K, France, Germany, and Singapore, are currently registered with the Commission to clear a diverse set of derivatives ranging from agricultural, energy, and Bitcoin futures, to overnight index swaps, to foreign exchange options.[5] Every day, these sixteen DCOs settle over $10 billion in daily mark-to-market obligations and hold over $450 billion in initial margin collateral.[6] Financial institutions, commercial end-users, and retail investors rely on the continued success of DCOs in order to ensure the integrity of their risk management transactions. The public also relies on the CFTC to ensure that DCOs are subject to meaningful regulations that prevent undue risk, while also providing DCOs with sufficient discretion to manage aspects of their operations that they are best equipped to handle without unnecessary government intervention. Today's final version of revised regulations for DCOs includes carefully considered enhancements which the Commission believes DCOs can fulfill without incurring overly burdensome compliance costs.

I am proud that the CFTC is one of only a few authorities around the world to have issued DCO rules that are consistent with the internationally-recognized CPMI–IOSCO *Principles for Financial Market Infrastructures* (PFMIs).[7] The Commission was a leader in both the development of the PFMIs as well as adopting rules consistent with the PFMIs, having done so in 2013.[8] The CFTC's rules for DCOs were augmented again in 2016 to include industry-accepted best practices for cybersecurity, business continuity, and disaster recovery.[9]

The amendments set forth in today's final rule include new requirements for: Governance; reporting clearing members' positions to the Commission; reporting changes in liquidity funding and settlement bank arrangements; determining initial margin requirements; default management procedures; enterprise risk management; reviewing haircuts on assets submitted as initial margin; exemptions for DCOs clearing only fully-collateralized contracts; cross-margining programs; transfers of open interest; and public disclosures issued in response to an CPMI–IOSCO initiative.[10]

I would like to highlight some of the provisions of the final rule. Regarding reporting to the Commission, a DCO will be required to report daily the amounts of initial and variation margin for ''individual customer accounts'' held within each futures commission merchant (FCM)-clearing member's overall ''customer account.''[11] Such individual customer accounts include individual funds sponsored by an asset manager and an asset manager's separate accounts for institutional investors. DCR can use this information to more precisely assess the risks and exposures of a DCO's clearing members. In adopting this new requirement, the Commission noted that much of this information is already reported, meaning the burden to comply with the revised rule should be minimal. Regarding default management, the final rule requires a DCO to include clearing members in annual tests of its default management plan.[12] Finally, I note that while the proposal would have required a DCO to file a new report with the Commission 30 days in advance of clearing a new product,[13] the final rule eliminates this requirement, noting that both designated contract markets (DCMs) and swap execution facilities (SEFs) already file notices of new product offerings with the Commission under the ''self-certification'' process.

In conclusion, I am pleased that in finalizing these new rules, the Commission has genuinely taken the public's comments into account, reviewing input not only from the DCOs themselves, but also from the market participants that clear their trades at DCOs, including investment funds, futures commission merchants, and other financial institutions. I recognize that commenters raised important issues that are beyond the scope of, or not included in, today's rulemaking concerning the relationship between a DCO and its members. While the Commission will continue to consider the public's views on these issues, the Commission is focused on ensuring DCOs comply with the CEA's core principles. I hope that the DCOs, their members, and their members' customers can continue working in good faith to find constructive solutions to other issues not included here.

[FR Doc. 2020–01065 Filed 1–24–20; 8:45 am]

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Provisions and Core Principles, 76 FR 69334 (Nov. 8, 2011)).

[5] The list of registered DCOs is available on the CFTC's website at, *https://sirt.cftc.gov/sirt/sirt.aspx?Topic=ClearingOrganizations.*

[6] These figures represent daily averages over the past month and concern only products within the Commission's jurisdiction.

[7] The PFMIs are available at, *https://www.bis.org/cpmi/info_pfmi.htm.*

[8] DCOs and International Standards, 78 FR 72476 (Dec. 2, 2013).

[9] System Safeguards Testing Requirements for DCOs, 81 FR 64322 (Sept. 19, 2016). In 2016, the Commission also instituted similar requirements for DCMs, SEFs and SDRs (81 FR 64272 (Sept. 19, 2016)).

[10] Revised and new regulations 39.3(g); 39.10(d); 39.11(c) and (e); 39.13(f), (g)(3), (g)(8), and (i); 39.16(c), 39.19(c); 39.26; and 39.37(c).

[11] Revised regulation 39.19(c)(1)(i).

[12] Revised regulation 39.16(b).

[13] Proposed regulation 39.19(c)(4)(xxvi).

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