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Contents

Federal Register

Vol. 85, No. 23

Tuesday, February 4, 2020

Reader Aids

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

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR

Proposed Rules:

930 6102

10 CFR

Proposed Rules:

Ch. I 6103
429 6102
430 6102

12 CFR

622 6023

13 CFR

Proposed Rules:

125 6106

14 CFR

25 (3 documents) ... 6025, 6026, 6028
71 6030

Proposed Rules:

39 (2 documents) 6107, 6110
71 (2 documents) 6115, 6118

17 CFR

201 6270
240 (2 documents) 6270, 6359

19 CFR

Ch. I 6044
351 6031

21 CFR

101 6045

29 CFR

4001 6046
4006 6046
4010 6046
4041 6046
4043 6046
4233 6046

Proposed Rules:

103 6120

37 CFR

Proposed Rules:

Ch. III 6121

40 CFR

63 6064

Proposed Rules:

52 (3 documents) ... 6121, 6123, 6125
174 6129
180 6129

49 CFR

Ch. XII 6044
380 6088
383 6088
384 6088

50 CFR

300 6101

Proposed Rules:

655 6131
660 6135

Rules and Regulations

Federal Register

Vol. 85, No. 23

Tuesday, February 4, 2020

FARM CREDIT ADMINISTRATION

12 CFR Part 622

RIN 3052–AD41

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

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This regulation implements inflation adjustments to civil money penalties (CMPs) that the Farm Credit Administration (FCA) may impose or enforce pursuant to the Farm Credit Act of 1971, as amended (Farm Credit Act), and pursuant to the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, and further amended by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) (collectively FDPA, as amended).

DATES: *Effective date:* This regulation is effective on February 4, 2020. *Applicability date:* The inflation-adjusted CMP were applicable beginning January 15, 2020.

FOR FURTHER INFORMATION CONTACT:

Paul K. Gibbs, Associate Director, Office of Regulatory Policy, Farm Credit Administration, (703) 883–4203, TTY (703) 883–4056,

or

Autumn R. Agans, Senior Attorney, Office of General Counsel, Farm Credit Administration, (703) 883–4082, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this regulation is to adjust the maximum CMPs for inflation through a final rulemaking to retain the deterrent effect of such penalties.

II. Background

A. Introduction

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (1996 Act) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) (collectively, 1990 Act, as amended), requires all Federal agencies with the authority to enforce CMPs to evaluate and adjust, if necessary, those CMPs each year to ensure that they continue to maintain their deterrent value and promote compliance with the law. Section 3(2) of the 1990 Act, as amended, defines a civil monetary penalty [1] as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.[2]

The FCA imposes and enforces CMPs through the Farm Credit Act [3] and the FDPA, as amended.[4] FCA's regulations governing CMPs are found in 12 CFR parts 622 and 623. Part 622 establishes rules of practice and procedure applicable to formal and informal hearings held before the FCA, and to formal investigations conducted under the Farm Credit Act. Part 623 prescribes rules regarding persons who may practice before the FCA and the circumstances under which such persons may be suspended or debarred from practice before the FCA.

B. CMPs Issued Under the Farm Credit Act

The Farm Credit Act provides that any Farm Credit System (System) institution or any officer, director, employee, agent, or other person participating in the conduct of the affairs of a System institution who violates the terms of a cease-and-desist order that has become final pursuant to section 5.25 or 5.26 of the Farm Credit Act must pay up to a maximum daily amount of $1,000 [5] during which such violation continues. This CMP maximum was set by the Farm Credit Amendments Act of 1985, which amended the Farm Credit Act. Orders issued by the FCA under section 5.25 or 5.26 of the Farm Credit Act include temporary and permanent cease-and-desist orders. In addition, section 5.32(h) of the Farm Credit Act provides that any directive issued under sections 4.3(b)(2), 4.3A(e), or 4.14A(i) of the Farm Credit Act ''shall be treated'' as a final order issued under section 5.25 of the Farm Credit Act for purposes of assessing a CMP.

Section 5.32(a) of the Farm Credit Act also states that ''[a]ny such institution or person who violates any provision of the [Farm Credit] Act or any regulation issued under this Act shall forfeit and pay a civil penalty of not more than $500 [6] per day for each day during which such violation continues.'' This CMP maximum was set by the Agricultural Credit Act of 1987, which was enacted in 1988, and amends the Farm Credit Act. Current, inflation-adjusted CMP maximums are set forth in existing § 622.61 of FCA regulations.[7]

The FCA also enforces the FDPA, as amended, which requires FCA to assess CMPs for a pattern or practice of committing certain specific actions in violation of the National Flood Insurance Program. The existing maximum CMP for a violation under the Flood Disaster Protection Act of 1973 is $2,000.[8] [9]

C. Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

1. In General

The 2015 Act required all Federal agencies to adjust the CMPs yearly, starting January 15, 2017.

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[1] *Note:* While the 1990 Act, as amended by 1996 and 2015 Acts, uses the term ''civil monetary penalties'' for these penalties or other sanctions, the Farm Credit Act and the FCA Regulations use the term ''civil money penalties.'' Both terms have the same meaning. Accordingly, this rule uses the term civil money penalty, and both terms may be used interchangeably.

[2] *See* 28 U.S.C. 2461 *note.*

[3] Public Law 92–181, as amended.

[4] 42 U.S.C. 4012a and Public Law 103–325, title V, 108 Stat. 2160, 2255–87 (September 23, 1994).

[5] The inflation-adjusted CMP in effect on January 15, 2019, for a violation of a final order is $2,326 per day, as set forth in § 622.61(a)(1) of FCA regulations.

[6] The inflation-adjusted CMP in effect on January 15, 2019, for a violation of the Farm Credit Act or a regulation issued under the Farm Credit Act is $1,052 per day, as set forth in § 622.61(a)(2) of FCA regulations.

[7] Prior adjustments were made under the 1990 Act.

[8] Public Law 112–141, 126 Stat. 405 (July 6, 2012).

[9] The inflation-adjusted CMP in effect on January 15, 2019, for a flood insurance violation is $2,187, as set forth in § 622.61(b)of FCA regulations.

Under Section 4(b) of the 1990 Act, as amended, annual adjustments are to be made yearly no later than January 15 of each year.[10] Section 6 of the 1990 Act, as amended, states that any increase to a civil monetary penalty under this 1990 Act applies only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.

Section 5(b) of the 1990 Act, as amended, defines the term ''cost-of-living adjustment'' as the percentage (if any) for each civil monetary penalty by which (1) the Consumer Price Index (CPI) for the month of October of the calendar year preceding the adjustment, exceeds (2) the CPI for the month of October 1 year before the month of October referred to in (1) of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.[11]

The increase for each CMP adjusted for inflation must be rounded using a method prescribed by section 5(a) of the 1990 Act, as amended, by the 2015 Act.[12]

2. Other Adjustments

If a civil monetary penalty is subject to a cost-of-living adjustment under the 1990 Act, as amended, but is adjusted to an amount greater than the amount of the adjustment required under the Act within the 12 months preceding a required cost-of-living adjustment, the agency is not required to make the cost-of-living adjustment to that CMP in that calendar year.[13]

III. Yearly Adjustments

A. Mathematical Calculations of 2020 Adjustments

The adjustment requirement affects two provisions of section 5.32(a) of the Farm Credit Act. For the 2020 yearly adjustments to the CMPs set forth by the Farm Credit Act, the calculation required by the 2019 White House Office of Management and Budget (OMB) guidance [14] is based on the percentage by which the CPI for October 2019 exceeds the CPIs for October 2018. The OMB set forth guidance, as required by the 2015 Act,[15] with a multiplier for calculating the new CMP values.[16] The 2019 OMB multiplier for the 2020 CMPs is 1.01764.

The adjustment also affects the CMPs set by the Flood Disaster Protection Act of 1973, as amended. The adjustment multiplier is the same for all FCA enforced CMPs, set at 1.01764. The maximum CMPs for violations were created in 2012 by the Biggert-Waters Act, which amended the Flood Disaster Protection Act of 1973.

1. New Penalty Amount in § 622.61(a)(1)

The inflation-adjusted CMP currently in effect for violations of a final order occurring on or after January 15, 2019, is a maximum daily amount of $2,326.[17] Multiplying the $2,326 CMP by the 2019 OMB multiplier, 1.01764, yields a total of $2,403.67. When that number is rounded as required by section 5(a) of the 1990 Act, as amended, the inflation-adjusted maximum increases to $2,404. Thus, the new CMP maximum is $2,404, for violations that occur on or after January 15, 2020.

2. New Penalty Amount in § 622.61(a)(2)

The inflation-adjusted CMP currently in effect for violations of the Farm Credit Act or regulations issued under the Farm Credit Act occurring on or after January 15, 2019, is a maximum daily amount of $1,052.[18] Multiplying the $1,052 CMP maximum by the 2019 OMB multiplier, 1.01764, yields a total of $1,070.56. When that number is rounded as required by section 5(a) of the 1990 Act, as amended the inflation-adjusted maximum increases to $1,071. Thus, the new CMP maximum is $1,071, for violations that occur on or after January 15, 2020.

3. New Penalty Amounts for Flood Insurance Violations Under § 622.61(b)

The existing maximum CMP for a pattern or practice of flood insurance violations pursuant to 42 U.S.C. 4012a(f)(5) occurring on or after January 15, 2019, is $2,187. Multiplying $2,187 by the 2019 OMB multiplier, 1.01764, yields a total of $2,225.58. When that number is rounded as required by section 5(a) of the 1990 Act, as amended, the new maximum assessment of the CMP for violating 42 U.S.C. 4012a(f)(5) is $2,226. Thus, the new CMP maximum is $2,226, for violations that occur on or after January 15, 2020.

IV. Notice and Comment Not Required by Administrative Procedure Act

The 1990 Act, as amended, gives Federal agencies no discretion in the adjustment of CMPs for the rate of inflation. Further, these revisions are ministerial, technical, and noncontroversial. For these reasons, the FCA finds good cause to determine that public notice and an opportunity to comment are impracticable, unnecessary, and contrary to the public interest pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), and adopts this rule in *final* form.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 622

Administrative practice and procedure, Crime, Investigations, Penalties.

For the reasons stated in the preamble, part 622 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 622—RULES OF PRACTICE AND PROCEDURE

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

Authority: Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261–2273); 28 U.S.C. 2461 note; and 42 U.S.C. 4012a(f).

■ 2. Revise § 622.61 to read as follows:

§ 622.61 Adjustment of civil money penalties by the rate of inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(a) The maximum amount of each civil money penalty within FCA's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 *note*), as follows:

(1) Amount of civil money penalty imposed under section 5.32 of the Act for violation of a final order issued

[10] Public Law 114–74, sec. 701(b)(1).

[11] The CPI is published by the Department of Labor, Bureau of Statistics, and is available at its website: *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.*

[12] Pursuant to section 5(a)(3) of the 2015 Act, any increase determined under the subsection shall be rounded to the nearest $1.

[13] Pursuant to section 4(d) of the 1990 Act, as amended.

[14] OMB Circular M–20–05, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

[15] 28 U.S.C. 2461 *note,* section 7(a).

[16] OMB Circular M–20–05, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

[17] 12 CFR 622.61(a)(1).

[18] 12 CFR 622.61(a)(2).

under section 5.25 or 5.26 of the Act: The maximum daily amount is $2,404 for violations that occur on or after January 15, 2020.

(2) Amount of civil money penalty for violation of the Act or regulations: The maximum daily amount is $1,071 for each violation that occurs on or after January 15, 2020.

(b) The maximum civil money penalty amount assessed under 42 U.S.C. 4012a(f) is $2,226 for each violation that occurs on or after January 15, 2020, with no cap on the total amount of penalties that can be assessed against any single institution during any calendar year.

Dated: January 23, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–01410 Filed 2–3–20; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2020–0032; Special Conditions No. 25–765–SC]

Special Conditions: Airbus Defense and Space Model C–295 Series Airplane; Electronic System Security Protection From Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus Defense and Space (Airbus DS) C–295 series airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is airplane electronic systems and networks that allow access from external sources (*e.g.,* wireless devices, internet connectivity) to the airplane's previously isolated, internal electronic components. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Airbus DS on February 4, 2020. Send comments on or before March 20, 2020.

ADDRESSES: Send comments identified by Docket No. FAA–2020–0032 using any of the following methods:

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

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thuan Nguyen, Airplane and Flight Crew Interface Section, AIR–671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3365; email *Thuan.T.Nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On August 2, 2018 Airbus DS applied for a change to Type Certificate No. A21NM to update the Avionics System Rockwell Collins Proline II to the Avionics System based on Proline Fusion in the Airbus DS C–295 series airplane. The Airbus DS C–295 series airplane, currently approved under Type Certificate No. A21NM, is a twin-engine, transport category airplane configured for freighter use, with a maximum takeoff weight of 46,300 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Airbus DS must show that the C–295 series airplane, as changed, meets the applicable provisions of the regulations listed in Type Certificate No. A21NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus DS C–295 series airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus DS C–295 series airplane must comply with the fuel vent and exhaust emission requirements of

14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus DS C–295 series airplane will incorporate the following novel or unusual design feature:

Airplane electronic systems and networks that allow access from external sources (*e.g.,* wireless devices, internet connectivity) to the airplane's previously isolated, internal electronic components.

Discussion

The Airbus DS C–295 series airplane architecture and network configuration may allow increased connectivity to, and access from, external network sources and airline operations and maintenance networks to the airplane control domain and airline information services domain. The airplane control domain and airline information services domain perform functions required for the safe operation and maintenance of the airplane. Previously, these domains had very limited connectivity with external network sources. The architecture and network configuration may allow the exploitation of network security vulnerabilities resulting in intentional or unintentional destruction, disruption, degradation, or exploitation of data, systems, and networks critical to the safety and maintenance of the airplane.

The existing regulations and guidance material did not anticipate these types of airplane system architectures. Furthermore, 14 CFR regulations and the current system safety assessment policy and techniques do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane networks, data buses, and servers. Therefore, these special conditions are to ensure that the security (*i.e.,* confidentiality, integrity, and availability) of airplane systems is not compromised by unauthorized wired or wireless electronic connections.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Airbus DS C–295 series airplane. Should Airbus DS apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on Airbus DS C–295 airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus DS C–295 series airplane.

1. The applicant must ensure that the airplane electronic systems are protected from access by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.

2. The applicant must ensure that electronic system-security threats are identified and assessed, and that effective electronic system-security protection strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.

3. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the airplane is maintained, including all post type certification modifications that may have an impact on the approved electronic system security safeguards.

Issued in Des Moines, Washington, on January 17, 2020.

James E. Wilborn,

Acting Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2020–01228 Filed 2–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2020–0033; Special Conditions No. 25–766–SC]

Special Conditions: Airbus Defense and Space Model C–295 Series Airplane; Electronic System Security Protection From Unauthorized Internal Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus Defense and Space (Airbus DS) C–295 series airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is airplane electronic systems and networks that allow access, from airplane internal sources (*e.g.,* wireless devices, internet connectivity), to the airplane's previously isolated, internal electronic components. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Airbus DS on February 4, 2020. Send comments on or before March 20, 2020.

ADDRESSES: Send comments identified by Docket No. FAA–2020–0033 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
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Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thuan Nguyen, Airplane and Flight Crew Interface Section, AIR–671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3365; email *Thuan.T.Nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On August 2, 2018, Airbus DS applied for a change to Type Certificate No. A21NM to update the Avionics System Rockwell Collins Proline II to the Avionics System based on Proline Fusion in the Airbus DS C–295 series airplane. The Airbus DS C–295 series airplane, currently approved under Type Certificate No. A21NM, is a twin-engine, transport category airplane configured for freighter use, with a maximum takeoff weight of 46,300 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Airbus DS must show that the C–295 series airplane, as changed, meets the applicable provisions of the regulations listed in Type Certificate No. A21NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus DS C–295 series airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus DS C–295 series airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus DS C–295 series airplane will incorporate the following novel or unusual design feature:

Airplane electronic systems and networks that allow access, from airplane internal sources (*e.g.,* wireless devices, internet connectivity), to the airplane's previously isolated, internal electronic components.

Discussion

The Airbus DS C–295 series airplane electronic network system architecture is novel or unusual for commercial transport airplanes because it allows connection to previously isolated data networks connected to systems that perform functions required for the safe operation of the airplane. This data network and design integration may result in security vulnerabilities from intentional or unintentional corruption of data and systems critical to the safety and maintenance of the airplane. The existing regulations and guidance material did not anticipate this type of system architecture or electronic access to airplane systems. Furthermore, 14 CFR regulations and the current system safety assessment policy and techniques do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane networks and servers. Therefore, these special conditions are to ensure that the security of airplane systems and networks is not compromised by unauthorized wired or wireless internal access.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Airbus DS C–295 series airplane. Should Airbus DS apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on Airbus DS C–295 series airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus DS C–295 series airplane.

1. The applicant must ensure that the design provides isolation from, or airplane electronic system security

protection against, access by unauthorized sources internal to the airplane. The design must prevent inadvertent and malicious changes to, and all adverse impacts upon, airplane equipment, systems, networks, or other assets required for safe flight and operations.

2. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the airplane is maintained, including all post type certification modifications that may have an impact on the approved electronic system security safeguards.

Issued in Des Moines, Washington, on January 17, 2020.

James E. Wilborn,

Acting Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2020–01229 Filed 2–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–0632; Special Conditions No. 25–762–SC]

Special Conditions: The Boeing Company Model 747–8 Series Airplane; Certification of Cooktops

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for The Boeing Company (Boeing) Model 747–8 series airplane. This airplane, as modified by Boeing, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is associated with the installation of advanced technology induction coil cooktops in the main deck galleys on a Boeing Model 747–8 series airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective March 5, 2020.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3215; email *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2018, Boeing applied for a supplemental type certificate for the modification of the Boeing Model 747–8 series airplane. The Boeing Model 747–8 currently approved under Type Certificate No. A20WE, is an extended range passenger version of the Boeing Model 747–400 series airplane with four General Electric engines having changes to increase its strength and fuel capacity.

The modification incorporates the installation of an electrically heated surface, called a cooktop. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. These potential hazards to the airplane and its occupants must be satisfactorily addressed. Since existing airworthiness regulations do not contain safety standards addressing cooktops, special conditions are needed.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 747–8 series airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. A20WE or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 747–8 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 747–8 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The modification of the Boeing Model 747–8 series airplane will incorporate a novel or unusual design feature, which is the installation of cooktops in the passenger cabin. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards to protect the airplane and its occupants from these potential hazards.

Discussion

Currently, ovens are the prevailing means of heating food on airplanes. Ovens are characterized by an enclosure that contains both the heat source and the food being heated. The hazards represented by ovens are thus inherently limited, and are well understood through years of service experience. Cooktops, on the other hand, are characterized by exposed heat sources and the presence of relatively unrestrained hot cookware and heated food, which may represent unprecedented hazards to both occupants and the airplane. Cooktops could have serious passenger and airplane safety implications if appropriate requirements are not established for their installation and use. These special conditions apply to cooktops with electrically powered burners. The use of an open flame cooktop (for example, natural gas) is beyond the scope of these special conditions and would require separate rulemaking action. The requirements identified in these special conditions are in addition to those considerations identified in Advisory Circular (AC) 20–168, *Certification Guidance for Installation of Non-Essential, Non-Required Aircraft Cabin Systems & Equipment (CS&E),* dated July 22, 2010, and those in AC 25–17A, *Transport Airplane Cabin Interiors Crashworthiness Handbook,* Change 1, dated May 24, 2016. The intent of these special conditions is to provide a level of safety that is consistent with that on similar airplanes without cooktops.

The special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

The FAA issued Notice of Proposed Special Conditions No. 25–19–08–SC for the Boeing Model 747–8 series airplane, which was published in the **Federal Register** on August 20, 2019 (84 FR 43037). The FAA received responses from one commenter.

Boeing requested a revision of the text included in the Summary section of the preamble. The language the FAA used in the preamble of the notice special conditions referred only to the replacement of an existing cooktop only. Boeing stated their proposed modification installs a complete system including cooktops, smoke detection, ventilation, and warnings. We concur with the request to revise the language and have done so in the preamble of these final special conditions.

Applicability

As discussed above, these special conditions are applicable to the Boeing 747–8 series airplane as modified by Boeing. Should Boeing apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A20WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on the Boeing Model 747–8 series airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 747–8 series airplane, as modified by The Boeing Company:

Cooktop Installations With Electrically-Powered Burner

1. Means, such as conspicuous burner-on indicators, physical barriers, or handholds, must be installed to minimize the potential for inadvertent personnel contact with hot surfaces of both the cooktop and cookware. Conditions of turbulence must be considered.

2. Sufficient design means must be included to restrain cookware while in place on the cooktop, as well as representative contents, *e.g.,* soup, sauces, etc., from the effects of flight loads and turbulence. Restraints must be provided to preclude hazardous movement of cookware and contents. These restraints must accommodate any cookware that is identified for use with the cooktop. Restraints must be designed to be easily utilized and effective in service. The cookware restraint system should also be designed so that it will not be easily disabled, thus rendering it unusable. Placarding must be installed which prohibits the use of cookware that can not be accommodated by the restraint system.

3. Placarding must be installed which prohibits the use of cooktops (*i.e.,* power on any burner) during taxi, takeoff, and landing.

4. One of the following options must be provided to address the possibility of a fire occurring on or in the immediate vicinity of the cooktop:

a. Placarding must be installed that prohibits any burner from being powered when the cooktop is unattended (*Note:* That this would prohibit a single person from cooking on the cooktop and intermittently serving food to passengers while any burner is powered). A fire detector must be installed in the vicinity of the cooktop, which provides an audible warning in the passenger cabin, and a fire extinguisher of appropriate size and extinguishing agent must be installed in the immediate vicinity of the cooktop. Access to the extinguisher must not be blocked by a fire on or around the cooktop.

b. An automatic, thermally activated fire suppression system must be installed to extinguish a fire at the cooktop and immediately adjacent surfaces. The agent used in the system must be an approved total flooding agent suitable for use in an occupied area. The fire suppression system must have a manual override. The automatic activation of the fire suppression system must also automatically shut off power to the cooktop.

5. The surfaces of the galley surrounding the cooktop, which could be exposed to a fire on the cooktop surface or in cookware on the cooktop must be constructed of materials that comply with the flammability requirements of Part III of Appendix F of part 25. This requirement is in addition to the flammability requirements typically required of the materials in these galley surfaces. During the selection of these materials, consideration must also be given to ensure that the flammability characteristics of the materials will not be adversely affected by the use of cleaning agents and utensils used to remove cooking stains.

6. The cooktop must be ventilated with a system independent of the airplane cabin and cargo ventilation system. Procedures and time intervals must be established to inspect and clean or replace the ventilation system to prevent a fire hazard from the accumulation of flammable oils and be included in the instructions for continued airworthiness. [*Note:* The applicant may find additional useful information in Society of Automotive Engineers, Aerospace Recommended Practice 85, Rev. E, entitled ''*Air Conditioning Systems for Subsonic Airplanes,*'' dated August 1, 1991.]

7. Means must be provided to contain spilled foods or fluids in a manner that will prevent the creation of a slipping hazard to occupants and will not lead to the loss of structural strength due to corrosion.

8. Cooktop installations must provide adequate space for the user to immediately escape a hazardous cooktop condition.

9. A means to shut off power to the cooktop must be provided at the galley containing the cooktop and in the cockpit. If additional switches are introduced in the cockpit, revisions to smoke or fire emergency procedures of the AFM will be required.

10. If the cooktop is required to have a lid to enclose the cooktop, there must be a means to automatically shut off power to the cooktop when the lid is enclosed.

Issued in Des Moines, Washington, on January 23, 2020.

James E. Wilborn,

Acting Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2020–01515 Filed 2–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0785; Airspace Docket No. 19–AEA–14]

RIN 2120–AA66

Revocation of Class E Airspace; Grundy, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace at Grundy, VA, as Grundy Municipal Airport has been abandoned, and controlled airspace is no longer required. This action enhances the safety and management of controlled airspace within the National Airspace System.

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes Class E airspace extending upward from 700 feet above the surface in the Grundy, VA area.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 60354, November 8, 2019) for Docket No. FAA–2019–0785 to remove Class E airspace extending upward from 700 feet above the surface for Grundy, VA, as Grundy Municipal Airport has closed.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 removes Class E airspace extending upward from 700 feet above the surface at Grundy Municipal Airport, Grundy, VA, as the airport has been abandoned, and controlled airspace is no longer required.

These changes are necessary for continued safety and management of IFR operations in the area.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA VA E5 Grundy, VA [Removed]

Issued in College Park, Georgia, on January 28, 2020.

Ryan Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2020–02019 Filed 2–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 200128–0035]

RIN 0625–AB16

Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (Commerce) is modifying two regulations pertaining to the determination of benefit and specificity in countervailing duty proceedings. These modifications clarify how Commerce will determine the existence of a benefit when examining a subsidy resulting from currency undervaluation and clarify that companies in the traded goods sector of the economy can constitute a group of enterprises for purposes of determining whether a subsidy is specific.

DATES:

Effective date: April 6, 2020.

Applicability date: This rule will apply to all segments of proceedings initiated on or after April 6, 2020. FOR

FOR FURTHER INFORMATION CONTACT: Gregory Campbell at (202) 482–2239 or Matthew Walden at (202) 482–2963.

SUPPLEMENTARY INFORMATION:

Background

On May 28, 2019, we published the *Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings; Proposed Rule and Request for Comments.*[1] In the proposed rule, we explained that neither the Tariff Act of 1930, as amended (the Act) nor Commerce's existing countervailing duty (CVD) regulations specify how to determine the existence of a benefit or specificity when Commerce is examining a potential subsidy resulting from the exchange of currency under a unified exchange rate system. We initiated this rulemaking process to fill that gap.

We received numerous comments on the proposed rule, and we address those comments below. The proposed rule, comments received, and this final rule can be accessed using the Federal eRulemaking portal at *http://www.regulations.gov* under Docket Number ITA–2019–0002. After analyzing and carefully considering all of the comments that Commerce received, we have adopted the modifications described below and amended Commerce's regulations accordingly.

Explanation of Regulatory Provisions and Final Modifications

Commerce is modifying 19 CFR 351.502, which addresses specificity of domestic subsidies, and is adding new 19 CFR 351.528, to govern the determinations of undervaluation and benefit when examining potential subsidies resulting from the exchange of an undervalued currency. The modification to 19 CFR 351.502 adds new paragraph (c), which explains that enterprises that buy or sell goods internationally (*i.e.,* enterprises in the traded goods sector of an economy) can comprise a ''group'' of enterprises for specificity purposes. In essence, this modification fills a gap in section 771(5A)(D) of the Act, which states that a subsidy can be specific if provided to ''a group'' of enterprises or industries, but does not define the word ''group.'' Existing 19 CFR 351.502 makes clear that in determining whether there is a ''group,'' Commerce is not required to determine whether there are shared characteristics among the enterprises or industries that are eligible for, or actually receive, the subsidy. Moreover, Commerce's Policy Bulletin 10.1, issued in 2010, clarifies that state-owned enterprises can constitute a ''group'' of enterprises within the meaning of section 771(5A)(D) of the Act.[2] The addition of 19 CFR 351.502(c) is intended to provide further clarification, this time for the traded goods sector, regarding the entities that may comprise a ''group.''

New 19 CFR 351.528 provides guidance for Commerce's determinations of undervaluation and benefit when examining a potential subsidy resulting from the exchange of an undervalued currency. Paragraph (a)(1) specifies that Commerce normally will consider whether a benefit is conferred from the exchange of U.S. dollars for the currency of the country under review or investigation only if that country's currency is undervalued during the relevant period. In other words, a determination of undervaluation is a prerequisite to proceeding to an analysis of whether a benefit is conferred. To determine whether there is undervaluation, Commerce normally will consider the gap between the country's real effective exchange rate (REER), on the one hand, and the REER that achieves an external balance over the medium term that reflects appropriate policies—otherwise known as the equilibrium REER—on the other hand. Paragraph (a)(2) specifies that Commerce normally will make an affirmative finding of currency undervaluation only if there has been government action on the exchange rate that contributes to an undervaluation of the currency. In assessing whether there has been such government action, Commerce will not normally include monetary and related credit policy of an independent central bank or monetary authority. In making its assessment of government action on the exchange rate, Commerce may consider the relevant government's degree of transparency regarding actions that could alter the exchange rate.

Paragraph (b) of § 351.528 states that once Commerce has made an affirmative finding of currency undervaluation, we normally will determine the existence of a benefit after examining the difference between (i) the nominal, bilateral U.S. dollar rate consistent with the equilibrium REER, and (ii) the actual nominal, bilateral dollar rate during the relevant time period, taking into account any information regarding the impact of government action on the exchange rate. If there is a difference between (i) and (ii), then the amount of the benefit normally will be determined by comparing the amount of the domestic currency [3] that the recipient received to the amount it would have received absent the difference between (i) and (ii). In short, under paragraph (b), the benefit normally will be equal to the

[1] 84 FR 24406 (proposed rule).

[2] *See* Import Administration Policy Bulletin 10.1, ''Specificity of Subsidies Provided to State-owned Enterprises,'' 2010, *available at https://enforcement.trade.gov/policy/PB-10.1.pdf.* Commerce has also addressed the issue of the definition of ''group'' in certain CVD proceedings. For example, we found foreign-invested enterprises to comprise a ''group'' under the Act. *See, e.g., Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 16836 (April 13, 2009), and accompanying Issues and Decision Memorandum at Comment 16.

[3] The term ''domestic currency,'' as used throughout this notice, means the currency of the country under investigation or review.

extra amount of domestic currency received by a firm because of the undervaluation.

Information regarding the amount of domestic currency that the recipient actually received from an exchange of U.S. dollars normally will come from the recipient itself, through Commerce's normal questionnaire process. In this sense, a currency-related subsidy does not differ from the other types of subsidies that Commerce normally investigates. However, paragraph (c) of new 19 CFR 351.528 clarifies that in determining undervaluation (including government action) and the bilateral U.S. dollar rate gap, Commerce will request that the Department of the Treasury (Treasury) provide its evaluation and conclusion regarding these issues during a CVD proceeding.

Response to Comments on the Proposed Rule

Commerce received 47 comments on the proposed rule. The majority of these comments expressed support for a regulation that addresses subsidies resulting from currency undervaluation.

As a result of the comments, we made changes (primarily additions) to the regulatory text, which are summarized in the ''Changes from the Proposed Rule'' section below. Many of these additions to the regulatory text—for example, the additions describing in greater detail the steps of the benefit determination and the additions regarding the role of government action on the exchange rate—are consistent with how we described the rule in the preamble to the proposed rule. In light of the comments received, we have decided to include greater detail in the regulatory text itself, rather than in the preamble alone. Other changes to the regulatory text—for example, the technical changes in 19 CFR 351.502—respond to comments received.

Below is a summary of the comments, grouped by issue, followed by Commerce's response.

1. Whether the CVD Law is an Appropriate Tool To Remedy Subsidies From Currency Undervaluation

While many of the comments Commerce received on the proposed rule were focused on technical or legal aspects of the methodologies described, several commenters also opined more generally on whether it is appropriate and effective, as a policy matter, for Commerce to involve itself in an area of analysis in which other U.S. government agencies and international institutions have historically been viewed as having primary jurisdiction and competence. These commenters argued that the CVD law is not the appropriate vehicle for remedying the effects of currency undervaluation. Some of these commenters presumed that Commerce would impose a single, across-the-board duty that (i) assumes full exchange rate pass through, (ii) is applied to all exporters and all U.S. imports of the subject merchandise, and (iii) is totally divorced from ''on-the-ground,'' company-specific circumstances and experience.

Response: Congress gave Commerce the authority to remedy injurious subsidies, regardless of what form they take. The CVD law gives U.S. domestic producers the right to petition Commerce to investigate allegedly injurious foreign subsidies, and it requires Commerce to conduct such investigations (provided that the applicable requirements for initiation are met). This is true even with respect to issues in which other U.S. Government agencies or international bodies may have an overlapping interest. For example, if the domestic industry petitions Commerce alleging that a foreign agricultural product or a foreign energy resource is subsidized and injures a domestic industry, Commerce generally must investigate the allegations, even though other U.S. government agencies have expertise with respect to such products. Commerce routinely investigates programs involving, *e.g.,* export credits and equity infusions, which are potential forms of subsidization that may also be practices monitored by other governmental and international entities. So too with currency: If the domestic industry petitions Commerce alleging that a foreign currency is a mechanism for subsidizing an imported product, Commerce generally must investigate the allegations, despite the fact that other agencies have an interest in U.S. policy towards foreign currencies. This is true even before the adoption of the rule in this notice.

This interpretation of Commerce's obligations is consistent with the intent behind the Trade Agreements Act of 1979, which transferred the authority for administering CVD investigations from Treasury to Commerce. The House Ways and Means Committee explained that this shift: ''will give these functions high priority within a Department whose principal mission is trade. In the past, agencies have arbitrarily set a course of administration of these statutes contrary to congressional intent.'' Thus, Congress has already decided that because Commerce's principal mission is trade, it is Commerce that should administer the CVD laws with respect to foreign imports and foreign subsidies of all types.

However, Commerce cannot administer the CVD law to counteract currency undervaluation *per se.* Contrary to some of the commenters, and as these regulatory modifications make clear, Commerce did not propose an across-the-board CVD in the amount of any currency undervaluation found to exist. The CVD law can only counteract countervailable subsidies—*i.e.,* financial contributions that confer a benefit and meet the specificity requirement of the Act—provided with respect to specifically defined categories of imported goods that injure or threaten injury to a U.S. industry.

To do this, Commerce will follow a two-step approach. First, we will conduct a REER-based analysis to determine if there is potentially actionable currency undervaluation. We will normally not find such currency undervaluation unless there has been government action on the exchange rate that contributes to the undervaluation. Such government action will not normally include monetary and related credit policy of an independent central bank or monetary authority. The second step will be an analysis of ''on-the-ground,'' firm-specific circumstances and experience to determine the extent of any countervailable benefit, after taking into account the U.S. dollar rate gap with respect to the undervalued currency. This approach will ensure that Commerce's analysis of currency undervaluation adheres to the principles and conforms to the requirements of the U.S. CVD law, and that it fits squarely within the financial contribution-benefit-specificity framework. Thus, the benefit calculation for any exchange or transfer involving an undervalued currency will follow the same principles as for any other countervailable subsidy. It will generally be based on the firm-specific value of the benefit, *i.e.,* the extra domestic currency units received as a result of the undervaluation, conferred on the firm.

Commerce recognizes that implementation will raise a variety of issues, but these should be addressed incrementally and over time, through Commerce's experience in individual cases—which are informed by arguments put forward by the interested parties as well as the underlying administrative record.

This approach is consistent both with Commerce's practice in other areas, as well as general principles of administrative law. In *SEC* v. *Chenery Corporation,* the Supreme Court recognized that rulemaking is often

essential to an agency's processes, but then also explained, ''the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule.'' [4] In such situations, ''the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective. There is thus a very definite place for the case-by-case evolution of statutory standards.'' [5] The Supreme Court explained that ''the choice made between proceeding by general rule or by individual, *ad hoc* litigation is one that lies primarily in the informed discretion of the administrative agency.[6]

Likewise, the Court of International Trade (CIT) has recognized that ''[a]bsent statutory restraints, agencies are generally free to develop policy through either rulemaking or adjudication.'' [7] In *Apex,* the CIT found that Commerce's differential pricing methodology in antidumping duty proceedings was not required to be implemented through rulemaking.[8]

In fact, when Commerce promulgated its current CVD regulations in 1998, we repeatedly noted that it was not appropriate to set forth precise rules on every detail of CVD methodology for every type of subsidy.[9] Thus we stated that if Commerce at that time had little or no experience with a particular issue, we would not issue a regulation on that issue, but rather would resolve it on a case-by-case basis or further refine our treatment of it in the future.[10]

Therefore, these regulatory modifications do not resolve all potential complex issues that will arise. That these case issues can only be resolved over time is true not just for currency undervaluation, but for any new type of subsidy Commerce investigates. Commerce's analytical approach, as structured in these regulatory modifications, will ensure that CVD actions against subsidies resulting from currency undervaluation remain measured, deliberate, and predictable.

2. Statutory Authority To Promulgate This Rule

One commenter asserted that Commerce has the statutory authority to evaluate currency undervaluation within the CVD law. On the other hand, two commenters argued that Commerce's proposed rule is unlawful because Congress failed to approve legislation that would specifically deem currency undervaluation as a countervailable subsidy. Therefore, these commenters claimed that Commerce lacks the statutory authority to alter its approach without Congressional change to the Act. Further, one commenter argued that Commerce has consistently held that ''an allegedly undervalued unified exchange rate does not constitute a countervailable subsidy,'' citing to *Carbon Steel Wire Rod from Poland: Preliminary Negative Countervailing Duty Determination,* 49 FR 6768, 6771 (February 23, 1984). This commenter argued that, in light of Commerce's alleged practice and Congress's subsequent amendments to the Act that failed to establish that Commerce can countervail currency undervaluation, Congress, in effect, ratified Commerce's alleged practice. Accordingly, citing *GPX,*[11] this commenter argues that this Congressional acquiescence in Commerce's longstanding practice precludes Commerce from unilaterally altering its approach.

Response: To the extent that a currency exchange involving an undervalued currency meets the statutory definition of a countervailable subsidy, Commerce has the authority to administer the CVD law, countervail such a program and write regulations to effectuate the statute.

First, contrary to the allegation of one commenter, Commerce does not have an established practice that it does not find currency undervaluation to be countervailable. Although this commenter points to the preliminary determination of *Carbon Steel Wire Rod from Poland* to indicate such a practice, Commerce's finding in that 1984 investigation dealt with multiple currency exchange rates, not the type of unified exchange rate system at issue in this regulation. Therefore, Commerce's statement that ''an allegedly undervalued unified exchange rate does not constitute a countervailable subsidy'' can be viewed as *dicta* given that a unified exchange rate was not the program at issue in that investigation. Moreover, in the final determination of *Carbon Steel Wire Rod from Poland,* Commerce ultimately determined that it cannot apply the CVD law to non-market economies (NMEs) such as Poland (at that time), rendering moot Commerce's initial statements in the preliminary determination.[12]

Further, contrary to this commenter's claims that this alleged ''practice'' was further upheld in subsequent determinations by Commerce not to initiate on currency undervaluation allegations, Commerce determined not to initiate on subsequent currency undervaluation subsidy allegations because we determined that the petitioners' allegations in those particular proceedings were unsupported by reasonably available information regarding the statutory elements for imposition of a CVD.[13] Commerce's determinations not to initiate were not based on any practice regarding currency-related subsidies.

Additionally, since the publication of *Carbon Steel Wire Rod from Poland* in 1984, Commerce's CVD law has undergone substantial changes, most significantly in the Uruguay Round Agreements Act.[14] For example, the law underwent a significant change that replaced the term ''bounty or grant'' with the current statutory definition of a ''subsidy'' as being a financial contribution that confers a benefit.[15] Thus, given the substantial changes to the CVD law since 1984, Commerce's statements regarding subsidy programs in 1984 are not binding on its current application of the law.

Moreover, even if Commerce's alleged practice was binding—despite its consistent subsequent practice indicating otherwise—Commerce is always free to change its practice, provided that it explains its decision, which we have done here.

Contrary to one commenter's reliance on *GPX* to assert that Congressional acquiescence in Commerce's longstanding practice precludes us from unilaterally altering our approach, the *GPX* case is distinguishable.

[4] *SEC* v. *Chenery Corp.,* 332 U.S. 194, 202 (1947).

[5] *Id.* at 203.

[6] *Id.*

[7] *Apex Frozen Foods Private Ltd.* v. *United States,* 144 F. Supp. 2d 1308, 1319 (CIT 2016).

[8] *See id.* at 1319–22.

[9] *See Countervailing Duties; Final Rule,* 63 FR 65348 (November 25, 1998) (*1998 Final Rule*).

[10] *See, e.g., id.* at 65378, 65394, 65397.

[11] *GPX Int'l Tire Corp.* v. *United States,* 666 F.3d 732, 740 (Fed. Cir. 2011).

[12] *Carbon Steel Wire Rod from Poland; Final Negative Countervailing Duty Determination,* 29 FR 19374, 19375 (May 7, 1984).

[13] *See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 59213 (Sept. 27, 2010), and accompanying Issues and Decision Memorandum at cmts. 5–7; *Aluminum Extrusions From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 75 FR 54302 (September 7, 2010) (unchanged in *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 18521 (April 4, 2011)); and *Notice of Initiation of Countervailing Duty Investigations: Coated Free Sheet Paper from the People's Republic of China, Indonesia, and the Republic of Korea,* 71 FR 68546 (November 27, 2006).

[14] *See, e.g.,* Uruguay Round Agreements Act of 1994, Pub. L. 103–465, 108 Stat. 4809 (1994).

[15] *Id.*

In *GPX,* the Federal Circuit determined that because Commerce had previously interpreted the Act such that CVDs could not be assessed on imports from NMEs and, because Congress had subsequently amended the Act without disturbing Commerce's interpretation, Congress had, in effect, ratified the agency's interpretation of the statute.[16] In evaluating whether Commerce had interpreted the statute to determine CVDs could not be assessed on imports from NMEs, the court looked to prior agency briefs that defended its interpretation of the statute, Congressional rejection of provisions to amend the law to include subsidies in NMEs as countervailable, and Congressional testimony by Commerce asserting that CVDs cannot be assessed on NMEs.[17] Further, the court looked to a past Federal Circuit case [18] which upheld Commerce's interpretation of the Act that CVDs could not be assessed on imports from NMEs.[19]

Contrary to the situation in *GPX,* Commerce does not have a practice that subsidies related to currency undervaluation are not countervailable, and there certainly has been no Federal Circuit case affirming that alleged ''practice,'' as there had been prior to the *GPX* decision. Rather, Commerce in the past did not initiate on currency undervaluation allegations because the petitioners' allegations in those particular proceedings were unsupported. Finally, contrary to these commenters' arguments, the Supreme Court has stated that ''failed legislative proposals are '''a particularly dangerous ground on which to rest an interpretation of a prior statute.' '' [20] Therefore, we disagree that Commerce does not have statutory authority to promulgate this final rule.

3. Financial Contribution

Several commenters argued that currency undervaluation and exchanges of currency do not constitute financial contributions under either section 771(5)(D) of the Act or Article 1.1(a)(1) of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). They argued that an exchange of currency is neither a ''direct transfer of funds,'' as indicated in the proposed rule, nor any other type of listed financial contribution. One commenter argued that the conversion of one currency into another is a purchase and sale of items of equivalent value and also that the sale of something to the government—unless it is the sale of a ''good,'' which currency is not—is not a financial contribution. This commenter also noted that when an exporter earns foreign currency on an export sale, it might never convert that foreign currency into domestic currency. According to this commenter, even when the exporter does convert that foreign currency, it may be impossible to link the currency exchange back to the export sale.

Other commenters urged Commerce to take a broad view of the types of entities that can constitute ''authorities'' capable of providing financial contributions within the meaning of section 771(5)(B) of the Act. Some commenters also urged Commerce to take a broad view of the ''entrustment or direction'' standard in section 771(5)(B)(iii) of the Act during investigations of currency-related subsidies. They argued that there may be a large variety of government actions that amount to entrustment or direction when a government undervalues its currency and that an express government mandate that banks purchase foreign currency is not a prerequisite to a finding of entrustment or direction.

Response: These regulatory modifications do not address financial contribution under section 771(5)(B) and section 771(5)(D) of the Act. In fact, none of Commerce's existing CVD regulations directly address financial contribution. Accordingly, we do not consider it necessary to respond in detail to these comments, many of which are more appropriately made in the context of a particular CVD proceeding than in this rulemaking process.

As we stated in the proposed rule, ''[t]he receipt of domestic currency from an authority (or an entity entrusted or directed by an authority) in exchange for U.S. dollars could constitute the financial contribution under section 771(5)(D) of the Act.'' [21] We maintain this view, but of course any such finding will depend upon the facts on the record of the proceeding. We disagree that an exchange of currency can never be a ''direct transfer of funds'' within the meaning of section 771(5)(D)(i) of the Act. The word ''transfer'' suggests a conveyance, passing or exchange of something from one person to another. The word ''funds'' suggests money or some monetary resource. Further, contrary to one commenter, we disagree that the question of whether ''equivalent value'' was exchanged is relevant to a financial contribution analysis. If anything, this relates to the determination of benefit.

With respect to the commenters that raised issues regarding interpretations of the statutory terms ''authority'' and ''entrusts or directs,'' we find that these issues are more appropriately raised in the context of an actual CVD proceeding. The issue of whether a provider of a financial contribution is an authority arises frequently in our CVD proceedings, and our practice is well-developed and known by interested parties. With respect to the ''entrusts or directs'' language in section 771(5)(B)(iii) of the Act, we explained in the *1998 Final Rule* that ''we do not believe it is appropriate to develop a precise definition of the phrase for purposes of these regulations'' and that it was not necessary to provide an ''illustrative list'' of actions that could constitute entrustment or direction.[22] At the same time, we explained that we would examine entrustment or direction on a case-by-case basis, that we would ''enforce this provision vigorously,'' and that the statutory language could encompass a ''broad range of meanings.'' [23] We reiterate these points here.

4. Determination of Undervaluation

Several commenters claimed the proposed rule needs to have more objective and clear criteria. Some commenters were in support of the proposed rule but advocated for a more clear and concise decision-making process, including a predetermined set of objective criteria, for determining if a currency is manipulated to avoid uncertainty and charges of arbitrariness. Other commenters argued that since there is no one agreed-upon methodology for calculating currency undervaluation, any such estimate would unavoidably be subjective. One such comment claimed Commerce's proposed methodology is too broad to be understood, properly applied and transparent, and is therefore arbitrary and unenforceable. According to the commenter, although Commerce claimed that ''[i]n determining whether there has been government action on the exchange rate that undervalues the currency, [it does] not intend in the normal course to include monetary and related credit policy of an independent central bank or monetary authority . . .,'' it did not define ''the normal

[16] *GPX Int'l Tire Corp.,* 666 F.3d at 737–45.

[17] *Id.* at 737–740.

[18] *Georgetown Steel Corp.* v. *United States,* 801 F.2d 1308 (Fed. Cir. 1986).

[19] *GPX,* 666 F.3d at 741–745.

[20] *Central Bank, N.A.* v. *First Interstate Bank, N.A.,* 511 U.S. 164, 187 (1994) (quoting *Pension Benefit Guaranty Corp.* v. *LTV Corp.,* 496 U.S. 633, 650 (1990)).

[21] Proposed Rule, 84 FR at 24408.

[22] *See 1998 Final Rule,* 63 FR at 65349.

[23] *See id.,* 63 FR at 65349, 65351.

course.'' This, the commenter claimed, opens the door to a wide range of actions and could lead to unpredictability. Similarly, the comment expressed concern that Commerce does not define ''external balance'' that an equilibrium REER would achieve or ''the relevant time period'' that Commerce would consider.

Another commenter argued that even if Commerce used the International Monetary Fund's (IMF)'s approach for estimating the equilibrium REER, since the IMF utilizes a wide range of methods to make its determinations, Commerce should not use the IMF's estimation of the equilibrium REER as a stand-alone determination but rather as one component of its overall assessment. This commenter also pointed out a discrepancy related to the second step of Commerce's methodology: Estimating the nominal, bilateral U.S. dollar exchange rate consistent with the equilibrium REER that would have prevailed but for the undervaluation. The commenter contended that the equilibrium REER estimated does not provide any information on bilateral exchange rates.

Various commenters urged Commerce to consider methods for calculating the equilibrium REER other than those commonly used by the IMF and other third parties, claiming that these methodologies, unlike the one described by Commerce in the proposed rule, will produce a REER that causes a true zero-balance in the current account (*i.e.,* neither a trade surplus nor a trade deficit). Other commenters recommended that, in addition to considering the equilibrium REER as defined in its proposed methodology, when measuring the extent of undervaluation, Commerce should also consider the equilibrium REER as defined in either the IMF's macroeconomic balance approach (which has effectively been replaced with the External Balance Assessment approach—the IMF's preferred methodology) or the purchasing power parity approach. Alternatively, Commerce could focus not on the REER but on the fundamental equilibrium exchange rate (FEER) in accordance with the methodology proposed by the Peterson Institute for International Economics (PIIE). The commenters argued, among other points, that the right approach varies by country and that in some cases these alternatives may better capture economic conditions and provide more accurate estimates of undervaluation for the currencies of certain countries.

Response: Commerce recognizes the challenges in countervailing subsidies resulting from exchanges of undervalued currencies and the variation in the analytical methods used and the REER gap estimates produced. However, these are measurement and valuation problems not unlike those that arise in many CVD proceedings, and Commerce will therefore follow standard procedure for CVD proceedings in the currency context. All information and evidence on the administrative record will be reviewed, and all estimates of REER gaps, U.S. dollar exchange rate gaps and the underlying methodologies and data will be assessed after receiving any input from Treasury and in light of interested party comments. Commerce's ultimate determination will be fully documented and supported by evidence on the administrative record, and the general analytical approach will be that described in the final rule.

Commerce agrees with the commenters that multiple valid methodologies may exist for calculating the equilibrium REER and that no single definition or formula necessarily fully captures a country's appropriate medium-term external balance. Section 358.528 of this final rule states that Commerce normally will examine the gap between the country's real effective exchange rate (REER) and the real effective exchange rate that achieves an external balance over the medium term that reflects appropriate policies (equilibrium REER) and will carry out its analyses based on the determinations and information from Treasury and other relevant record information. Specifically, an assessment of the appropriate level for countries' external balances and REERs that takes into account macroeconomic fundamentals, demographics, cyclical factors, and desired medium-term macroeconomic policies, and which generates multilaterally consistent estimates, would not necessarily indicate that a zero balance for the current account would be ''appropriate'' for all countries. As such, if the facts on the record for a case indicate circumstances warranting the use of an alternative methodology to calculate the equilibrium REER, the rule preserves Commerce's flexibility to do so in exceptional cases. However, in most cases, we intend to follow the normal rule set forth in new § 351.528.

In light of the comments received, and to provide more guidance to the public and interested parties in our CVD proceedings, these final modifications to our regulations specify in greater detail than did the proposed rule the process we will follow in examining an alleged subsidy relating to the exchange of an undervalued currency. We also note that many of the comments evinced a misunderstanding of the exact type of subsidy at issue, the benefit calculation proffered in the proposed rule, and the process for calculating a CVD rate more generally. Therefore, this final rule adds new § 351.528 to our regulations to specifically address the exchange of undervalued currencies. Paragraph (a) of § 351.528 provides the criteria Commerce will follow in determining whether a currency is undervalued. Paragraph (b) describes how Commerce will determine the existence and amount of any benefit resulting from the exchange of an undervalued currency. Given Commerce's lack of experience with examining this type of subsidy, we disagree that more detail is warranted at this time. As we stated in the *1998 Final Rule* with respect to similar issues for which we had little experience, we intend to follow the general principles set forth in this final rule, and we may develop more detailed criteria as we gain experience.[24]

5. Government Action on the Exchange Rate

Several commenters urged greater clarity on how ''government action on the exchange rate'' would factor into the assessment of currency undervaluation. They argued that a foreign government should be engaged in activity purposefully aimed at undervaluing its currency for Commerce to find undervaluation. In other words, Commerce should limit its application of the proposed new rule to currency undervaluation caused by official actions that target the exchange rate for competitive purposes and not to currency fluctuations caused by monetary and fiscal policies or any non-policy factors. Some commenters claimed that, due to strong economic growth and higher interest rates than other advanced economies, the U.S. dollar is arguably overvalued on a purchasing power parity (PPP) basis, but that this situation should not constitute grounds for imposing countervailing duties against our major trading partners.

Response: We have added language in a new § 351.528(a)(2) stating that Commerce normally will make an affirmative finding of currency undervaluation only if there has been government action on the exchange rate that contributes to an undervaluation of the currency. Such government action will not normally include monetary and related credit policy of an independent central bank or monetary authority. In

[24] *See, e.g., 1998 Final Rule,* 63 FR at 65378.

making its assessment of government action on the exchange rate, Commerce may also consider the relevant government's degree of transparency regarding actions that could alter the exchange rate.

The scope of government action under this final rule will necessarily become more clear as Commerce considers a range of government actions over time and the institutional settings in which they are undertaken. This could potentially include whether and how meaningful distinctions can be made between government action and market action.

6. Calculation of the Benefit

One commenter argued that Commerce's benefit formula of ''X percent duty for X percent undervaluation'' will significantly over-penalize a producer because the notion that ''X percent duty'' counteracts ''X percent undervaluation'' is only true under certain circumstances. This commenter provided several examples to illustrate its point. Furthermore, the commenter claimed that determining the tariff duty that accurately countervails the extent of undervaluation is a difficult and imprecise process that varies considerably from industry to industry and from firm to firm.

Some commenters stated that the proposed rule suggested that Commerce will only calculate a benefit from sales to the United States that occur in U.S. dollars; however, these commenters suggested that it is also possible that sales to third countries could be denominated in dollars and thus benefit from the same undervaluation when converted to the domestic currency. Moreover, a government's currency undervaluation practices may also impact goods traded in other international currencies. In order to capture the full benefit from currency undervaluation, these commenters argued that dollar-denominated sales to third countries should also be included in the benefit calculation.

Some commenters also argued that Commerce should countervail the benefit that exporters receive from converting all currencies into the domestic currency, instead of only countervailing the benefit received from converting U.S. dollars into the domestic currency. These commenters believed that doing so would capture the full benefit of the undervaluation, which is calculated on a REER-basis (*i.e.,* the domestic currency is undervalued relative to a basket of currencies, and not simply bilaterally undervalued relative to the dollar).

Response: The first comment misunderstands the benefit analysis set forth in the proposed rule and adopted in this final rule. Nowhere in the proposed rule did we suggest, and nowhere in this final rule do we suggest, that ''X percent undervaluation'' will lead to ''X percent duty.'' A ten percent undervaluation will not automatically lead to a duty of ten percent. This is not the approach to benefit and duty calculation promulgated in this final rule.

Rather, this final rule makes clear that when Commerce determines under § 351.528 that a country's currency is undervalued, there may be a benefit to a particular firm when that firm exchanges U.S. dollars for domestic currency and receives more domestic currency than it otherwise would have absent the undervaluation. Commerce agrees with this commenter's argument that this calculation must be firm-specific.

With respect to the argument that we should account for dollar-denominated sales to third countries in our benefit calculation, § 351.528(b)(2) of the regulatory text in this final rule states that the amount of any benefit from a currency exchange normally will be based on the difference between the amount of domestic currency the firm received in exchange for U.S. dollars and the amount of domestic currency the firm would have received absent the difference between (i) the nominal, bilateral U.S. dollar rate consistent with the equilibrium REER and (ii) the actual nominal, bilateral U.S. dollar rate during the relevant time period, taking into account any information regarding the impact of government action on the exchange rate. We do not find it necessary, in this final rule, to specify or anticipate the manner in which the firm earned the U.S. dollars that it is converting. The relevant point is that there may be a benefit at the point of the conversion of those U.S. dollars into the undervalued domestic currency. There might be a variety of means by which the firm earned the U.S. dollars and, to the extent that is relevant, we will assess the facts on a case-by-case basis consistent with sections 701 and 771(5)(B) of the Act and the provisions of this final rule.

Regarding the comments that we should calculate the benefit after taking into account conversions of all currencies (not just the U.S. dollar) into the domestic currency, we have not adopted this position in this final rule. Although the determination of undervaluation, as outlined in § 351.528(a), is made with respect to a basket of currencies, § 351.528(b) specifies that Commerce will determine the existence of a benefit after examining the difference between (i) the nominal, bilateral U.S. dollar rate consistent with the equilibrium REER and (ii) the actual nominal, bilateral U.S. dollar rate during the relevant time period, taking into account any information regarding the impact of government action on the exchange rate. In other words, this final rule only addresses conversions of U.S. dollars into domestic currency that might give rise to a countervailable subsidy. Given Commerce's lack of experience with determining the benefit from exchanges of currency, we find that conversions of U.S. dollars are the appropriate focus at this time. Once Commerce gains more experience in investigating and analyzing this type of subsidy, there may come a time to adopt the approach advocated by these commenters.

7. Other Calculation Issues

One commenter stated that if the benefit from an undervalued currency is limited to the excess domestic currency a firm receives in exchange for U.S. dollars, the sales denominator should also be limited to sales in U.S. dollars. To allocate the excess domestic currency over a firm's total sales revenue to determine the subsidy rate for the currency program would understate the benefit conferred by currency undervaluation.

A second commenter argued that the existence of a net benefit to an exporter from an undervalued exchange rate cannot be presumed due to the fact that an individual exporter may engage in a variety of transactions in a foreign currency. This commenter stated that the costs for imported goods such as materials and machinery that may be used by the exporter would increase with an undervalued exchange rate. As a result, the measurement of the net impact of an undervalued currency is necessarily a complex undertaking that requires a comprehensive analysis of the effect of the exchange rate not only on the exports of the finished product, but also on the cost of all inputs used by the producer and its upstream suppliers. In a similar vein, a third commenter argued that the determination of the duty rate that accurately countervails any undervaluation is very difficult and will vary from industry to industry and from firm to firm. This commenter stated that firms with the same level of sales revenue will have different subsidy rates from the currency undervaluation based on their level of imported goods used in the production of its merchandise and provided three examples to demonstrate the argument.

Response: The essential concept, with which we agree, behind the argument of the first commenter is that the numerator and the denominator for our subsidy calculations must be on the same basis. This is the fundamental premise of our attribution regulation codified at 19 CFR 351.525. This regulation sets forth how we calculate the *ad valorem* subsidy rate and attribute a subsidy to the sales value of the product or products that benefit from the subsidy. In any future CVD proceeding involving a subsidy resulting from the exchange of an undervalued currency, the appropriate numerator and denominator will be based upon the facts on the record of that proceeding consistent with the application of the attribution rules in 19 CFR 351.525. While the first commenter cited to our attribution regulation, the second and third commenters did not reference any statutory or regulatory support for their arguments with respect to the calculation of an alleged subsidy resulting from currency undervaluation. The second commenter has argued that an undervalued currency may increase certain costs to a firm, which supposedly would negate or offset any benefits received by that firm due to an undervalued exchange rate. The commenter argued that an undervalued exchange rate will increase the firm's costs for imported raw materials and equipment, which should be considered in determining whether the firm received a benefit from exchanges of the undervalued currency.

We disagree with this commenter that these modifications to our regulations should include this concept. We note that section 771(6) of the Act provides for only a limited number of adjustments to the gross countervailable subsidy in order to calculate the net countervailable subsidy. These are: (a) Any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy; (b) any loss in value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by government order; and (c) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received. The adjustment proposed by this commenter is not included within the list in section 771(6) of the Act, and therefore we are not including it in this final rule.

Likewise, we disagree with the third commenter that the cost of imported inputs is relevant to the benefit calculation for a subsidy resulting from a firm's exchange of U.S. dollars for the undervalued domestic currency. In effect, this commenter is suggesting an offset to the benefit conferred through exchanges of undervalued currency. However, such an offset is not contemplated by section 771(6) of the Act. Nevertheless, we agree with this commenter that the subsidy rate calculation will be firm-specific. Except with respect to the calculation of the all-others rate under section 705(c)(5) of the Act, a country-wide rate under section 777A(e)(2)(B) of the Act or a ''non-selected'' respondent rate in an administrative review, all of our subsidy rates are firm-specific. The identical subsidy provided to three different firms could produce different subsidy rates given a number of factors such as sales revenue, whether the subsidy is untied or tied (and to which product or products it is tied), and the presence of cross-owned companies. In fact, it would be unusual to have identical subsidy rates for different firms.

8. The Role of Treasury

Comments fell across a wide spectrum with respect to the role Treasury should play in a determination that undervalued currency gives rise to a countervailable subsidy. Some commenters argued that Treasury holds the primary expertise, reflecting its role historically as the lead U.S. government agency with responsibility for exchange rate policy, in assessing whether foreign government actions result in currency manipulation, and therefore Commerce should ultimately defer to Treasury's judgment in making the decision as to whether undervaluation exists in a given CVD proceeding. Other commenters recognized that Treasury has relevant experience that Commerce should take into account, but that Commerce should ultimately make any determination regarding undervaluation subsidies for CVD purposes.

Commenters also stated that Commerce should clarify the difference between ''currency manipulation,'' as Treasury investigates in its semi-annual reports on exchange practices of U.S. trading partners, and ''currency undervaluation'' in Commerce's proposed rule. Still other commenters argued that Treasury should not be involved, or should only be involved to the extent that it is treated similarly to that of any objective, third party source of data and analysis, in making the relevant determination. The latter group tended to emphasize the point that Commerce should use a different standard from Treasury's manipulation standard. Treasury, they argued, has not utilized its own statutory authority to the fullest, as evidenced by the fact that it has not found any country to be a currency manipulator since the mid-1990s. Commenters argued that strong enforcement of the trade remedy laws will require relying on stronger, less-discretionary statutory authority than that which governs Treasury's findings.

Four commenters objected to the language in the preamble to the proposed rule that Commerce would ''defer'' to Treasury on the issue of undervaluation. Three commenters suggested that we replace the word ''defer'' in the preamble of the proposed rule with the phrase ''confer with, and seek advice from,'' Treasury. Two commenters objected to the statement in the proposed rule that Commerce ''will request that the Secretary of the Treasury provide Treasury's evaluation and conclusion as to'' undervaluation, and suggested that the rule simply state that Commerce ''will determine'' the issue of undervaluation. Another commenter argued that Commerce's deference to Treasury in the proposed rule is an inappropriate delegation of Commerce's statutory authority to determine CVDs under the Act. This commenter argued that federal courts have ruled that an agency with delegated authority from Congress may not sub-delegate that authority to another entity. Two commenters argued that Commerce did not provide sufficient explanation in the preamble to the proposed rule as to when it would depart from Treasury's recommendation regarding undervaluation.

Other commenters raised concerns that Treasury's involvement in Commerce's investigatory process, which is governed by tight statutory timelines, could cause disruption to that process and potentially delay relief to the petitioning U.S. industry. These commenters request that, if Treasury is to be involved, Commerce should specify clear dates by which Treasury's views and supporting information would be put on the record of a given proceeding, to ensure that all parties have sufficient time to submit rebuttal factual information and to comment. Other commenters suggested that any Treasury input should not go on the record until after Commerce issues a preliminary finding, given the very short statutory deadline (*e.g.,* 65 days from initiation) for issuing such preliminary decisions in a CVD investigation.

Response: Commerce recognizes that Treasury has considerable experience and data that are relevant to an analysis of currency undervaluation as envisioned in this regulation. That said, Commerce makes its determination regarding CVDs pursuant to a different

legal authority from Treasury's statutory currency determinations, and for a different statutory purpose. The purpose of the CVD remedy is to provide redress to particular domestic industries that are found by the U.S. International Trade Commission (ITC) to be injured (or threatened with injury) by imports that Commerce determines to benefit from specific subsidies. Under the CVD law, the petitioning U.S. industries have a right to relief—because section 701 of the Act mandates that duties ''shall be imposed''—where Commerce and the ITC make these requisite findings. A determination that the foreign subsidizing government is *intending* to provide its subsidized industries a competitive advantage vis-à-vis their U.S. and international competitors, or to otherwise manipulate the playing field, is not a required element of a CVD determination under U.S. law.

In contrast, pursuant to the Omnibus Trade and Competitiveness Act of 1988 and the Trade Facilitation and Trade Enforcement Act of 2015, Treasury is responsible for completing and releasing a semiannual Report to Congress on Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States. In its analysis, Treasury assesses a range of developments in international economic and exchange rate policies of selected trading partners, including currency developments. The 1988 statute directs Treasury to determine whether countries manipulate the rate of exchange between their currency and the United States dollar *for purposes of* preventing effective balance of payments adjustments or gaining unfair competitive advantage in international trade. The 2015 statute requires Treasury to assess the macroeconomic and currency policies of major trading partners and conduct enhanced analysis of and engagement with those partners if they trigger certain objective criteria that provide insight into possibly unfair currency practices.[25]

We therefore agree with those commenters who argue that the statutory provisions pursuant to which Treasury conducts its analysis differ from the statutory provisions governing Commerce's CVD analysis. Accordingly, whereas the analysis in Treasury's semiannual reports examining possible currency manipulation may have relevance to Commerce's determination, Treasury's analysis in its semiannual reports is distinct from the analysis as to whether there is undervaluation for purposes of a CVD proceeding. In other words, Treasury conducts a different analysis, pursuant to a different statutory authority and subject to different statutory criteria, in its semiannual reports. Nonetheless, these statutes reflect Congress' recognition that Treasury has expertise in currency-related matters.

With respect to the comments arguing that Commerce cannot legally ''defer'' decision-making authority to Treasury under principles of administrative law, section 771(1) of the Act designates the Secretary of Commerce as the administering authority of the CVD law. This means that Congress has delegated to Commerce, and no other agency, the authority to determine the existence of countervailable subsidies, impose duties, and otherwise administer the CVD law. Commerce's authority under the CVD law is distinct and independent from Treasury's authority to consider whether countries manipulate their currency pursuant to 22 U.S.C. § 5305 and 19 U.S.C. 4421.

We agree with the commenters who argued that it is important for Commerce to retain ultimate authority on administering the CVD law, including determining whether exchanges of an undervalued currency constitute countervailable subsidies in a given case. We acknowledge that federal courts have found that when Congress delegates authority to an agency, that agency cannot redelegate that authority to a separate entity.[26] However, this final rule does not delegate any decision-making authority from Commerce to Treasury, but rather provides that Commerce will request and expect to receive Treasury's evaluation and conclusion as to undervaluation, government action and the bilateral U.S. dollar rate gap during a CVD proceeding. In any such future CVD proceeding involving currency undervaluation, we intend to place Treasury's evaluation and conclusion on the record and allow the submission of factual information to rebut, clarify or correct Treasury's evaluation and conclusion, as required by 19 CFR 351.301(c)(4). In recognition of Treasury's experience in the area of evaluating currency undervaluation, Commerce will defer to Treasury's expertise, but we will not delegate to Treasury the ultimate determination of whether currency undervaluation involves a countervailable subsidy in a given case. It is lawful for one federal agency to turn to another for ''advice and policy recommendations'' in an area where that other agency might have particular expertise.[27] Accordingly, we intend to defer to Treasury's expertise with respect to currency undervaluation. Therefore, we disagree with the commenters that objected to the proposed rule on this basis. We further disagree with the commenters that suggested that we need to describe in detail when we will depart from Treasury's evaluation and conclusion regarding undervaluation. We expect that we will normally follow Treasury's evaluation and conclusion regarding undervaluation, and any departure from Treasury's evaluation and conclusion will be based on substantial evidence on the administrative record.

Regarding the comments expressing concern about the impact of Treasury's role on the deadlines of CVD proceedings, § 351.528 states that Commerce will request from Treasury its evaluation and conclusion as to the issues of undervaluation, government action and the U.S. dollar rate gap. Commerce intends to do so well before the deadline for a preliminary determination on the alleged currency subsidy. We will place on the record any information timely received from Treasury and intend to follow all normal procedures in Commerce's regulations—such as those in 19 CFR 351.301—with respect to that information. It is Commerce's intention that, normally, such information will be placed on the record prior to a

[25] Following the closing of the comment period for the proposed rule, Treasury designated a country (China) as a currency manipulator for the first time. *See* Press Release, Treasury Designates China as a Currency Manipulator (Aug. 5, 2019), *https://home.treasury.gov/news/press-releases/sm751*.

[26] *See G.H. Daniels III & Associates* v. *Perez,* 626 Fed. Appx. 205, 210–12 (10th Cir. 2015) (holding that the Department of Homeland Security's subdelegation of its authorities under the H–2B visa program to an outside agency, the Department of Labor, was improper); *see also U.S. Telecom Ass'n* v. *FCC,* 359 F.3d 554, 565–66 (D.C. Cir. 2004) (prohibiting the FCC from delegating its decision-making authority to state commissions); *Shook* v. *D.C. Fin. Responsibility & Mgmt. Assistance Auth.,* 132 F.3d 775, 783–84 and n.6 (D.C. Cir. 1998) (forbidding the Control Board in the Department of Education from redelegating its delegated powers to a Board of Trustees); and *ETSI Pipeline Project* v. *Missouri,* 484 U.S. 495, 511, 517 (1988) (holding that the Army was not permitted to redelegate to the Department of the Interior power to contract to remove water for industrial use that Congress delegated to the Army). *But see Louisiana Forestry Ass'n Inc.* v. *Sec'y U.S. Dep't of Labor,* 745 F.3d 653, 671–75 (3rd Cir. 2014) (determining that the Department of Homeland Security did not delegate its authority under the H–2B visa program to the Department of Labor).

[27] *See U.S. Telecom Ass'n* v. *Federal Comm'ns Commission,* 359 F.3d 554, 568 (D.D.C. 2017) (''[A] federal agency may turn to an outside entity for advice and policy recommendations, provided the agency makes the final decisions itself''); *see also Bellion Spirits* v. *United States,* 393 F. Supp. 3d 5, 15–17 (D.D.C. 2019) (upholding the Alcohol and Tobacco Tax and Trade Bureau's reliance on the scientific fact-finding and analysis of the Food and Drug Administration because the Bureau retained ultimate decision-making authority).

preliminary determination regarding the alleged currency subsidy so that, where possible and appropriate, Commerce can take it into account in its preliminary findings. Regardless of when the information is placed on the record, however, and as with all record information in a CVD proceeding, interested parties will have adequate opportunity to rebut any information provided by Treasury with factual information of their own. All interested parties and U.S. government agencies also have the opportunity to submit case briefs and rebuttal briefs to Commerce, pursuant to 19 CFR 351.309, after Commerce issues its preliminary determination.

9. Specificity

Several commenters argued that the proposed addition of paragraph (c) to 19 CFR 351.502 would contravene U.S. law and WTO rules. They argued that the traded goods sector is too diverse of a sector to constitute a ''group'' of enterprises under the Act and SCM Agreement. One commenter, citing to prior CVD investigations of aluminum extrusions and coated paper suitable for high-quality print graphics using sheet-fed presses from the People's Republic of China, claimed that treating exporters as a ''group'' for purposes of specificity for domestic subsidies is contrary to Commerce's past practice. Other commenters, on the other hand, generally supported the proposed modification. They argued that defining the traded goods sector as a ''group'' is a positive step toward addressing specificity for certain types of subsidies.

More broadly, some commenters went beyond the proposed regulatory text and argued that currency undervaluation and exchanges of currency are not ''specific'' under U.S. or international law. Specifically, these commenters claimed that such subsidies, which are all-encompassing and broadly available throughout the economy, cannot be deemed specific under the statute or satisfy the ''known or particularized'' requirement of specificity under Article 2.1 of the SCM Agreement. One commenter cited to Commerce's past determinations in this regard, and subsequent affirmance by the CIT, as demonstrative of the agency's historical understanding of the term ''specific.'' Because the provisions of the SCM Agreement mirror those of the Act, several commenters also claimed that the proposed rule would conflict with WTO rules.

Some commenters argued that Commerce should not limit its specificity analysis to that under the proposed rule alone (*i.e.,* a domestic subsidy), because currency-related subsidies could also be viewed as export subsidies. One commenter further urged Commerce to allow domestic industries to allege currency undervaluation as an export subsidy. In contrast, one commenter claimed that treating currency undervaluation as an export subsidy is never proper under WTO rules, because the mere fact that such subsidies are provided to enterprises that export is not, in itself, enough to be found to be specific.

Other commenters requested revisions to the proposed language regarding specificity. For purposes of defining the relevant ''group'' of enterprises, several commenters requested that Commerce elaborate on its interpretation of the term ''primarily.'' According to these commenters, that term (*i.e.,* primarily), if left undefined, would be restrictive, and even critical to effective implementation. As one possible solution, some of these commenters proposed that Commerce replace the term with the phrase ''actively engaged in,'' thereby establishing a more discretionary basis for assessment. Separately, one commenter suggested that Commerce replace the phrase ''may consider'' with ''will consider'' for purposes of consistency with other CVD regulations.

Response: As described above, Commerce is modifying 19 CFR 351.502 to add new paragraph (c), which clarifies that in analyzing specificity, Commerce normally will consider enterprises that buy or sell goods internationally to comprise a ''group'' of enterprises within the meaning of section 771(5A)(D) of the Act. Therefore, under this regulation, if a subsidy is limited to enterprises that buy or sell goods internationally, or if enterprises that buy or sell goods internationally are the predominant users or receive disproportionately large amounts of a subsidy, then that subsidy may be specific. This regulatory modification is similar to prior interpretations of the statutory term ''group.'' For example, we have found state-owned enterprises and foreign-invested enterprises to comprise ''groups'' under the Act.[28]

We agree with the commenters who suggested removing the word ''primarily'' from the proposed rule, because the use of this word may raise problems with administrability due to its ambiguity. We also agree with the commenters who suggested changing the phrase ''may consider.'' New section 351.502(c) now states that Commerce ''normally will consider enterprises that buy or sell goods internationally to comprise such a group.'' This phrase (''normally will'') is more consistent with the terminology used in most of our CVD regulations.

We disagree that this regulatory modification runs afoul of U.S. law or WTO rules. Section 771(5A)(D) of the Act does not define the word ''group.'' Therefore, it is within Commerce's authority to adopt a permissible interpretation of that term.[29] The interpretation adopted by paragraph (c) is permissible, because enterprises that buy or sell goods internationally are certainly an identifiable set of enterprises, and they constitute a subset of all economic actors within a country. Moreover, as mentioned above, this type of interpretation of the term ''group'' is consistent with our practice. Regarding the argument that enterprises that buy or sell goods internationally could come from a variety of different industries, we do not disagree. But this is irrelevant under our existing regulations, because 19 CFR 351.502(b) states that there need not be shared characteristics among the enterprises that comprise a group.[30]

We further note that section 771(5A)(A) of the Act deems export subsidies and import-substitution subsidies to be specific *per se,* without regard to whether there is a narrow or diverse array of industries or companies reflected by the recipients of those two categories of subsidies, or whether there are any other common characteristics among those recipients. The SCM Agreement not only likewise deems these two categories of subsidies to be specific, but also prohibits them outright.[31] Specifically in the context of undervalued currency, moreover, we note that if an exchange rate is too low or undervalued, it underprices exports and overprices imports. This directly distorts international trade on a systemic basis with the same direct adverse impact on trade as the simultaneous provision of import-substitution and export subsidies. Accordingly, treating importers and exporters of goods as a group for specificity purposes is entirely consistent with the international trade focus and remedial purposes of the trade remedy laws.

With respect to any statements Commerce may have made in prior investigations regarding issues that are

[28] *See* Import Administration Policy Bulletin 10.1, *supra* note 2; *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination, supra* note 2.

[29] *See Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837 (1984).

[30] In any event, enterprises that buy or sell goods internationally clearly do share a characteristic, namely, that they buy or sell goods internationally.

[31] *See* Article 3 of the SCM Agreement.

squarely addressed and clarified in this final rule, it is a fundamental principle of administrative law that an agency is allowed to change its practice, provided the change is reasonable and explained.[32] Not only have we explained any such changes, but we are also adopting them through this notice-and-comment rulemaking.

Some of the commenters stepped beyond the text of the proposed regulatory provision to argue the specificity of currency-related subsidies *per se.* This regulatory modification to 19 CFR 351.502 only concerns the definition of the term ''group,'' and cannot possibly address the specificity of a particular type of subsidy *per se.* Rather, an affirmative or negative finding of specificity for a particular type of subsidy can only occur in a CVD proceeding. Nonetheless, we offer the following observations. Under section 771(5) of the Act, a countervailable subsidy must be one that is found specific under section 771(5A) of the Act. Section 771(5A)(D)(iii) of the Act, in turn, permits a finding of specificity as a matter of fact (*de facto*) where, *inter alia,* ''(a)n enterprise or industry is a predominant user of a subsidy'' or ''receives a disproportionately large amount of the subsidy.'' The Federal Circuit has held that determinations of ''dominance'' and ''disproportionality'' for the purposes of *de facto* specificity must be made on a fact-specific, case-by-case basis.[33] The CIT has further held that one enterprise or industry may in fact ''predominantly'' benefit from a subsidy even though that subsidy is nominally available to many different enterprises or industries.[34] Accordingly, there is no bright line rule at which an enterprise or industry or group of enterprises or industries would be deemed a predominant user or a disproportionate beneficiary. Indeed, in determining whether an enterprise or industry (or group thereof) is a disproportionate or predominant beneficiary of a subsidy, Commerce evaluates the relative share of the benefits received as opposed to the absolute share of the benefit. Thus, an inquiry into whether an alleged subsidy is all-encompassing or broadly available throughout an economy, requires case-by-case analysis, which Commerce intends to perform for currency undervaluation allegations, consistent with its statutory obligation. Moreover, because U.S. law is consistent with our international obligations, we disagree with commenters that the proposed rule conflicts with WTO rules, specifically the requirements of the SCM Agreement.

We also disagree with commenters that the proposed rule limits the domestic industries' ability to bring certain allegations (such as export subsidy allegations) regarding such subsidies, or that it limits Commerce's specificity analysis with respect to such allegations. This final rule only addresses the definition of the term ''group'' for domestic subsidy purposes; it does not address export subsidies. Indeed, Commerce, will continue to consider allegations concerning currency undervaluation and exchanges of currency—as well as all subsidy allegations—consistent with its statutory and regulatory obligations, including this final rule. And Commerce's evaluation of the facts of the proceeding, on a case-by-case basis, will serve to facilitate its analysis, and decisions on how to proceed with allegations concerning currency undervaluation and exchanges of currency. Because Commerce's evaluation of each allegation will be based on the facts of each case and consistent with U.S. law, there is no need to opine on the one commenter's statement that treating currency undervaluation as an export subsidy is never proper under international law.

10. General Comments

Commerce's Proposal Infringes on the IMF's Authority

We received comments from various parties arguing that our proposed rule infringes upon the jurisdiction of the IMF. One commenter stated that under Article XV of the GATT, the IMF is the appropriate venue to handle currency-related issues and that to countervail currency undervaluation could violate that GATT Article. Another commenter also argued that the IMF is the appropriate forum to deal with exchange rates and currency manipulation. This commenter argued that this is clear from the provisions of Article XV:2 of GATT 1994, which indicate that it is the IMF, and not the WTO, that has authority over problems concerning monetary reserves, balance of payments and foreign exchange arrangements. Another commenter argued that individual members of the IMF do not have the right to assess whether another member is involved in exchange rate manipulation or whether the member's exchange rate is undervalued. Finally, another commenter also argued that the proposed rule attempts to supersede the leading role played by the IMF on currency and exchange rate issues.

Response: We find the arguments made by these commenters to be without legal foundation. There is nothing under U.S. law or the IMF Articles of Agreement that prevents a sovereign member of the IMF from analyzing whether an exchange involving an undervalued currency constitutes a countervailable subsidy under a nation's CVD law. These commenters have cited to no provision under U.S. law or within the IMF Articles of Agreement that prohibits the remedies set forth under the CVD law to be applied against imports that benefit from countervailable subsidies resulting from an undervalued currency. In addition, the proposed rule does not infringe upon any rights or obligations set forth under the IMF Articles of Agreement. There is no language in the proposed rule that restricts in any manner the actions undertaken by the IMF, nor have the commenters referenced any language in the proposed rule that infringes on any actions of the IMF. Moreover, we note that the SCM Agreement explicitly includes certain currency-related practices in item (b) of the ''Illustrative List of Export Subsidies'' in Annex I, and therefore it is incorrect to suggest that the IMF is the only international organization with jurisdiction over currency matters.

Moreover, under the section 771(1) of the Act, Commerce is designated as the administering authority of the CVD law. As such, under section 701 of the Act, we are legally mandated to determine whether any government or public entity of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind or merchandise imported into the United States. Therefore, we are legally required to address, and—if the ITC finds injury—provide a remedy for, any action of a government or public entity that results in a subsidy that meets the definition of a countervailable subsidy defined under section 771(5) of the Act and is specific as defined under section 771(5A) of the Act. Indeed, Commerce has previously investigated exchange rate regimes.[35] Furthermore, at the time of the adoption of the SCM Agreement and the subsequent enactment of the

[32] *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *see also Huvis Corp.* v. *United States,* 570 F. 3d 1347, 1354 (Fed. Cir. 2009).

[33] *AK Steel Corp.* v. *United States,* 192 F. 3d 1367, 1382–1385 (Fed. Cir. 1999).

[34] *Royal Thai Gov't* v. *United States,* 441 F. Supp. 2d 1350, 1364 (CIT 2006).

[35] *See, e.g., Final Negative Countervailing Duty Determination: Pork Rind Pellets from Mexico,* 48 FR 39105 (August 29, 1983); *Final Affirmative Countervailing Duty Determination: Certain Electrical Conductor Aluminum Redraw Rod from Venezuela,* 53 FR 24763 (June 30, 1988). These cases involved dual exchange rate regimes.

Uruguay Round Agreements Act, there was only a narrow list of government actions that, notwithstanding the provisions of sections 771(5) and 771(5A) of the Act, would be treated as non-countervailable. This list was set forth under section 771(5B) of the Act. This list of exempted practices did not include exchange rate regimes, and, in addition, has long-since expired.

Possible Retaliation by U.S. Trading Partners

Some commenters argued against implementing the proposed regulation on the grounds that, should the United States begin to apply its CVD law against imports that allegedly benefit from undervalued currencies, this would result in disruption of international trade of goods and services, and could also lead U.S. trading partners to retaliate through the imposition of CVDs of their own, or through some other similar actions, especially in light of recent statements from the U.S. Administration about possible actions to lower the U.S. dollar value. This would have an adverse impact on U.S. exports of manufactured goods and agricultural products, and potentially reduce economic growth, especially if the WTO were to rule adversely against this practice. Similarly, one commenter notes that the IMF was originally created to avoid the risks of politicization of bilateral exchange rates disputes and a return to beggar-they-neighbor currency policies, which are risks that implementation of the proposed regulation may recreate.

Response: As noted elsewhere in this notice, under the CVD statute, the petitioning U.S. industries have a right to relief where Commerce determines that countervailable subsidies exist and the ITC determines that any such subsidies that benefit the imports in question cause, or threaten to cause, injury to those petitioning industries. Commerce must fully enforce the CVD law regardless of whether doing so may prompt trading partners to attempt to retaliate through the improper imposition of CVDs against U.S exports or through other means. Having previously received and addressed allegations that exchange rate regimes result in countervailable subsidies that injure U.S. industry, it is entirely consistent with the U.S. countervailing duty law that Commerce provide additional guidance on such matters through this rulemaking. When it comes to Commerce's attention that other countries are imposing retaliatory trade remedies or other trade barriers in a manner inconsistent with their international obligations, Commerce will work with the U.S. Trade Representative's office and other interagency partners to ensure that U.S. rights are fully protected.

Other Methods To Combat Currency Manipulation/Misalignment May Be More Effective

A few commenters argued that the proposed rule is not the most effective method to address currency manipulation because it would simply countervail imports from a specific industry (instead of all exports from the country under investigation or review) and because any duties would be contingent upon an affirmative injury ruling from the ITC. Others opined that the proposed rule is inappropriate because it fails to address the root cause of the currency misalignment (*i.e.,* the dollar's overvaluation due to years of excessive global demand for dollar-denominated assets and financial capital). Some of these commenters suggested potentially more effective alternatives that would better address the issue, such as countervailing currency intervention (CCI), Market Access Charge (MAC), and naming China a currency manipulator. However, all three of these commenters supported Commerce's proposed rule and believed that it was an important (albeit imperfect) first step towards fully addressing the issue. One commenter noted that Commerce should coordinate with Treasury to implement CCI, which would reduce bureaucratic problems that would likely occur under Commerce's proposed countervailing duty approach.

Response: While the alternatives proposed by commenters for combating currency misalignment and manipulation may or may not be more effective than the modifications proposed by Commerce, Commerce cannot implement any of them, because: (1) Concerning the option to label China a currency manipulator, Treasury, and not Commerce, possesses the sole statutory authority to label a country a currency manipulator; and (2) both the other two proposed alternatives (CCI and MAC) also fall outside of Commerce's purview and have no connection to subsidies or CVDs.

Relationship to the Antidumping Law

Some commenters argued that Commerce should or could use the antidumping law to address currency undervaluation. For example, one commenter suggested that currency undervaluation could be one factor that leads to a finding of a particular market situation in an antidumping proceeding. This commenter argued that currency undervaluation can distort costs in the comparison market by distorting the costs of input products.

Response: This final rule addresses only CVD proceedings. Nothing in this final rule should be construed as affecting Commerce's antidumping duty regulations or practice in any way. The issue of what constitutes a particular market situation in an antidumping proceeding is a case-by-case determination, and interested parties are permitted to make a timely allegation of a particular market situation in antidumping proceedings.

11. Economic Impact

Some commenters noted that there is a large difference in the estimates produced by the two economic impact assessments included in the proposed rule, with the first estimating an economic impact of $3.9 to $16.6 million in duties collected annually and the second estimating a range of $1.71 to $3.14 billion in new duties collected annually on Chinese imports alone. These comments claimed that this suggests Commerce lacks a reliable or well-developed methodology for imposing CVDs for currency undervaluation.

Some comments predicted the impacts the duties would have. One commenter argued that linking the well-known undervaluation issue with the more obscure CVD law will increase public awareness of the latter and result in a greater number of CVD allegations from a variety of U.S. industries demanding that CVDs be enforced to remedy the amount of benefit provided to foreign producers. The commenter therefore contended that the proposed rule will likely increase its economic impact to a level well beyond Commerce's estimations. Another commenter claimed that there has been a significant cost to overall U.S. employment and GDP as a result of the U.S. government not effectively addressing the trade effects of undervalued foreign currencies and that eliminating this cost could increase U.S. GDP by between $288 billion and $720 billion and create 2.3 to 5.8 million jobs.

Other commenters argued that imposing CVDs to offset the benefit of currency-related subsidies to imported goods would likely have relatively little impact overall to the U.S. economy, although it could provide much-needed relief to the industries and workers that have been specifically impacted by currency undervaluation. While some other commenters agreed that the overall impact was likely to be relatively small, they suggested that this was an argument against implementing this

proposed regulation because the likely positive impact does not justify the significant risks involved. Still other commenters expressed concern that countervailing undervalued currencies would have a negative impact on the U.S. economy because it will force U.S. producers to switch to other foreign suppliers. They claimed the resulting shift in supply chains will have a widespread effect on U.S. prices of the relevant merchandise.

Response: The significant divergence in the estimates produced by the two alternative approaches reflects the nature of this exercise, which involves numerous variables and several simplifying assumptions that must be made for analytic tractability, as well as data constraints. Under the Alternative 1, ''bottom-up'' approach, Commerce estimated the total value of additional duties that would be collected on all imports of the relevant merchandise if currency-related subsidies were countervailed in future proceedings using standard benefit-to-the-recipient calculation methodologies. In contrast, under Alternative 2, Commerce followed a ''top-down'' approach to estimate total additional duties on the basis of market price effects. Thus, both approaches attempted to quantify the economic impact of the implementation of this regulation in terms of total additional duties, but necessarily involved different variables and assumptions made, which in large part explains the divergent economic impact estimates. Since each estimate involves a margin of error, Commerce provided both assessments to give a sense of the dollar range of the possible economic impact of implementing this regulation.

Alternative 1 is based on Commerce's experience and practice, as well as with the requirements of the Act and Commerce's regulations. Under the law, CVDs are calculated and applied to offset benefits that accrue at the firm level. Although countervailing subsidies resulting from currency undervaluation may increase the number of allegations brought forth by petitioners and investigated by Commerce in a given case, any resulting CVDs would still be contingent on an affirmative injury finding by the ITC, thereby significantly limiting the economic impact of the proposed rule. No commenters argued specifically for the adoption of Alternative 2 over Alternative 1 as the appropriate economic impact analysis, although at least one commenter argued, without citing to any specific data for support and without specifying which alternative it was addressing, that the economic impact could be higher than the estimate in the proposed rule.

Commerce agrees with commenters who argue that currency undervaluation has adversely affected the U.S. economy. Although, as discussed above, it is not possible to determine the economic impact of implementing this rule with certainty, the collection of appropriate duties will have a significant positive impact on the specific U.S. industries harmed by undervalued currencies. Some commenters objected that Commerce's economic impact estimates fail to account for what they believe will be a vast number of currency allegations and additional CVD cases (and presumably orders) that will result from the proposed rule. While the number of allegations in future CVD proceedings is almost certain to increase by at least one, it is unlikely currency allegations would increase the total number of cases, since that would be contingent upon an affirmative injury finding, which, as we discussed in the proposed rule at 24412, depends on a host of factors other than whether the currency is undervalued. Furthermore, currency-related duties in terms of their magnitude and scope of application would reflect subsidy benefits calculated under the same benefit-to-the-recipient framework that governs all of Commerce's subsidy benefit calculations. Currency-related duties would apply to foreign exporters in a CVD proceeding that receive a benefit by converting U.S. dollars to their domestic currency. The duties would not be applied across the board to all imports of the subject merchandise in an equal amount, but rather would reflect on-the-ground company-level circumstances. With respect to the trade-diversion effects that some commenters argue currency-related duties could have, Commerce notes that currency-related duties in this regard would be no different than duties associated with other subsidies and (as explained above) are unlikely to increase the number of orders under which duties are collected. As Commerce noted in the proposed rule at 24411, at the time of drafting Commerce had 58 CVD orders on China, the most for any single country. Each CVD order typically involves multiple subsidy programs. Yet despite the increasing number of orders (starting with zero in 2006), U.S. imports from China have continued to rise significantly over the last several years to $540 billion in 2018.

As we explained in the proposed rule,[36] Commerce's CVD determinations are made on a case-by-case basis, and each determination is based solely on the administrative record of that case, as well as on the Act and Commerce's regulations. Commerce's economic assessment of this final rule is not meant to serve as a predictor of the results of future CVD proceedings in which currency-related subsidies are alleged. Rather, our economic assessment is done solely to comply with Executive Order 12866.

[36] See Proposed Rule, 84 FR at 24409.

Changes From the Proposed Rule

As noted in the previous ''Response to Comments on the Proposed Rule'' section, in this final rule, and as a result of the comments on the proposed rule, we made changes (primarily additions) to the regulatory text. Many of these additions to the regulatory text—for example, the additions describing in greater detail the steps of the benefit determination and the additions regarding the role of government action on the exchange rate—are consistent with how we described the rule in the preamble to the proposed rule. In light of the comments received, we have decided to include greater detail in the regulatory text itself, rather than in the preamble alone. Other changes to the regulatory text—for example, the technical changes in 19 CFR 351.502—respond to comments received.

In particular, Commerce has made certain modifications to the proposed rule's regulatory text for 19 CFR 351.502(c) with respect to specificity. In particular, in response to comments, we removed the word ''primarily'' from the description of the enterprises that buy or sell goods internationally that may comprise a group of enterprises. We also changed the phrase ''may consider'' to ''normally will consider,'' in response to comments.

Additionally, we have created new 19 CFR 351.528 to contain the rules governing the determination of benefit for subsidies resulting from exchanges of undervalued currencies. We determined that it is more appropriate to put these rules in their own regulatory provision, rather than adding language in a paragraph of the general provisions of 19 CFR 351.503. Additionally, in response to comments received, we have provided additional detail on the various steps in the benefit determination. New § 351.528(a)(1) makes clear that a determination of undervaluation normally is a prerequisite to proceeding with the benefit determination. New § 351.528(a)(2) makes clear that a finding of government action on the exchange rate that contributed to the undervaluation normally is a prerequisite to the finding of

undervaluation in paragraph (a)(1). New § 351.528(b)(1) explains that Commerce normally will calculate the benefit after taking into account the U.S. dollar rate gap. New § 351.528(b)(2) explains that Commerce normally will determine the amount of the benefit by comparing the amount of domestic currency a firm received to the amount it would have received absent the U.S. dollar rate gap. New § 351.528(c) is similar to language in the proposed rule, in that it specifies that Commerce will seek an evaluation and conclusion from Treasury regarding the issues of undervaluation, government action, and the U.S. dollar rate gap.

Classifications

Executive Order 12866

It has been determined that this rule is economically significant for purposes of Executive Order 12866.

Executive Order 13771

This rule constitutes regulatory action within the meaning of Executive Order 13771.

Economic Impact

In the proposed rule at 24409, Commerce presented two alternative approaches to estimating the economic impact of the adoption of this rule. Under Alternative 1, Commerce estimated an economic impact ranging from $4 million to less than $17 million. Under Alternative 2, Commerce estimated an impact in the range of between $1.71 billion and $3.14 billion. We received a small number of limited public comments on these estimates, which we have addressed above. None of the comments contained a detailed argument that one of the alternatives is more accurate than the other.

As we stated in the proposed rule, this economic impact analysis is done solely to conform with the requirements of Executive Order 12866 and is not meant to serve as a predictor of the facts in any potential future cases, nor to indicate the likelihood of any particular future determinations, should we receive currency-related subsidy allegations in the future. Commerce's CVD determinations are based solely on the administrative record of the proceeding at hand, consistent with the Act and Commerce's regulations.

Paperwork Reduction Act

This rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Congressional Review Act

This rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801, *et seq.*) and will be transmitted to the Congress and to the Comptroller General for review in accordance with such provisions.

Executive Order 13132

This rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Regulatory Flexibility Act

The Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this final rule would not have a significant economic impact on a substantial number of small business entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the Regulatory Flexibility Act. As a result, the conclusion in the certification memorandum for the proposed rule remains unchanged and a final regulatory flexibility analysis is not required and one has not been prepared.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Dated: January 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

For the reasons stated, 19 CFR part 351 is amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

■ 1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.;* and 19 U.S.C. 3538.

■ 2. In § 351.502, redesignate paragraphs (c) through (f) as paragraphs (d) through (g), and add paragraph new (c) to read as follows:

§ 351.502 Specificity of domestic subsidies.

* * * * *

(c) *Traded goods sector.* In determining whether a subsidy is being provided to a ''group'' of enterprises or industries within the meaning of section 771(5A)(D) of the Act, the Secretary normally will consider enterprises that buy or sell goods internationally to comprise such a group.

* * * * *

■ 3. Add § 351.528 to subpart E to read as follows:

§ 351.528 Exchanges of undervalued currencies.

(a) *Currency undervaluation*—(1) *In general.* The Secretary normally will consider whether a benefit is conferred from the exchange of United States dollars for the currency of a country under review or investigation under a unified exchange rate system only if that country's currency is undervalued during the relevant period. In determining whether a country's currency is undervalued, the Secretary normally will take into account the gap between the country's real effective exchange rate (REER) and the real effective exchange rate that achieves an external balance over the medium term that reflects appropriate policies (equilibrium REER).

(2) *Government action.* The Secretary normally will make an affirmative finding under paragraph (a)(1) of this section only if there has been government action on the exchange rate that contributes to an undervaluation of the currency. In assessing whether there has been such government action, the Secretary will not normally include monetary and related credit policy of an independent central bank or monetary authority. The Secretary may also consider the government's degree of transparency regarding actions that could alter the exchange rate.

(b) *Benefit*—(1) *In general.* Where the Secretary has made an affirmative finding under paragraph (a)(1) of this section, the Secretary normally will determine the existence of a benefit after examining the difference between:

(i) The nominal, bilateral United States dollar rate consistent with the equilibrium REER; and

(ii) The actual nominal, bilateral United States dollar rate during the relevant time period, taking into account any information regarding the impact of government action on the exchange rate.

(2) *Amount of benefit.* Where there is a difference under paragraph (b)(1) of this section, the amount of the benefit from a currency exchange normally will be based on the difference between the amount of currency the firm received in exchange for United States dollars and the amount of currency that firm would have received absent the difference

referred to in paragraph (b)(1) of this section.

(c) *Information sources.* In applying this section, the Secretary will request that the Secretary of the Treasury provide its evaluation and conclusion as to the determinations under paragraphs (a) and (b)(1) of this section.

[FR Doc. 2020–02097 Filed 2–3–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Transportation Security Administration

19 CFR Chapter I

49 CFR Chapter XII

Notification of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the People's Republic of China

AGENCY: U.S. Customs and Border Protection and U.S. Transportation Security Administration, Department of Homeland Security.

ACTION: Notification of arrival restrictions.

SUMMARY: This document announces the decision of the Secretary of the Department of Homeland Security (DHS) to direct all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the People's Republic of China to arrive at one of the United States airports where the United States Government is focusing public health resources to implement enhanced screening procedures. For purposes of this document, a person has recently traveled from the People's Republic of China if that person has departed from, or was otherwise present within, the People's Republic of China (excluding the special autonomous regions of Hong Kong and Macau) within 14 days of the date of the person's entry or attempted entry into the United States. Also, for purposes of this document, crew, and flights carrying only cargo (*i.e.,* no passengers or non-crew), are excluded from the measures herein.

DATES: The arrival restrictions begin at 5 p.m. EST on Sunday, February 2, 2020; and continue until cancelled or modified by the Secretary of DHS and notification is published in the **Federal Register** of such cancellation or modification.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, 202–344–3788.

SUPPLEMENTARY INFORMATION:

Background

The Centers for Disease Control and Prevention (CDC) is closely monitoring an outbreak of respiratory illness caused by a novel (new) coronavirus first identified in Wuhan City, Hubei Province, China. Coronaviruses are a large family of viruses that are common in many different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people such as with Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS).

The potential for widespread transmission of this virus by infected individuals seeking to enter the United States threatens the security of our transportation system and infrastructure, and the national security. In an abundance of caution and to assist in preventing the introduction and spread of this communicable disease in the United States, DHS, in coordination with the CDC and other Federal, state and local agencies charged with protecting the American public, is implementing enhanced arrival protocols to ensure that all travelers with recent travel from the People's Republic of China are provided public health services. Entry screening is part of a layered approach used with other public health measures already in place to detect arriving travelers who are exhibiting overt signs of illness, reporting of ill travelers by air carriers during travel, and referral of ill travelers arriving at a U.S. port of entry by U.S. Customs and Border Protection (CBP) to appropriate public health officials to slow and prevent the spread of communicable disease into the United States.

To ensure that travelers with recent travel from the People's Republic of China are screened, DHS directs that all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the People's Republic of China arrive at airports where enhanced public health services and protocols are being implemented. While DHS anticipates working with air carriers to identify potential persons from the affected area prior to boarding, air carriers shall comply with the requirements of this document.

Notification of Arrival Restrictions Applicable to All Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the People's Republic of China

Pursuant to 19 U.S.C. 1433(c), 19 CFR 122.32, 49 U.S.C. 114, and 49 CFR 1544.305 and 1546.105, DHS has the authority to limit the location where all flights entering the U.S. from abroad may land. Under this authority and effective at 5 p.m. EST on Sunday, February 2, 2020, I hereby direct all operators of aircraft to ensure that all flights carrying persons who have recently traveled from, or were otherwise present within, the People's Republic of China only land at one of the following airports:

- John F. Kennedy International Airport (JFK), New York;
- Chicago O'Hare International Airport (ORD), Illinois;
- San Francisco International Airport (SFO), California;
- Seattle-Tacoma International Airport (SEA), Washington;
- Daniel K. Inouye International Airport (HNL), Hawaii;
- Los Angeles International Airport, (LAX), California; or
- Hartsfield-Jackson Atlanta International Airport (ATL), Georgia.

This direction considers a person to have recently traveled from the People's Republic of China if that person departed from, or was otherwise present within, the People's Republic of China (excluding the special autonomous regions of Hong Kong and Macau) within 14 days of the date of the person's entry or attempted entry into the United States. Also, for purposes of this document, crew, and flights carrying only cargo (*i.e.,* no passengers or non-crew), are excluded from the measures herein. This direction is subject to any changes to the airport landing destination that may be required for aircraft and/or airspace safety as directed by the Federal Aviation Administration.

This list of affected airports may be modified by the Secretary of Homeland Security in consultation with the Secretary of Health and Human Services and the Secretary of Transportation. This list of affected airports may be modified by an updated publication in the **Federal Register** or by posting an advisory to follow at *www.cbp.gov.* The restrictions will remain in effect until superseded, modified, or revoked by publication in the **Federal Register**.

For purposes of this Federal Register document, ''United States'' means the States of the United States, the District of Columbia, and territories and

possessions of the United States (including Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and Guam).

Chad F. Wolf

Acting Secretary, U.S. Department of Homeland Security.

[FR Doc. 2020–02318 Filed 1–31–20; 5:15 pm]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2012–N–1210]

Food Labeling: Revision of the Nutrition and Supplement Facts Labels; Small Entity Compliance Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a guidance for industry entitled ''Food Labeling: Revision of the Nutrition and Supplement Facts Labeling—Small Entity Compliance Guide.'' The small entity compliance guide (SECG) is intended to help small entities comply with a final rule we issued in the **Federal Register** of May 27, 2016, entitled ''Food Labeling: Revision of the Nutrition and Supplement Facts Labeling.''

DATES: The announcement of the guidance is published in the **Federal Register** on February 4, 2020.

ADDRESSES: You may submit either electronic or written comments on FDA 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–2012–N–1210 for ''Food Labeling: Revision of the Nutrition and Supplement Facts Labeling—Small Entity Compliance Guide.'' 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.

Submit written requests for single copies of the SECG to the Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition (HFS–800), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Blakeley Fitzpatrick, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1450.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 27, 2016 (81 FR 33742), we issued a final rule amending our labeling regulations for conventional foods and dietary supplements to provide updated nutrition information on the label to assist consumers in maintaining healthy dietary practices. The final rule updates the list of nutrients that are required or permitted to be declared; provides updated Daily Reference Values and Reference Daily Intake values that are based on updated dietary recommendations from consensus reports; amends requirements for foods represented or purported to be specifically for children under the age of 4 years and pregnant and lactating women and establishes nutrient reference values specifically for these population subgroups; and revises the format and appearance of the Nutrition Facts label. The final rule, which is codified at 21 CFR 101.9, 101.30, and 101.36, became effective July 26, 2016, and set a compliance date of July 26, 2018, for manufacturers with $10 million or more in annual food sales, and July 26, 2019, for manufacturers

with less than $10 million in annual food sales. In the **Federal Register** of May 4, 2018 (83 FR 19619), we published a final rule to extend the compliance dates to January 1, 2020, for manufacturers with $10 million or more in annual food sales, and January 1, 2021, for manufacturers with less than $10 million in annual food sales.

We examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and determined that the final rules on nutrition labeling, taken as a whole, will have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121, as amended by Pub. L. 110–28), we are making available the SECG to explain the actions that a small entity must take to comply with the rule.

We are issuing the SECG consistent with our good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the current thinking of FDA on this topic. 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

The guidance refers to previously approved collections of information found in FDA regulations. The collections of information in §§ 101.9, 101.30, and 101.36 have been approved under OMB control number 0910–0813.

III. Electronic Access

Persons with access to the internet may obtain the SECG at either *http://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: January 21, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–01165 Filed 2–3–20; 8:45 am]

BILLING CODE 4164–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4001, 4006, 4010, 4041, 4043, and 4233

RIN 1212–AB34

Miscellaneous Corrections, Clarifications, and Improvements

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is making miscellaneous technical corrections, clarifications, and improvements to its regulations on Reportable Events and Certain Other Notification Requirements, Annual Financial and Actuarial Information Reporting, Termination of Single-Employer Plans, and Premium Rates. These changes are a result of PBGC's ongoing retrospective review of the effectiveness and clarity of its rules as well as input from stakeholders.

DATES:

Effective date: This rule is effective on March 5, 2020.

Applicability dates: Certain amendments made by this rule are applicable as described below.

- The changes in 29 CFR 4006.5(f)(3), which deal with premium proration for short plan years where the plan's assets are distributed in a termination, are applicable to plan years beginning in or after 2020.
- The changes in 29 CFR 4010.7(a)(2), § 4010.9(b)(2), and § 4010.11(a)(1)(i), (which deal with identifying legal relationships of controlled group members, consolidated financial statements, and calculating the funding target for purposes of the 4010 funding shortfall waiver, respectively) are applicable to 4010 filings due or amended on or after April 15, 2020. The changes in § 4010.8(d)(2) for valuing benefit liabilities in cash balance plan account conversions are applicable to plan years beginning on or after January 1, 2020.
- The changes in 29 CFR 4041.29 are applicable to plan terminations for which, as of March 5, 2020, the statutory deadline for certifying that plan assets have been distributed as required, has not passed.
- The changes in 29 CFR 4043.23, § 4043.27(d)(3), § 4043.29, § 4043.30, 4043.31(c)(6), § 4043.32(c)(4), and § 4043.35(b)(3) (which deal with active participant reductions, changes in contributing sponsor or controlled group, liquidation, insolvency or similar settlement, and the public company waiver) are applicable to post-event reports for those reportable events occurring on or after March 5, 2020.

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

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose and Authority

The purpose of this regulatory action is to make miscellaneous technical corrections, clarifications, and improvements to several Pension Benefit Guaranty Corporation (PBGC) regulations. These changes are based on PBGC's ongoing retrospective review of the effectiveness and clarity of its rules, which includes input from stakeholders on PBGC's programs.

Legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA. It also comes from section 4006 of ERISA, which gives PBGC the authority to prescribe schedules of premium rates and bases for the application of those rates; section 4010 of ERISA, which gives PBGC authority to prescribe information to be provided and the timing of reports; section 4041 of ERISA (Termination of Single-Employer Plans); and section 4043 of ERISA, which gives PBGC authority to define reportable events and waive reporting.

Major Provisions

The major provisions of this rulemaking amend PBGC's regulations on:

- Reportable Events and Certain Other Notification Requirements, by eliminating possible duplicative reporting of active participant reductions, clarifying when a liquidation event occurs and providing additional examples for active participant reduction, liquidation, and change in controlled group events.
- Annual Financial and Actuarial Information Reporting, by eliminating a requirement to submit individual financial information for each controlled group member, clarifying reporting waivers, and providing

guidance on assumptions for valuing benefit liabilities for cash balance plans.

- Termination of Single-Employer Plans, by providing more time to submit a complete PBGC Form 501 in the standard termination process.
- Premium Rates, by expressly stating that a plan does not qualify for the variable-rate premium exemption for the year in which it completes a standard termination if it engages in a spinoff in the same year, clarifying the participant count date special rule for transactions (*e.g.,* mergers and spinoffs), and modifying the circumstances under which the premium is prorated for a short plan year resulting from a plan's termination.

Background

The Pension Benefit Guaranty Corporation (PBGC) administers two insurance programs for private-sector defined benefit pension plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA)—one for single-employer pension plans and one for multiemployer pension plans. The amendments proposed in this rulemaking apply primarily to the single-employer program.

This rulemaking arises from PBGC's ongoing retrospective regulatory review program to identify and correct unintended effects, inconsistencies, inaccuracies, and requirements made irrelevant over time. It also responds to suggestions and questions from stakeholders that PBGC receives on an ongoing basis and through public outreach, such as PBGC's July 2017 ''Regulatory Planning and Review of Existing Regulations'' Request for Information.[1]

Proposed Rule

PBGC published a proposed rule on June 27, 2019,[2] and received five written comments. The commenters were supportive of PBGC's regulatory review efforts and expressed that the clarifications and updates proposed would improve filer compliance and reduce reporting burden. Commenters also made helpful observations and suggestions for further clarification that PBGC incorporated in the final rule, particularly with respect to the regulations on ''Annual Financial and Actuarial Information Reporting'' and ''Reportable Events and Certain Other Notification Requirements.'' Otherwise the final rule is substantially the same as the proposed with minor editorial changes. The public comments, PBGC's responses, and the provisions of this final rule are discussed with respect to each of the regulations as identified below.

Terminology—29 CFR Part 4001

The final rule, like the proposed, amends the general ''Definitions'' section (29 CFR 4001.2) for terms used in regulations under title IV of ERISA to include the terms ''Ultimate parent'' and ''U.S. entity.'' Those terms are currently defined in PBGC's ''Reportable Events and Certain Other Notification Requirements'' regulation (29 CFR part 4043), ''reportable events regulation,'' at §§ 4043.2 and 4043.81(c) respectively. Because amendments to PBGC's Annual Financial and Actuarial Information Reporting regulation (29 CFR part 4010), ''4010 reporting regulation,'' use those same two terms, it is appropriate to move them to the common definitions section in § 4001.2.

Reportable Events and Certain Other Notification Requirements—29 CFR Part 4043

Section 4043 of ERISA requires that PBGC be notified of the occurrence of certain ''reportable events'' that may signal financial issues with the plan or a contributing employer. The statute provides for both post-event and advance reporting. PBGC's reportable events regulation implements section 4043 of ERISA.

Reportable events include such plan events as missed contributions, insufficient funds, large pay-outs, and such sponsor events as loan defaults and controlled group changes—events that may present a risk to a sponsor's ability to continue to maintain a plan. When PBGC has timely information about a reportable event, it can take steps to encourage plan continuation. Without timely information about a reportable event, PBGC typically learns that a plan is in danger of failing only when the time has passed for PBGC to work with the sponsor to protect participants and the pension insurance system.

On September 11, 2015, PBGC issued a final rule,[3] the ''2015 Final Rule,'' implementing changes to the reportable events regulation. The rule revised longstanding procedures governing when administrators and sponsors of single-employer defined benefit pension plans are required to report certain events to PBGC. The major changes in the 2015 Final Rule tied reporting waivers more closely to situations where a contributing sponsor is at risk of not being able to continue to maintain a plan (*i.e.,* risk of default), revised definitions and descriptions of several reportable events, and required electronic filing. The goal of the 2015 Final Rule was to ease reporting requirements where notice to PBGC is unnecessary but to allow for possible earlier PBGC intervention where there is an opportunity to help sponsors maintain a plan or otherwise preserve benefits for participants.

Since publication of the 2015 Final Rule, PBGC has further identified some opportunities to improve the reportable events and notification requirements by filling in gaps where guidance is needed, simplifying or removing language, codifying policies, providing examples, and further reducing unnecessary reporting. Those improvements are contained in this final rule.

Company Low-Default-Risk Safe Harbor—Commercial Measures Criterion

Section 4043.9(e) of the reportable events regulation describes the standards for the low-default-risk safe harbor that is available for five events.[4] The low-default-risk safe harbor is available where a company that is a contributing sponsor of a plan has adequate capacity to meet its obligations as evidenced by satisfying a combination of certain criteria. Among the criteria listed, the commercial measures criterion requires that the company's probability of default on its financial obligations be no more than 4 percent over the next 5 years or 0.4 percent over the next year, as ''determined on the basis of widely available financial information on the company's credit quality.''

The preamble to the 2015 Final Rule made clear that the commercial measures criterion was to be met by looking to third-party information and not, for example, information that a company itself generates but that might be considered ''widely available'' because the information is posted on the company's website.[5] However, the regulatory text in the 2015 Final Rule did not explicitly mention third party information. To remove any ambiguity, the final rule, like the proposed, amends § 4043.9(e)(2)(i) to make clear that a plan must use third-party financial information to satisfy the criterion for the company financial soundness safe harbor.

[1] 82 FR 34619 (July 26, 2017).

[2] 84 FR 30666.

[3] 80 FR 54980 (Sept. 11, 2015).

[4] The five events are: Active participant reduction, substantial owner distributions, controlled group changes, extraordinary dividends, and benefit liabilities transfers.

[5] See 80 FR 54986.

Active Participant Reduction

Under § 4043.23 of the reportable events regulation, an active participant reduction reportable event generally occurs when, as a result of a single-cause event or through normal attrition of employees (described below), the number of active participants in a plan is reduced below 80 percent of the number at the beginning of the year (one-year lookback) or below 75 percent of the number at the beginning of the prior year (two-year lookback). The regulation distinguishes between reductions caused by single-cause events and normal attrition events. If a plan loses more than 20 percent of its active participants due to a single-cause event, such as a reorganization or layoff, the plan administrator and contributing sponsor must file a notice with PBGC within 30 days after the reduction, unless a waiver applies. Conversely, if the active participant reduction is caused by the normal comings and goings of employees or other smaller scale reductions (*i.e.,* normal attrition), notice of the event is extended until the premium filing due date for the plan year following the event year.

Since publication of the 2015 Final Rule, PBGC has received questions from practitioners, including in a comment to its 2017 RFI on Regulatory Planning and Review of Existing Regulations (see the ''Background'' section of this preamble), about whether a plan administrator or contributing sponsor that files a single-cause event notice must also file an attrition event notice at a later date due to the same active participant reduction. Upon review, PBGC recognizes that § 4043.23 could be interpreted in this manner, although this was not PBGC's intent.[6]

To address this issue, the final rule, like the proposed, amends § 4043.23(a)(2) to alter the way active participants are counted at the end of the plan year when determining whether an attrition event has occurred by taking into account the number of active participants that had already been the subject of a single-cause event report in the same plan year. Thus, to determine whether an attrition event has occurred, the number of participants who ceased to be active and were covered by a single-cause event reported in the same year are included in the year-end count (even though such participants are not active at year-end). This new method of counting would prevent duplicative reporting by disregarding the earlier single-cause event if already reported to PBGC.

PBGC received one comment stating the rule as proposed could suggest that an active participant reduction report due to attrition could be required even if an earlier single-cause event had occurred, but had not been reported to PBGC (*e.g.,* a reporting waiver applied). The commenter recommended clarifying the language in the final rule if that wasn't PBGC's intent. It is PBGC's intent that an active participant reduction because of a single-cause event can only be disregarded for purposes of the attrition count if it was previously reported to PBGC. The purpose of the new counting method is to address and prevent situations of duplicative reporting, so no change was made in the final rule.

The final rule, like the proposed, also clarifies that multiple single-cause events during the plan year must be reported separately. Thus, each time a new single-cause event results in an active participant reduction greater than 20 percent over the number of active participants at the beginning of the plan year, a new Form 10 would be required to be filed. PBGC is making this clarification because dramatic reductions due to different events in the same year could signal that the plan sponsor's ability to maintain the plan is rapidly deteriorating.

The final rule, like the proposed, includes examples showing the interplay between single-cause and attrition events, as well as a single-cause event that occurs over a period of time.

The final rule also adopts the proposed rule's non-substantive changes to the formula for counting a single-cause event in § 4043.23(a)(1) that PBGC believes is clearer, more aligned to the language in § 4043.23(a)(2) described above, and easier to use.

To further reduce reporting burden, the final rule, like the proposed, eliminates the two-year/75 percent lookback requirement. Two commenters to the proposed rule supported this change. With a few years' experience under the 2015 Final Rule, PBGC concluded that the one-year/80 percent test provides sufficient information and undertaking the additional burden of conducting the two-year/75 percent lookback is not necessary. To address the statutory requirement, the final rule, like the proposed, waives notice of the two-year lookback provided under section 4043(c)(3) of ERISA.

The final rule, like the proposed, also clarifies the definition of ''active participant'' in § 4043.23(b)(2). That definition provides that an active participant for purposes of the active participant reduction event means, among other things, a participant who ''is receiving compensation for work performed,'' but does not address whether a participant is considered active or inactive if the participant ceases employment with one of the contributing sponsors of the plan, and begins working for another member of the same controlled group. The final rule clarifies that a participant is considered ''active'' for this purpose if the participant receives compensation from any member of the plan's controlled group for work performed for any member of the plan's controlled group.

Finally, the existing regulation provides that a reduction in the number of active participants may be disregarded if the reduction is timely reported to PBGC under section 4063(a) of ERISA, but does not specify when such report must be made in relation to a Form 10 report under § 4043.23 for the disregard provision to be available. PBGC's intent in providing the waiver was to prevent duplicative reporting for the same event where notice had previously been filed.[7] To codify PBGC's intent, the final rule, like the proposed, clarifies that reporting a reduction in the number of active participants under § 4043.23 may be disregarded if the reduction is timely reported under section 4062(e) and/or 4063(a) of ERISA [8] before the filing of a notice is due under § 4043.23.

Inability To Pay Benefits When Due

In general, a reportable event occurs under § 4043.26 of the reportable events regulation when a plan fails to make a benefit payment timely or when a plan's liquid assets fall below the level needed for paying benefits for six months. The 2015 Final Rule modified § 4043.26(a)(1)(iii) so that a plan is not treated as having a ''current inability'' to pay benefits when due if, among other things, the failure to pay is caused solely by ''any other administrative delay, including the need to verify a person's eligibility for benefits, to the

[6] In PBGC Technical Update 17–1, issued September 15, 2017, PBGC provided interim guidance on reporting under § 4043.23 by providing an alternative method for determining whether an active participant reduction due to attrition must be reported to PBGC under § 4043.23(a)(2).

[7] See the proposed rule, Reportable Events and Certain Other Notification Requirements, 64 FR 20039 (April 3, 2013) for a discussion of improving the waiver structure. The final rule was published on September 11, 2015 (80 FR 54980).

[8] PBGC created a new forms series for reporting under section 4062(e) of ERISA in September 2019 intended to clarify and simplify the process for providing PBGC the required notifications following a substantial cessation of operations and election to make additional annual contributions to satisfy resulting liability. The forms are available on PBGC's website at *https://www.pbgc.gov/prac/reporting-and-disclosure/erisa-section-4062-e.*

extent that the delay is for less than the shorter of two months or two full benefit payment periods.'' In modifying the regulation, the 2015 Final Rule inadvertently imposed a time limit for verification of a person's eligibility for benefits. PBGC recognizes that employers may need more than the specified time limit to verify a person's eligibility for benefits and that such a circumstance is not indicative of a possible need for plan termination.

To resolve this issue, the final rule, like the proposed, amends § 4043.26 to clarify that an inability to pay benefits when due caused by the need to verify eligibility is not subject to the time limit imposed for other administrative delays.

Change in Contributing Sponsor or Controlled Group

Under § 4043.29 of the reportable events regulation, a reportable event occurs for a plan when there is a transaction that results, or will result, in one or more persons' ceasing to be members of the plan's controlled group. PBGC had received inquiries about when a reportable event is triggered under this section. For instance, although the heading of § 4043.29 includes ''a change in contributing sponsor,'' the regulatory text does not.

In response to the questions PBGC had received, the proposed rule would have modified the description of the event so that the event and the heading were consistent (*i.e.,* to require reporting when a transaction results in one or more persons ceasing to be a contributing sponsor of a plan, or ceasing to be a member of the plan's controlled group (other than by merger involving members of the same controlled group).

PBGC received two comments to this proposal. Both commenters suggested that the proposed modification would broaden the event by requiring plan administrators and sponsors to report changes in a contributing sponsor even where the former contributing sponsor remains within the controlled group. One commenter added that this type of change in contributing sponsor could be determined through other regular PBGC filings, such as annual premium filings. The other commenter stated that actuaries, who identify reportable events to plan sponsors and administrators, are unlikely to know about contributing sponsor changes within a controlled group, so the event could be easily missed. The commenters suggested narrowing the proposed event definition so that it does not apply to a change in contributing sponsor within the controlled group.

PBGC considered the comments, and after further reviewing risk to the insurance program, decided not to adopt the proposed amendment in the final rule. Changes in a contributing sponsor to the plan may raise concerns, since contributing sponsors support the pension plan. However, if a change does not result in a contributing sponsor ceasing to be a member of the plan's controlled group,[9] PBGC believes the risk to the plan's participants and to the insurance program doesn't rise to the level of a reportable event. All members of a controlled group are jointly and severally liable under ERISA and the Code for obligations to the pension plan,[10] and PBGC believes the current statutory rules adequately ensure that PBGC has the tools to protect the pension plan where the controlled group doesn't change.[11]

Where there is a transaction that causes the controlled group to change, including by a change in contributing sponsor, where one or more members ceases to be a member of the controlled group, that event must be reported to PBGC under § 4043.29. PBGC clarifies this section by adding the parenthetical ''(including any person who is or was a contributing sponsor)'' to modify ''one or more persons''' in the event definition in paragraph (a)(1). The final rule also changes the event heading to read ''Change in controlled group.'' While headings do not have the force of law, PBGC believes modifying the heading will help minimize confusion.

The final rule, like the proposed, also revises the examples in this section. The first example is revised to provide greater clarity on the timing of, and responsibility for, filing a report. Two new examples—one regarding dissolution of a controlled group member and one describing a merger of controlled group members illustrate some common situations implicated by the requirements in § 4043.29.

[9] 29 CFR 4001.2 provides that ''controlled group'' means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under § 4001.3 of this part. For purposes of determining the persons liable for contributions under section 412(b)(2) of the Code or section 302(b)(2) of ERISA, or for premiums under section 4007(e)(2) of ERISA, a controlled group also includes any group treated as a single employer under section 414(m) or (o) of the Code. *Any reference to a plan's controlled group means all contributing sponsors of the plan and all members of each contributing sponsor's controlled gro*up. [emphasis added]

[10] 29 U.S.C. 1082(b)(2) and 26 U.S.C. 412(b)(2).

[11] Controlled group members are liable under section 4062(a) of ERISA for termination liability, section 4068 of ERISA for net worth and liens, section 430(k) of the Code for liens for missed contributions, and section 4007(e)(2) of ERISA for premium payments.

Liquidation

Section 4043.30(a)(1) of the reportable events regulation states that a reportable event occurs for a plan when a member of the plan's controlled group ''is involved in any transaction to implement its complete liquidation (including liquidation into another controlled group member).'' In discussing this provision with practitioners over the years, it has become clear that this event description could benefit from greater clarity and precision, particularly with respect to what ''involved in any transaction to implement'' a liquidation means and when the event occurs. In particular, one such liquidation scenario that commonly results in increased risk of plan termination involves a company that ceases operations and sells substantially all of its assets over a period of time. As described in the preamble to the proposed rule, the company continues to sponsor a plan, but there is no new business income and any existing company assets may be used to cover other financial obligations, such as business wind-down costs and settlement of debts with other creditors.

When a company fails to notify PBGC that the company ceased business operations and began a liquidation, PBGC encounters greater difficulties in effectively intervening to protect plan assets and participant benefits, thereby increasing the potential for loss of employer funding for the plan and greater potential strain on the pension insurance system. In some cases, PBGC did not become aware of the process of liquidation until years later, when the best opportunity for protecting plan assets and participant benefits had passed.

The type of liquidations that concern PBGC may take a myriad of forms and be implemented over long periods of time (like the example above). To alleviate confusion and improve precision, the final rule, like the proposed, clarifies the definition of liquidation to state that a liquidation event occurs when a member of the plan's controlled group ''resolves to cease all revenue-generating business operations, sell substantially all its assets, or otherwise effect or implement its complete liquidation (including liquidation into another controlled group member) by decision of the member's board of directors (or equivalent body such as the managing partners or owners) or other actor with the power to authorize such cessation of operations or a liquidation.'' Hence, a cessation of operations, such as the

example above, would trigger a reportable event under § 4043.30.

The final rule, like the proposed, includes the word ''revenue-generating'' to qualify a cessation of business operations in acknowledgement of the fact that various administrative activities may continue during the winding down of a business. The use of the word ''revenue-generating'' is therefore designed to capture the fact that a company is not earning revenue to enable it to support the pension plan.

The decision to liquidate can have serious implications for participants and the pension insurance system. Given that PBGC's success in such cases is often directly correlated with finding out about an event when there is still time to preserve plan assets, PBGC believes requiring reporting close to the time a decision to liquidate the company is made by the person(s) or body (such as a board of directors) that has the authority to make that decision will be most protective of participants and the pension insurance system. Since a liquidation may or may not involve a formal plan, a written agreement to sell assets to a single buyer, or a series of sales over time to maximize proceeds, the language in the final rule represents as close as possible to a uniform trigger for reporting of liquidation events. PBGC believes that in the vast majority of cases, the decision to liquidate must go through a formal approval or authorization process. Even in cases where the plan sponsor is a company owned by a single person and board formalities do not exist, a moment occurs when that owner has made the decision to move forward with a liquidation. This decision is the common point of departure for liquidations to move forward. For reference and further clarity, PBGC included in the final rule the three additional examples it proposed regarding a liquidation within a controlled group, occurring by cessation of operations, and through an asset sale.

Companies that liquidate as a result of insolvency are required to report both events to PBGC under § 4043.30 and § 4043.35 of the reportable events regulation. However, given the similarities between the two events, PBGC believes that reporting to PBGC under either section (instead of both) would be sufficient notification. Thus, PBGC is adding a waiver to provide relief from the possibility of duplicative reporting under a § 4043.30 liquidation or a § 4043.35 insolvency. The final rule, like the proposed, provides parallel waivers in both § 4043.30 and § 4043.35 to clarify that notice is waived if notice has already been provided to PBGC for the same event under the other section.

Public Company Extension—Liquidation Events

PBGC does not intend to compel public company sponsors to disclose liquidations on a Form 10 before notifying the public. Thus, the final rule includes an extension under § 4043.30(c) to file the post-event reportable events notice until the earlier of the timely filing of a SEC Form 8–K disclosing the event or the issuance of a press release discussing it.

PBGC requested comment on whether the public company extension should be available for foreign private issuers and if so, how. For example, should the regulation allow an extension to file a reportable events notice involving a foreign private issuer that is a plan sponsor until the earlier of the timely filing of a SEC Form 6–K disclosing the event or the issuance of a press release discussing it, even if the country of incorporation for the foreign private issuer would not require reporting as timely as is required on a Form 8–K for the same event had the issuer been a U.S. filer? [12]

PBGC received no comments and has determined that the public company extension should not be available with respect to a SEC Form 6–K filing. As noted above, a Form 6–K may not require the same disclosure or be filed as soon after an event as a SEC Form 8–K.[13] However, the final rule clarifies that the public company extension is available to a foreign private issuer that is a public company where an English language press release relating to the event is issued in the U.S.

PBGC in this final rule also applies the public company extension for liquidations to the parent company of a contributing sponsor within the same controlled group. The final rule provides that where a contributing sponsor's parent is a public company within the same controlled group, and files a Form 8–K or issues a press release disclosing the liquidation event, the due date for reporting the event to PBGC is extended to the earlier of either of those public disclosures. PBGC extended the public company waiver in the same manner as described below.

Public Company Waiver

Reporting for five reportable events [14] is waived if any contributing sponsor of the plan (before the transaction that caused the event) is a public company, and the contributing sponsor timely files a SEC Form 8–K sufficiently disclosing the event under an item of the Form 8–K, except under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits). As explained in the 2015 Final Rule, PBGC found that SEC filings provide timely and adequate information with respect to the five events because these events are either required to be reported under a specific Form 8–K item or because they are material information for investors. Therefore, PBGC didn't need to compel reporting of these events via a Form 10 under the reportable events regulation.

PBGC requested comment in the proposed rule on whether the public company waiver should be expanded to apply in situations where a parent company that is not a contributing sponsor to the plan timely files a SEC Form 8–K disclosing the event. PBGC received two comments that supported expanding the waiver. One stated that if a Form 8–K disclosing an event filed by a contributing sponsor is appropriate to waive reporting, then substantially the same information disclosed on a Form 8–K, but filed by a parent company, should also suffice. The other commenter suggested that reportable event notices generally should be waived where information required by PBGC is already publicly available.

In the interest of avoiding duplicative reporting where appropriate and possible, the final rule expands the public company waiver for the five events to apply where the contributing sponsor to the plan or the parent company (if not the contributing sponsor) files a Form 8–K adequately disclosing the event under an item of the Form 8–K other than under Item 2.02 or in financial statements under Item 9.01. Where a Form 8–K provides timely and sufficient information to PBGC with respect to the reportable event, PBGC sees no reason to make a distinction as to who makes the filing

[12] For more information on Securities and Exchange Commission filing obligations for foreign private issuers, see the discussion at *https://www.sec.gov/divisions/corpfin/internatl/foreign-private-issuers-overview.shtml* (including Form 6–K under section III.B.3. Periodic and Ongoing Reporting Obligations; Other Reports).

[13] *See* 17 CFR 240.13a-16, Reports of foreign private issuers on Form 6–K (17 CFR 249.306), which provides that the Form 6–K report is required to be transmitted promptly after the information required by Form 6–K is made public by the issuer, by the country of its domicile or under the laws of which it was incorporated or organized, or by a foreign securities exchange with which the issuer has filed the information.

[14] These five post-event filings are (1) active participant reduction, (2) distribution to a substantial owner, (3) change in contributing sponsor or controlled group, (4) extraordinary dividend or stock redemption, and (5) transfer of benefit liabilities.

between the contributing sponsor or the sponsor's parent company.

In this regard, PBGC is also clarifying in the Form 10 instructions what information is sufficient with respect to a particular reportable event for the public company waiver to apply. In general, for all five events, information should include the plan name, a brief description of the pertinent facts relating to each event, and the date and type of event being disclosed. As an example of information that would be relevant to a specific event, for an active participant reduction notice required because of a single-cause event, this information would include a statement explaining the cause of the reduction, such as facility shutdown or sale, discontinued operations, winding down of the company, or reduction in force. Plan administrators and sponsors should refer to the revised instructions and description of the public company waiver for the information relevant for each of the five events.

As stated in the **DATES** section of this preamble, this expansion of the public company waiver is applicable to post-event reports for those reportable events occurring on or after March 5, 2020.

Annual Financial and Actuarial Information Reporting—29 CFR Part 4010

Section 4010 of ERISA requires the reporting of actuarial and financial information by controlled groups with single-employer pension plans that have significant funding problems. It also requires PBGC to provide an annual summary report to Congress containing aggregate information filed with PBGC under that section. PBGC's ''4010 reporting regulation'' (29 CFR part 4010) implements section 4010 of ERISA.

Definitions

Section 4010.2 of PBGC's 4010 reporting regulation contains the terms used in part 4010 and their definitions. The final rule, like the proposed, amends this ''Definitions'' section to include the term ''Foreign entity,'' which is used in amendments to § 4010.9 describing the financial information a filer is required to provide to PBGC. This definition is similar to the definition of ''Foreign entity'' in § 4043.2 of PBGC's reportable events regulation. The only difference is that ''information year'' replaces ''date the reportable event occurs'' in part (3) of the definition so that part (3) is satisfied for 4010 purposes if one of three tests are met for the fiscal year that includes the information year.

The final rule, like the proposed, also adds to the list of common terms referenced in § 4010.2 the two terms it defines in the general definitions section of PBGC's regulations (§ 4001.2). As explained above, under ''Terminology—29 CFR part 4001,'' those terms are ''Ultimate parent,'' and ''U.S. entity.''

Filers

Section 4010.4 of the 4010 reporting regulation prescribes who is a filer. Paragraph (e) of this section explains how reporting is applicable to plans to which special funding rules apply. This paragraph provides that except in connection with the actuarial valuation report, the special funding rules under sections 104 and 402(b) of the Pension Protection Act of 2006, Public Law 109–280 (PPA) (applicable to multiple employer plans of cooperatives and charities, and plans of commercial passenger airlines and airline caterers, respectively) and under the Cooperative and Small Employer Charity Pension Flexibility Act of 2013, Public Law 113–97, are disregarded for all other 4010 purposes. The final rule, like the proposed, removes from paragraph (e) the reference to PPA section 104 because it has expired.

Identifying Information

Section 4010.7 of the 4010 reporting regulation describes what types of identifying information each filer must provide as part of its reporting. Paragraph (a)(1) of this section specifies what information is required to be included about current members of the filer's controlled group, such as identifying the legal relationships of each controlled group member to the other members. Filers identify the legal relationships by entering a description, *e.g.,* parent, subsidiary, for each member. Identifying the legal relationships of controlled group members in this way can be burdensome to filers in larger controlled groups and does not provide a clear picture of the controlled group structure, frustrating the intent of this information.

The final rule, like the proposed, provides a simple method for filers in larger controlled groups to satisfy the requirement in paragraph (a) of this section. Instead of manually entering ''parent,'' ''subsidiary,'' or other relationship, filers with more than 10 controlled group members would just submit with their filing an organizational chart or other diagram showing the relationship of the controlled group members to each other.

Three commenters to the proposed rule suggested that PBGC permit filers to include an organizational chart with their filing before the final rule is effective, citing the reduced burden and streamlining of requirements. Two of the three noted that while many filers have such diagrams readily available, some do not, and requested that the organizational chart be an optional method for filers to satisfy the legal relationship requirement.

PBGC considered these suggestions to make the chart an optional method to satisfy the legal relationship requirement and decided not to make the suggested change in the final rule.[15] Submitting a chart, which commenters agreed is something most companies already have, reduces burden by streamlining this reporting requirement for most filers. While it may add some burden for a minority of filers that do not have such diagrams, having controlled group member relationships more clearly presented overall benefits filers and PBGC by reducing the number of follow up questions to clarify the information as well as errors in data entry of information.

PBGC also clarifies in the final rule that for purposes of determining whether the requirement to provide an organizational chart applies, exempt entities are disregarded, (*i.e.,* the requirement applies only to controlled groups with more than 10 non-exempt entities). For these filers, exempt entities may, but need not be, included in the organizational chart.

Plan Actuarial Information

Section 4010.8 of the 4010 reporting regulation prescribes the plan actuarial information a filer must provide. Paragraph (d)(2) of this section sets the actuarial assumptions and methods to use for determining a plan's benefit liabilities. PBGC had heard from practitioners that the assumptions in paragraph (d)(2) as they apply to cash balance pension plans are not clear and don't specify how a lump sum payment (which is the assumption used by most cash balance plans) under such a plan should be converted to an annuity form. The final rule provides needed guidance with respect to cash balance plans on these assumptions and changes the paragraph's structure to improve clarity.

The final rule, like the proposed, reorganizes § 4010.8(d)(2) by combining the actuarial assumptions of this section into a table and includes an assumption

[15] PBGC did not issue guidance at the suggestion of two commenters to permit plans to submit a chart before a final rule is effective. As noted above, some comments suggested that PBGC change its proposed provision, therefore it would not be appropriate to issue guidance before publishing a final rule informing the public of PBGC's decision and the basis for it.

that was inadvertently left out of the table in the proposed rule. The table includes the assumptions to use for valuing benefit liabilities for cash balance plans. Cash balance plan filers must convert account balances to annuity forms of payment using the rules under section 411(b)(5)(B)(vi) of the Code and 26 CFR 1.411(b)(5)–1(e)(2) that specify the interest crediting rate and annuity conversion rate upon plan termination. In other words, for purposes of reporting benefit liabilities, a cash balance plan would be treated as if terminated and lump sums converted to annuity payments using the assumptions in the applicable U.S. Department of the Treasury regulation cited above.

Two commenters asked PBGC to clarify how benefit liabilities should be determined for cash balance plans if the annuity conversion basis includes a mortality table that is automatically updated each year to reflect expected improvements in mortality experience (such as the applicable mortality table in section 417(e)(3) of the Code), and notes that 26 CFR 1.411(b)(5)–1(e)(2)(iii)(A)(*2*) provides that the mortality table that applies as of the annuity starting date is used if the annuity starting date is after the date of plan termination. The commenters recommended that PBGC permit use of the mortality table for the information year for 4010 reporting.

PBGC agrees that for 4010 reporting purposes expected improvements in mortality experience that apply under a cash balance plan for years after the information year need not be reflected in the calculation of benefit liabilities. Accordingly, the final rule provides that filers may disregard the updates to reflect expected improvements in mortality experience that are described in 26 CFR 1.411(b)(5)–1(e)(2)(iii)(A)(*2*) for the purpose of valuing benefit liabilities under § 4010.8(d)(2).

The same commenters requested that PBGC make this provision applicable for 4010 filings from cash balance plans due for the second information year (*i.e.,* 2020) after the year in which the final rule is effective. The commenters stated that by the time a final rule is effective, filers are likely to have already valued benefit liabilities using different assumptions for the 2019 information year. PBGC recognizes that some filers may have already begun or completed such valuations for the 2019 information year using alternative methods and that modifications may need to be made to valuation software to implement the final rule. In addition, PBGC recognizes that having the new rule apply for all 2020 information year filings may pose problems for some filers (*e.g.,* a plan with a 7/1/2019–6/30/2020 plan year reported in a filing for a 1/1/2020–12/31/2020 information year). Therefore, as stated in the ''Dates'' section above, PBGC is making this valuation method applicable to plan years beginning on or after January 1, 2020. Cash balance plan filers may use the method prescribed in the final rule for valuing benefit liabilities for plan years beginning before 2020, regardless of which information year the filing is for, but they are not required to do so.

Another commenter stated that it assumed under the proposed rule that pre-retirement mortality could still be disregarded in determining benefit liabilities for 4010 purposes if the plan actuary does not use an assumption of pre-retirement mortality for funding purposes (as is permitted under Treasury regulations).[16] The commenters requested that this be clarified in the final rule. PBGC did not consider this comment because for purposes of determining benefit liabilities using the assumptions under section 4044 of ERISA and PBGC's regulation (as prescribed in section 4010(d) of ERISA), pre-retirement mortality was never disregarded.

The final rule, like the proposed, also includes edits to § 4010.8(d)(3) to conform citations to ERISA and the Code and includes an additional edit to improve readability.

Financial Information

Section 4010.9 of the 4010 reporting regulation prescribes the financial information a filer must submit to PBGC for each member of the filer's controlled group. Paragraph (b) of this section permits a filer to submit consolidated financial statements if the financial information of a controlled group member is combined with the information of other members in a consolidated statement. However, if consolidated information is reported, paragraph (b)(2) had also required filers to report revenues, operating income, and net assets for each controlled group member.

In PBGC's 2017 Request for Information (RFI) on Regulatory Planning and Review of Existing Regulations (noted in the ''Background'' section of this preamble), a commenter stated that some filers have difficulty trying to identify and collect the three types of information under § 4010.9(b)(2) for each controlled group member and recommended that PBGC modify the regulation to request this detailed information only when necessary as part of reviewing the plan and controlled group financial statements.

PBGC believes it can adequately assess risks to participants and plans without this detailed information, and with the ''off-the-shelf'' information on U.S. entities with foreign parents, as described below.[17] Therefore, PBGC proposed to remove the regulatory requirement to provide controlled group member-specific detail. Two commenters to the proposed rule supported the removal, and PBGC is eliminating the requirement in the final rule.

As noted above, the final rule, like the proposed, also clarifies what financial information must be provided for controlled group members that are U.S. entities where the ultimate parent is a foreign entity. In addition to the consolidated statements for the whole controlled group, the filer must submit consolidated (audited or unaudited) financial statements on only the U.S. entities that are members of the controlled group. If consolidated information is not available, the filer must provide separate audited (or unaudited) financial statements, or tax returns if financial statements are not available, for controlled group members that are U.S. entities.

Lastly, § 4010.9 allows filers to indicate where PBGC can find required financial information that is publicly available (in lieu of submitting that information to PBGC). Paragraph (d) of this section on ''submission of public information'' provides that a filer may submit a statement indicating when the financial information was made available to the public and where PBGC may obtain it. In PBGC's experience, these statements have led to general websites, but not specific web pages where the information required to be reported can be found. Therefore, the final rule, like the proposed, clarifies that filers must provide the exact URL for the web page where public financial information is located. The example of a Securities and Exchange Commission filing in paragraph (d) is clarified accordingly.

Waivers

Reporting under section 4010 of ERISA is required if any one of three conditions is met. However, PBGC can waive reporting under its 4010 reporting regulation and does so in three

[16] See 26 CFR 1.430(d)(1)(f)(2).

[17] In PBGC Technical Update 19–1, issued October 16, 2019, PBGC waived the requirement in § 4010.9(b)(2) to provide member-specific financial information. *See https://www.pbgc.gov/prac/other-guidance/4010-financial-information-reporting-waiver.*

situations (with discretion to waive in others) under § 4010.11 of the regulation.

PBGC automatically waives reporting where: (a) The aggregate funding shortfall is not in excess of $15 million; (b) the aggregate participant count is less than 500; or (c) the sole reason filing would otherwise be required is because of either a statutory lien resulting from missed contributions over $1 million or outstanding minimum funding waivers exceeding the same amount, provided the missed contributions or applications for minimum funding waivers were previously reported to PBGC.

PBGC received questions from practitioners about which plans are considered when determining if either of the first two waivers apply. Practitioners noted that the regulation clearly states that for purposes of the below-80 percent 4010 funding target attainment percentage (FTAP) triggering event for 4010 reporting (the ''80% 4010 FTAP Gateway Test'') only plans maintained by the controlled group on the last day of the information year are considered, but that the same is not clear under § 4010.11 for purposes of determining whether either of the first two waivers apply. Without specifying ''on the last day of the information year,'' the language of the aggregate funding shortfall waiver in paragraph (a) and the waiver for smaller plans in paragraph (b) of § 4010.11, could be interpreted to mean that plans maintained at any time during the plan year must be included in the determination of whether the waiver applies. This is not the interpretation that PBGC intended or believes is reasonable in light of the standard in the 80% 4010 FTAP Gateway Test. Therefore, the final rule, like the proposed, modifies paragraphs (a) and (b) of § 4010.11 to insert ''on the last day of the information year.''

In response to practitioner questions, PBGC had addressed in the proposed rule when at-risk assumptions (under section 303(i) of ERISA and section 430(i) of the Code) are to be used to calculate the funding target for purposes of the 4010 funding shortfall and waiving reporting where a plan's aggregate funding shortfall is $15 million or less. The proposed rule would have revised paragraph (a)(1)(i) of § 4010.11 to provide that at-risk retirement and form of payment assumptions are not required to be used to determine the funding target used to calculate the 4010 funding shortfall for a plan unless the plan is in ''at-risk status'' for funding purposes.

Commenters suggested that additional guidance is needed with respect to how the 4010 funding shortfall should be determined for plans in at-risk status. For example, commenters questioned whether the phase-in rule provided in section 303(i)(5) of ERISA for plans that have been in at-risk status for fewer than five consecutive years applies. They suggested other clarifications with respect to the participant count date for the $700 per participant load, and the 4 percent expense load on the not at-risk funding target.

As the commenters note, PBGC intended for filers to be able to use already-calculated amounts for purposes of determining the 4010 funding shortfall. But on further review, and in light of the complications arising with respect to the at-risk transition rules, PBGC has decided to simplify a plan's calculations for determining whether the $15 million aggregate funding shortfall waiver applies. In this regard, the final rule provides that the special rules for at-risk plans in section 303(i) of ERISA and section 430(i) of the Code are disregarded for purposes of determining the funding target underlying the 4010 funding shortfall for a plan, even if the plan is in at-risk status. Based on PBGC's review of plans in at-risk status, disregarding the at-risk rules solely for purposes of determining whether the 4010 funding shortfall waiver applies is unlikely to extend the waiver to plans it wasn't intended to cover. PBGC believes it can reduce administrative burden on plans while maintaining the original intent and integrity of this waiver.

Proposed Waiver

The primary condition triggering reporting is that the 4010 FTAP of a plan maintained by the contributing sponsor or any member of its controlled group, is less than 80 percent (the ''80% 4010 FTAP Gateway Test'' mentioned above). Section 303(d)(2) of ERISA and section 430(d)(2) of the Code provide that in determining the FTAP of a plan for a plan year, plan assets are reduced by the amount of the plan's prefunding and funding standard carryover balances. Plan sponsors are permitted under section 303(f) of ERISA and section 430(f) of the Code to elect to reduce (*i.e.,* waive) some or all of such funding balances, and by doing so increase the plan's FTAP.[18]

PBGC is aware of situations where a plan's 4010 FTAP was below 80 percent but would have been at least 80 percent if such an election had been made timely with respect to 4010 reporting. To the extent the plan sponsor of these plans are willing to waive funding balances at a later date and thereby commit not to use the funding balances to satisfy the following year's funding requirement, PBGC believes it would be appropriate to waive the 4010 reporting requirement. Therefore, PBGC had proposed to create an automatic 4010 reporting waiver where a plan sponsor makes a ''late'' election to reduce a funding balance, and the plan's FTAP for 4010 purposes would have been greater than or equal to 80 percent had the election been timely made.

However, commenters raised issues with how this automatic waiver would work in practice. Some stated that such a waiver could be useful, but only in limited circumstances, and suggested technical clarifications around its application. Others requested clarity specifically about what is a ''late election'' to reduce a funding balance for 4010 reporting purposes because, for minimum funding purposes, ''late elections'' do not take effect for the plan year for which they are nominally made. Additional questions concerned whether a ''late election'' could be made only if the funding balance existed on the valuation date for the 4010 FTAP and had not been used against required minimum contributions, and the amount by which funding balances must be reduced.

PBGC considered these technical questions and concurs with the commenters that, as drafted, the automatic waiver leaves many questions unanswered. In light of this, and because it is likely that this automatic waiver would help only a few, if any, filers, PBGC is not adopting the proposed waiver in this final rule. PBGC encourages the plan sponsor of a plan with a 4010 FTAP below 80 percent solely because of an administrative error with respect to the timing of a funding balance election to request a case-specific waiver pursuant to § 4010.11(d).

Commenters suggested that PBGC in the final rule automatically waive 4010 reporting in other situations, such as where a plan's 4010 FTAP would have been 80 percent or more (or the 4010 funding shortfall would have been less than $15 million) if not for the timing of a contribution that was made too late to count as a prior year contribution (*i.e.,* more than 8½ months after the end of the prior plan year), as well as in situations where 4010 reporting is triggered by an acquisition. Creating additional reporting waivers is beyond the scope of this final rule, and PBGC has not included automatic waivers for the suggested situations. Where

[18] *See* 26 CFR 1.430(f)–1(f)(2) for rules on timing of elections.

extenuating circumstances come into play (*e.g.,* a contribution was late because it was inadvertently wired to the wrong account), plan sponsors may request a case-specific waiver pursuant to § 4010.11(d). PBGC reviews such requests based on the facts and circumstances of specific cases.

Termination of Single-Employer Plans—29 CFR Part 4041

A single-employer plan covered by PBGC's insurance program may be voluntarily terminated only in a standard or distress termination. The rules governing voluntary terminations are in section 4041 of ERISA and PBGC's regulation on Termination of Single-Employer Plans (29 CFR part 4041), ''termination of single-employer plans regulation.''

Post-Distribution Certification

ERISA requires the plan administrator of a plan terminating in a standard termination to certify to PBGC that the plan's assets have been distributed to pay all benefits under the plan. Certification under section 4041(b)(3)(B) of ERISA must be made within 30 days after the final distribution of assets is completed.

Section 4041.29 of the termination of single-employer plans regulation requires a plan administrator to submit by the 30-day statutory deadline a ''post-distribution certification'' (*i.e.,* PBGC Form 501). PBGC has heard from practitioners that it is sometimes challenging to collect all of the information required to be submitted as an attachment to Form 501 within the prescribed timeframe (*e.g.,* documentation that benefit obligations were settled for all participants including copies of cancelled checks in the case of lump sum distributions) and have asked whether PBGC could extend the certification deadline.

While PBGC cannot extend the statutory deadline for certifications, the final rule, like the proposed, amends § 4041.29(a) to provide an alternative filing option for plan administrators who need more time to complete the PBGC Form 501. This alternative permits a plan administrator to submit a completed PBGC Form 501 within 60 days after the last distribution date for any affected party if the plan administrator certifies to PBGC that all assets have been distributed in accordance with section 4044 of ERISA and 29 CFR part 4044 (in an email or otherwise, as described in the instructions to the Form 501) within 30 days after the last distribution date for any affected party.

The proposed rule revised § 4041.29(b) and paragraph (d)(2) of § 4041.30 (requests for deadline extensions) only to account for the proposed changes to § 4041.29(a).

One commenter expressed support for the additional time to file a Form 501 in § 4041.29(a)(2).

The same commenter suggested that PBGC modify proposed § 4041.29(b) in the final rule to clarify when PBGC would begin assessing penalties for required information not received by the deadlines in § 4041.29(a). Penalties under section 4071 of ERISA apply where there is a failure to timely provide required information. Thus, penalties may be assessed where a filing (*e.g.,* the Form 501) is not filed by the stated deadline, or where a filing is submitted on time, but some or all required information is omitted or wrong. The commenter suggested the language of proposed § 4041.29(b)—that PBGC will assess a penalty ''only to the extent a completed Form 501 is filed more than 90 days after the distribution deadline (including extensions) under § 4041.28(a)''—could imply that PBGC may assess a penalty on an incomplete Form 501 before the 90-day threshold is reached. The commenter suggested replacing the words ''only to the extent'' with the words ''only if'' to clarify that penalties may only be assessed if required filings are submitted more than 90 days after the distribution deadline.

PBGC's proposed changes in § 4041.29 to provide an alternative filing deadline for the Form 501 were not intended to alter the long-standing penalty relief provided for in § 4041.29(b). Therefore, the final rule modifies the language in paragraph (b) to make clear that PBGC will not assess a penalty if the required information (*e.g.,* the certification or Form 501) is filed within 90 days after the distribution deadline.

Premium Rates—29 CFR Part 4006

Under sections 4006 and 4007 of ERISA, plans covered by the termination insurance program under title IV of ERISA must pay premiums to PBGC. Section 4006 of ERISA deals with premium rates, including the computation of premiums, and PBGC's regulation on Premium Rates in 29 CFR part 4006, ''premium rates regulation,'' implements section 4006 of ERISA.

Determination of Unfunded Vested Benefits—Plans to Which Special Funding Rules Apply

Section 4006.4 of the premium rates regulation, which provides rules for determining unfunded vested benefits, states in paragraph (f) that plans subject to special funding rules must disregard those rules and determine unfunded vested benefits for premium purposes in the same manner as all other plans. Section 4006.4(f) referred to the special funding rules under sections 104, 105, 106, and 402(b) of the Pension Protection Act of 2006, Public Law 109–280 (PPA), that are applicable to multiple employer plans of cooperatives and charities, PBGC settlement plans, plans of government contractors, and plans of commercial passenger airlines and airline caterers.

The final rule, like the proposed, removes references to PPA sections 104, 105, and 106 because those provisions have expired. It adds a reference to the special funding rules of section 306 of ERISA and section 433 of the Code that apply to certain multiple-employer defined benefit pension plans maintained by certain cooperatives and charities, and that were added in 2014.[19]

Variable-Rate Premium Exemptions; Plans Terminating in Standard Terminations

In general, a single-employer plan pays a variable-rate premium (VRP) for the plan year ten-and-a-half months after the plan year begins based on the level of the plan's underfunding at the beginning of the plan year. In 2014, as part of PBGC's regulatory review process, PBGC amended its premium rates regulation to provide for a VRP exemption for the year in which a standard termination of a plan is completed (''2014 rule''). PBGC adopted this exemption because it did not seem appropriate to require a VRP of a terminating plan based on the underfunding at the beginning of the year when, by the time the premium was due (or shortly thereafter), the sponsor had fully funded the plan and distributed all accrued benefits (*i.e.,* purchased annuities or paid lump sums) and PBGC coverage had ceased.[20]

PBGC has received questions from practitioners as to whether a plan qualifies for this ''final year'' exemption if a large number of participants are spun off to a new plan or transferred to another existing plan during the year in which the termination is completed. It had been suggested that, if the

[19] Cooperative and Small Employer Charity Pension Flexibility Act, Public Law 113–97 (Apr. 7, 2014).

[20] Before 2014, the standard termination VRP exemption in § 4006.5(a)(3) was available only if the proposed date of termination was in a prior year, but the plan had not yet completed the close-out by the end of that year. The 2014 rule expanded that exemption to include plans that are able to complete the termination within one plan year. *See* 79 FR 13547, 13553 (March 11, 2014).

exemption applies, a plan sponsor could significantly reduce its VRP because the transferor plan would not owe any VRP for its final year and the transferee plan would owe, at most, a pro-rata VRP for the plan year in which the transfer occurs.[21] However, the VRP exemption does not apply in this type of transaction because the benefits of most of the participants who were in the plan at the beginning of the year would not be fully funded or paid in full, and for those participants, PBGC coverage would still be in effect. PBGC added language to the 2018 premium filing instructions to highlight to filers that the VRP exemption does not apply in such cases.

In light of these questions, the final rule, like the proposed, amends § 4006.5(a)(3) of the premium rates regulation to expressly state that a plan does not qualify for the VRP exemption for the year in which a standard termination of the plan is completed if the plan engages in a spinoff during the premium payment year. In addition, the final rule provides an exception where the spinoff is de minimis pursuant to the regulations under section 414(l) of the Code, *i.e.,* generally fewer than 3 percent of the assets are spun off. In other words, the VRP exemption applies for the year in which a standard termination for the plan is completed even if the plan engages in a de minimis spinoff during the year.

To distinguish cases where the termination has not yet been completed, the final rule, like the proposed, moves the exemption for certain plans in the process of completing a standard termination initiated in a prior year from § 4006.5(a)(3) to § 4006.5(a)(4) of the premium rates regulation.

PBGC received three comments with respect to its proposed amendment to § 4006.5(a)(3). Two commenters acknowledged that this provision is ''clear and workable.'' Three commenters suggested that it represents a change to the current provision and requested that it apply only prospectively. PBGC disagrees that the amendment represents a change to the provision. PBGC believes its interpretation of the 2014 rule is the only reasonable one. It is based directly on the regulation's application to a plan that ''makes a final distribution of assets in a standard termination during the premium payment year.'' The preamble to the 2014 rule states plainly that the exemption applies only when all benefits are fully satisfied in accordance with the standard termination rules. A plan that first transfers benefits (and associated assets) to another plan before completing a standard termination does not make a final distribution of assets in satisfaction of all benefits. As explained in the proposed rule, the amendment to § 4006.5(a)(3) is merely to expressly state the circumstances in which a plan does not qualify for the VRP exemption. Therefore, the final rule does not provide an applicability date for this provision.

Participant Count Date; Certain Transactions

To determine the flat-rate premium for a plan year, participants are counted on the ''participant count date,'' generally the day before the plan year begins. Changes in the participant count during the plan year do not affect that year's flat-rate premium. Under the premium rates regulation, a special rule (§ 4006.5(e)) shifts the participant count date to the first day of the plan year in specified situations that take place at the beginning of a plan year so that the change in participant count is recognized immediately rather than a year later (*i.e.,* the ''special rule''). Situations where this special rule applies include:

- The first plan year a plan exists.
- A plan year in which a plan is the transferor plan in the case of a beginning of year non-de minimis spinoff.
- A plan year in which a plan is the transferee plan in the case of a beginning of year non-de minimis merger.

For example, consider a scenario where Plan A, a calendar year plan, spins off a group of participants (and the corresponding assets and liabilities) into new Plan B at the beginning of Plan A's 2018 plan year (assume the spinoff is not de minimis). Because of the special rule, both plans count participants on the first day of the year which means Plan B owes a 2018 flat-rate premium on behalf of the transferred participants, but Plan A does not.

PBGC received questions from practitioners as to whether the special rule applies to the transferee plan in a situation where spun off participants are transferred to an existing plan instead of a new plan. These practitioners believed the premium filing instructions could be interpreted to provide that the special rule does not apply to the transferee plan in this plan-to-plan transfer.

As explained in the proposed rule, that interpretation would lead to an inconsistent result. For example, assume that instead of spinning off participants into a new plan, Plan A (in the above example) had transferred those participants to a pre-existing Plan C (also a calendar year plan) at the beginning of Plan C's 2018 plan year. As noted above, the special rule would apply to Plan A, so Plan A would not include the transferred participants in its participant count. But, if the special rule does not apply to Plan C (*i.e.,* to the transferee plan), Plan C would count participants on the day before the transfer. That would mean that neither Plan A nor Plan C would owe flat-rate premiums on behalf of the transferred participants for 2018.

Therefore, PBGC is adopting in the final rule its proposed clarifications to the special rule in paragraph (e) of § 4006.5 to clarify that, in such plan-to-plan transfers, the participant count date of the transferee plan shifts to the first day of its plan year. Doing so makes clear that the transferee plan, in such a transaction, owes flat-rate premiums on behalf of the transferred participants. This provision generally operates where both plans have the same plan year and the transfer takes place at the beginning of the plan year.

As noted above, the special rule also applies where a plan is the transferee plan in the case of a beginning-of-year non-de minimis merger. For example, if two calendar year plans merge at the beginning of 2018, the surviving plan's participant count date is shifted to January 1, 2018. As a result, the surviving plan owes 2018 flat-rate premiums on behalf of the participants who were previously in the transferor plan.

PBGC exempted de minimis mergers from this special rule because PBGC felt the burden resulting from shifting the participant count date was not justified in the case of a de minimis merger because the number of participants for whom neither plan would owe a flat-rate premium would be relatively small (*i.e.,* the regulations under section 414(l) of the Code provide that a merger is de minimis where the liabilities of the smaller plan are less than 3 percent of the assets of the larger plan).

PBGC received questions from practitioners as to whether this de minimis exemption applies where the surviving plan is the smaller plan. It had been suggested that, if the exemption applies, a plan sponsor could avoid paying flat-rate premiums on behalf of the large plan participants simply by merging it into a much smaller plan. In one case, a consultant reported that a plan sponsor was considering a strategy to establish a new plan covering only a

[21] If the transferee plan is an existing plan, the additional underfunding resulting from the transfer would not be reflected in its VRP because underfunding for VRP purposes is measured at the beginning of the year. If the transferee plan is a new plan, it would owe only a pro-rata VRP (see § 4006.5(f)(1)).

few employees so that it could merge a large plan into the new small plan at the beginning of the next year and avoid paying flat-rate premiums on behalf of the large plan participants. These results are inconsistent with the intent of the special rule and de minimis exception.

The final rule, like the proposed, clarifies that the special rule in paragraph (e) of § 4006.5 applies in the case of a beginning-of-year merger where a large plan is merged into a smaller plan (*i.e.,* the exception for de minimis mergers does not apply if the transaction is structured such that the smaller plan is the surviving plan).

PBGC received four comments with respect to the proposed provisions clarifying the special participant count date rule. While the commenters appreciated clarification of the rules, they believed the clarifications represented changes and should be applied only prospectively. Two of these commenters stated that some sponsors had completed transactions (*e.g.,* plan mergers) in reliance on their interpretation of how the special participant count date rules work. PBGC considered these comments. However, the provisions do not affect whether a transaction was (or was not) permissible. Rather, they simply set forth when the special rules apply in determining the participant count date. And as explained in the proposed rule, the provisions are merely clarifications of the existing special rules and as such, the final rule does not provide an applicability date for these provisions.

Two commenters recommended that PBGC eliminate the exceptions to the special rule for de minimis transactions (*e.g.,* spinoffs, mergers) and three commenters recommended that the special rule, which currently applies only to transactions that occur at the beginning of a plan year, also apply to transactions that occur on the last day of the prior plan year. PBGC considered the comments and believes it would not be appropriate to implement either change without providing an opportunity for public comment. PBGC believes both suggestions merit consideration and intends to do additional research and analysis to determine if such changes are warranted and/or appropriate. In particular, PBGC is concerned that eliminating the de minimis exception could result in some plans owing larger premiums than under the current rule.

Premium Proration for Certain Short Plan Years

The special rule in § 4006.5(f) of PBGC's premium rates regulation allows plan administrators to pay prorated VRP and flat-rate premiums for a short plan year and lists the four circumstances that would create a short plan year. One of those circumstances is where the plan's assets are distributed pursuant to the plan's termination. For example, if a plan distributed its assets in a standard termination with a final short plan year covering nine months (*i.e.,* 75 percent of a full year), the calculated premium would be reduced by 25 percent.

This rule makes sense where all accrued benefits are distributed (*i.e.,* purchased annuities or paid lump sums) and PBGC's coverage ends. However, where a completed termination is preceded in the same year by a spinoff of a group of the plan's participants to another plan, the transferred participants remain in the insurance program and PBGC coverage of their benefits is still in effect. It has been suggested that a plan sponsor could use this rule to significantly reduce its premium obligation for the year simply by transferring most of its participants to another plan early in the plan year and then terminating what's left of the transferor plan (and, thus, owing only a pro-rata premium for its final short plan year).

In view of these considerations, the final rule, like the proposed, changes the circumstances under which the premium is prorated for a short plan year resulting from a plan's termination to exclude situations where the plan engages in a spinoff in that same year, unless the spinoff is de minimis pursuant to the regulations under section 414(l) of the Code, (*i.e.,* generally fewer than 3 percent of the assets are spun off). As stated in the **DATES** section above, this provision is applicable for plan years beginning in or after 2020. In addition, the final rule, like the proposed, replaces the words ''excess assets'' in § 4006.5(f)(3) with ''residual assets under section 4044(d) of ERISA'' to be consistent with the statutory language.

Miscellaneous

This final rule corrects and updates the phone numbers for the PBGC multiemployer program division contact and the PBGC Participant and Plan Sponsor Advocate in the model notices contained in Appendix A to part 4233, the Partitions of Eligible Multiemployer Plans regulation.

Executive Orders 12866, 13563, and 13771

The Office of Management and Budget (OMB) has determined that this rulemaking is not a ''significant regulatory action'' under Executive Order 12866. Accordingly, this final rule is exempt from Executive Order 13771, and OMB has not reviewed it under Executive Order 12866.

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).

Although this is not a significant regulatory action under Executive Order 12866, PBGC has examined the economic and policy implications of this final rule. Most of the final rule amendments clarify regulations and remove outdated provisions, which are neutral in their impact. A few would minimally affect the time and cost of reporting for plans and sponsors, which is discussed in the Paperwork Reduction Act section below.

Section 6 of Executive Order 13563 requires agencies to rethink existing regulations by periodically reviewing their regulatory program for rules that ''may be outmoded, ineffective, insufficient, or excessively burdensome.'' These rules should be modified, streamlined, expanded, or repealed as appropriate. PBGC has identified technical corrections, clarifications, and improvements to some of its regulations and has included those amendments in this final rule. PBGC expects to propose periodic rulemakings of this nature to revise its regulations as necessary for minor technical corrections and clarifications to rules.

Regulatory Flexibility Act

The Regulatory Flexibility Act[22] imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the Regulatory Flexibility Act requires that the agency present a final regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and steps taken to minimize the impact. Small entities include small businesses, organizations, and governmental jurisdictions.

[22] 5 U.S.C. 601 *et seq.*

Small Entities

For purposes of the Regulatory Flexibility Act requirements with respect to this final rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is substantially the same criterion PBGC uses in other regulations [23] and is consistent with certain requirements in title I of ERISA [24] and the Code,[25] as well as the definition of a small entity that the Department of Labor has used for purposes of the Regulatory Flexibility Act.[26]

Thus, PBGC believes that assessing the impact of this final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration [27] under the Small Business Act. Therefore, PBGC requested comments on the appropriateness of the size standard used in evaluating the impact of the amendments in this proposed rule on small entities. PBGC received no comments on this point.

Certification

Based on its definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this final rule would not have a significant economic impact on a substantial number of small entities. As explained above under ''Executive Orders 12866, 13563, and 13771,'' some of the amendments reduce requirements for plans and sponsors, including for small plans, resulting in administrative savings, or have a very minimal cost impact as discussed in the Paperwork Reduction Act section below. Most of the amendments clarify regulations and remove outdated provisions, which are neutral in their impact. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

[23] *See, e.g.,* special rules for small plans under part 4007 (Payment of Premiums).

[24] *See, e.g.,* section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

[25] *See, e.g.,* section 430(g)(2)(B) of the Code, which permits single-employer plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[26] *See, e.g.,* DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66637, 66644 (Oct. 27, 2011).

[27] *See,* 13 CFR 121.201.

Paperwork Reduction Act

PBGC is submitting changes to the information requirements under this final rule to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act (PRA). 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. Most of the changes PBGC is making are revisions to filing instructions, where necessary or helpful, to incorporate the clarifications in the final rule. Therefore, PBGC estimates the final rule would have a minimal impact on the hour and cost burden of reporting as described below.

Reportable Events Regulation

The collection of information in part 4043 is approved under control number 1212–0013 (expires February 28, 2022). The current information collection requirements in part 4043 have an estimated annual hour burden of approximately 1,855 hours and a cost burden of $439,500. PBGC's instructions for Form 10 and Form 10-Advance are being updated to describe, as necessary or helpful, the clarifications made by the final rule and for other informational purposes. The clarifications incorporated in the instructions would replace or augment existing language but would not create additional filing burden. However, the final rule would reduce reporting of active participant reduction events by eliminating the two-year lookback requirement. PBGC estimates that the approximately 180 filings it receives for active participant reduction events per year would be reduced by approximately 38 percent. Therefore, PBGC estimates that the total average annual hour burden under the final rule would be approximately 1,641 hours and the cost burden $388,890.

Annual Financial and Actuarial Information Reporting Regulation

The collection of information in part 4010 is approved under control number 1212–0049 (expires May 31, 2022). The current information collection requirements have an estimated annual hour burden of 532 hours and a cost burden of $12,871,040.

PBGC's 4010 reporting e-filing instructions are being updated, as necessary or helpful, to describe the clarifications made by the final rule. The clarifications incorporated in the instructions replace existing language, and therefore would not create additional filing burden in these instances. With respect to the requirement in § 4010.7 to submit an organizational chart or other diagram in place of information describing legal relationships of controlled group members, PBGC expects this change will reduce burden for most filers, but may increase burden for filers that do not have an organizational chart readily available. Overall, PBGC estimates that this requirement will not change the aggregate hour and cost burden.

However, PBGC estimates that the final rule would reduce filer burden by eliminating the requirement of § 4010.9(b)(2) to provide the revenues, operating income, and net assets for each controlled group member if a filer is submitting consolidated financial information. (Former Question 2 on Schedule F, Section II, of the e-4010 module of PBGC's e-filing portal.) PBGC estimates that approximately 62 percent of a projected 560 filers per year (347.2 filers) are required to file Question 2 financial information. Based on estimates of the average hour and cost burden of this requirement, PBGC estimates that by eliminating it, the final rule would reduce total average annual filer burden by approximately 17 hours and $7,742. Therefore, PBGC estimates the aggregate annual hour burden under the final rule would be approximately 515 hours and the cost burden $12,863,298.

Termination of Single-Employer Plans Regulation

The collection of information in part 4041 is approved under control number 1212–0036 (expires March 31, 2021). The current information collection requirements in part 4041 (which includes standard and distress terminations) have an estimated annual hour burden of 29,890 hours and a cost burden of $5,963,400.

The final rule would revise § 4041.29 to provide plan administrators of plans terminating in a standard termination the option of more time to complete a PBGC Form 501. PBGC estimates up to 5 minutes of time—for those plan administrators who would choose this option—to review the instructions and send an email to PBGC's standard termination filings email address to certify that distributions have been made timely. There is no change in the information requirements contained in the PBGC Form 501.

PBGC estimates that approximately 25 percent of standard termination filers per year would choose this option. With a projected average increase in standard terminations over the current inventory, the total additional average hourly burden for this information collection

would be approximately 31 hours (25 percent of 1,503 plans = 375 plans × 5 minutes per plan (0.083 hours) = 31 hours). While PBGC projects this minimal additional time to review and send an email under the new option, overall compliance for plan administrators would be eased by extending the time to file.

Premium Rates Regulation

The collection of information with respect to premiums is approved under control number 1212–0009 (expires February 28, 2022). PBGC's Comprehensive Premium Filing Instructions are being updated to reflect the changes made by the final rule to the premium provisions. The updates incorporated in the instructions replace existing language and therefore would not create additional filing burden.

List of Subjects

29 CFR Part 4001

Business and industry, Organization and functions (Government agencies), Pension insurance, Pensions, Small businesses.

29 CFR Part 4006

Employee benefit plans, Pension insurance.

29 CFR Part 4010

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4041

Employee benefit plans, Pension insurance, Pensions.

29 CFR Part 4043

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

29 CFR Part 4233

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

For the reasons stated in the preamble, PBGC amends 29 CFR parts 4001, 4006, 4010, 4041, 4043, and 4233 as follows:

PART 4001—TERMINOLOGY

■ 1. The authority citation for part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

■ 2. Amend § 4001.2 by adding in alphabetical order definitions for ''U.S. entity'' and ''Ultimate parent'' to read as follows:

§ 4001.2 Definitions

* * * * *

U.S. entity means an entity subject to the personal jurisdiction of the U.S. district courts. *Ultimate parent* means the parent at the highest level in the chain of corporations and/or other organizations constituting a parent-subsidiary controlled group.

* * * * *

PART 4006—PREMIUM RATES

■ 3. The authority citation for part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

■ 4. Amend § 4006.4 by revising paragraph (f) to read as follows:

§ 4006.4 Determination of unfunded vested benefits.

* * * * *

(f) *Plans to which special funding rules apply.* The following statutory provisions are disregarded for purposes of determining unfunded vested benefits (whether the standard premium funding target or the alternative premium funding target is used):

(1) Section 402(b) of the Pension Protection Act of 2006, Public Law 109–280, dealing with certain frozen plans of commercial passenger airlines and airline caterers.

(2) Section 306 of ERISA and section 433 of the Code, dealing with certain defined benefit pension plans maintained by certain cooperatives and charities.

■ 5. In § 4006.5:

■ a. Revise paragraphs (a) introductory text and (a)(3);

■ b. Redesignate paragraph (a)(4) as paragraph (a)(5);

■ c. Add a new paragraph (a)(4); and

■ d. Revise paragraphs (e) and (f)(3).

The revisions and addition read as follows:

§ 4006.5 Exemptions and special rules.

(a) *Variable-rate premium exemptions.* A plan described in any of paragraphs (a)(1) through (5) of this section is not required to determine or report its unfunded vested benefits under § 4006.4 and does not owe a variable-rate premium under § 4006.3(b).

* * * * *

(3) *Certain plans completing a standard termination.* A plan is described in this paragraph if it—

(i) Makes a final distribution of assets in a standard termination during the premium payment year, and

(ii) Did not engage in a spinoff during the premium payment year, unless the spinoff is de minimis pursuant to the regulations under section 414(l) of the Code.

(4) *Certain plans in the process of completing a standard termination initiated in a prior year.* A plan is described in this paragraph if —

(i) The plan administrator has issued notices of intent to terminate the plan in a standard termination in accordance with section 4041(a)(2) of ERISA;

(ii) The proposed termination date set forth in the notice of intent to terminate is before the beginning of the premium payment year; and

(iii) The plan ultimately makes a final distribution of plan assets in conjunction with the plan termination.

* * * * *

(e) *Participant count date; certain transactions.* (1) The participant count date of a plan described in paragraph (e)(2) or (3) of this section is the first day of the premium payment year.

(2) With respect to a transaction where some, but not all, of the assets and liabilities of one plan (the ''transferor plan'') are transferred into another plan (the ''transferee plan'')—

(i) The transferor plan if the spinoff is not de minimis and is effective at the beginning of the transferor plan's premium payment year; and

(ii) The transferee plan if the transferor plan meets the criteria in paragraph (e)(2)(i) of this section and the transfer occurs at the beginning of the transferee plan's premium payment year.

(3) With respect to a merger effective at the beginning of the premium payment year, the transferee plan if—

(i) The merger is not de minimis; or

(ii) The assets of the transferee plan immediately before the merger are less than the total assets transferred to the transferee plan in the merger.

(4) For purposes of this paragraph (e), ''de minimis'' has the meaning described in regulations under section 414(l) of the Code (for single-employer plans) or in part 4231 of this chapter (for multiemployer plans).

(f) * * *

(3) *Distribution of assets.* The plan's assets (other than any residual assets under section 4044(d) of ERISA) are distributed pursuant to the plan's termination, but only if the plan did not engage in a spinoff during the plan year, unless the spinoff is de minimis pursuant to the regulations under section 414(l) of the Code.

* * * * *

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

■ 6. The authority citation for part 4010 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1310.

■ 7. In § 4010.2:
■ a. Amend the introductory text by removing ''and'' before ''unreduced'' and adding at the end of the sentence '', ultimate parent, and U.S. entity''; and
■ b. Add in alphabetical order a definition for ''Foreign entity''.

The addition reads as follows:

§ 4010.2 Definitions.

* * * * *

Foreign entity means a member of a controlled group that —

(1) Is not a contributing sponsor of a plan;

(2) Is not organized under the laws of (or, if an individual, is not a domiciliary of) any state (as defined in section 3(10) of ERISA); and

(3) For the fiscal year that includes the information year, meets one of the following tests—

(i) Is not required to file any United States Federal income tax form;

(ii) Has no income reportable on any United States Federal income tax form other than passive income not exceeding $1,000; or

(iii) Does not own substantial assets in the United States (disregarding stock of a member of the plan's controlled group) and is not required to file any quarterly United States income tax returns for employee withholding.

* * * * *

■ 8. Amend § 4010.4 by revising paragraph (e) to read as follows:

§ 4010.4 Filers.

* * * * *

(e) *Certain plans to which special funding rules apply.* Except for purposes of determining the information to be submitted under § 4010.8(h) (in connection with the actuarial valuation report), the following statutory provisions are disregarded for purposes of this part:

(1) Section 402(b) of the Pension Protection Act of 2006, Public Law 109–280, dealing with certain frozen plans of commercial passenger airlines and airline caterers.

(2) Section 306 of ERISA and section 433 of the Code, dealing with certain defined benefit pension plans maintained by certain cooperatives and charities.

■ 9. Amend § 4010.7 by revising paragraph (a) to read as follows:

§ 4010.7 Identifying information.

(a) *Filers.* Each filer is required to provide, in accordance with the instructions on PBGC's website, *http://www.pbgc.gov,* the following identifying information with respect to each member of the filer's controlled group (excluding exempt entities)—

(1) *Current members; individual member information.* For each entity that is a member of the controlled group as of the end of the filer's information year—

(i) The name, address, and telephone number of the entity;

(ii) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the entity (or if there is no EIN for the entity, an explanation); and

(iii) If the entity became a member of the controlled group during the information year, the date the entity became a member of the controlled group.

(2) *Current members; legal relationships of members.* If, as of the end of the filer's information year, the filer's controlled group consists of—

(i) Ten or fewer members (excluding exempt entities), the legal relationship of each entity to the plan sponsor (for example, parent, subsidiary).

(ii) More than ten members (excluding exempt entities), an organizational chart or other diagram showing the members of the filer's controlled group as of the end of the filer's information year and the legal relationships of the members to each other. Exempt entities may, but need not, be included in this organizational chart or diagram.

(3) *Former members.* For any entity that ceased to be a member of the controlled group during the filer's information year, the date the entity ceased to be a member of the controlled group and the identifying information required by paragraph (a)(1) of this section as of the day before the entity left the controlled group.

* * * * *

■ 10. Amend § 4010.8 by revising paragraphs (d)(2) and (3) to read as follows:

§ 4010.8 Plan actuarial information.

* * * * *

(d) * * *

(2) *Actuarial assumptions and methods.* The value of benefit liabilities must be determined using the rules in paragraphs (d)(2)(i) through (iii) of this section.

(i) *Benefits to be valued.* Benefits to be valued include all benefits earned or accrued under the plan as of the end of the plan year ending within the information year and other benefits payable from the plan including, but not limited to, ancillary benefits and retirement supplements, regardless of whether such benefits are protected by the anti-cutback provisions of section 411(d)(6) of the Code.

(ii) *Actuarial assumptions.* The value of benefit liabilities must be determined using the actuarial assumptions described in the following table:

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

Assumptions:	As prescribed in accordance with	
Interest	§ 4044.52(a).	
Form of payment	§ 4044.51.	
Expenses	§ 4044.52(d).	
Decrements		
• Mortality	§ 4044.53.	
• Retirement	§§ 4044.55–4044.57.	
• Other decrements (*e.g.,* turnover, disability).	Either Option 1 or Option 2—	
	Option 1	*Option 2*
	Disregard (*i.e.,* assume 0% probability of decrements other than mortality or retirement occurring).	Use the same assumptions as used to determine the minimum required contribution under section 303 of ERISA and section 430 of the Code for the plan year ending within the filer's information year. If there is no distinction between termination and retirement assumptions, reflect only rates for ages before the Earliest PBGC Retirement Date (as defined in § 4022.10 of this chapter).

TABLE 1 TO PARAGRAPH (d)(2)(ii)—Continued

Cash balance plan account conversions	Section 204(b)(5)(B)(vi) of ERISA and section 411(b)(5)(B)(vi) of the Code (which deal with the interest crediting rate and annuity conversion rates), as if the plan terminated on the last day of the plan year ending within the filer's information year. Expected improvements in mortality experience that apply under the plan for periods after the information year may be disregarded for valuing benefit liabilities for 4010 reporting purposes.
Other (*e.g.,* cost-of-living increases, marital status).	Use the same assumptions as used to determine the minimum required contribution under section 303 of ERISA and section 430 of the Code for the plan year ending within the filer's information year.

(iii) *Future service.* Future service expected to be accrued by an active participant in an ongoing plan during future employment (based on the assumptions used to determine benefit liabilities) must be included in determining the earliest and unreduced retirement ages used to determine the expected retirement age and in determining an active participant's entitlement to early retirement subsidies and supplements at the expected retirement age. See the examples in paragraph (e) of this section.

(3) *Special actuarial assumptions for exempt plan determination.* Solely for purposes of determining whether a plan is an exempt plan for an information year, the value of benefit liabilities may be determined using the same retirement assumptions as used to determine the minimum required contribution under section 303 of ERISA and section 430 of the Code for the plan year ending within that information year without regard to the at-risk assumptions of section 303(i) of ERISA and section 430(i) of the Code.

* * * * *

■ 11. Amend § 4010.9 by removing ''Web site'' and adding in its place ''website'' in paragraph (a) introductory text and revising paragraphs (b), (d), and (e).

The revisions read as follows:

§ 4010.9 Financial information.

* * * * *

(b) *Consolidated financial statements.* If the financial information of a controlled group member is combined with the information of other group members in consolidated financial statements, a filer may provide the following financial information in lieu of the information required in paragraph (a) of this section—

(1) The audited consolidated financial statements for the controlled group for the filer's information year or, if the audited consolidated financial statements are not available by the date specified in § 4010.10(a), unaudited consolidated financial statements for the fiscal year ending within the information year; and

(2) If the ultimate parent of the controlled group is a foreign entity, financial information on the U.S. entities (other than an exempt entity) that are members of the controlled group. The information required by this paragraph (b)(2) may be provided in the form of consolidated financial statements if the financial information of each controlled group member that is a U.S. entity is combined with the information of other group members that are U.S. entities. Otherwise, for each U.S. entity that is a controlled group member, provide the financial information required in paragraph (a) of this section.

* * * * *

(d) *Submission of public information.* If any of the financial information required by paragraphs (a) through (c) of this section is publicly available, the filer, in lieu of submitting such information to PBGC, may include a statement with the other information that is submitted to PBGC indicating when such financial information was made available to the public and where PBGC may obtain it (including the exact URL for the web page where the financial information is located). For example, if the controlled group member has filed audited financial statements with the Securities and Exchange Commission, it need not file the financial statements with PBGC but instead can identify the SEC filing and the exact URL for the web page where the filing can be retrieved as part of its submission under this part.

(e) *Inclusion of information about non-filers and exempt entities.* Consolidated financial statements provided pursuant to paragraph (b) of this section may include financial information of persons who are not controlled group members (*e.g.,* joint ventures) or are exempt entities.

■ 12. In § 4010.11:

■ a. Revise paragraphs (a) introductory text and (a)(1);

■ b. Add ''on the last day of the information year'' after the words ''controlled group'' in the first sentence in paragraph (b)(1);

The revisions read as follows:

§ 4010.11 Waivers.

(a) *Aggregate funding shortfall not in excess of $15 million waiver.* Unless reporting is required by § 4010.4(a)(2) or (3), reporting is waived for a person (that would be a filer if not for the waiver) for an information year if, for the plan year ending within the information year, the aggregate 4010 funding shortfall for all plans (including any exempt plans) maintained by the person's controlled group on the last day of the information year (disregarding plans with no 4010 funding shortfall) does not exceed $15 million, as determined under paragraphs (a)(1) and (2) of this section.

(1) *4010 funding shortfall; in general.* A plan's 4010 funding shortfall for a plan year equals the funding shortfall for the plan year as provided under section 303(c)(4) of ERISA and section 430(c)(4) of the Code, with the following exceptions:

(i) The funding target used to calculate the 4010 funding shortfall is determined without regard to the interest rate stabilization provisions of section 303(h)(2)(C)(iv) of ERISA and section 430(h)(2)(C)(iv) of the Code and without regard to the at-risk plan provisions in section 303(i) of ERISA and section 430(i) of the Code.

(ii) The value of plan assets used to calculate the 4010 funding shortfall is determined without regard to the reduction under section 303(f)(4)(B) of ERISA and section 430(f)(4)(B) of the Code (dealing with reduction of assets by the amount of prefunding and funding standard carryover balances).

* * * * *

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

■ 13. The authority citation for part 4041 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

■ 14. Revise § 4041.29 to read as follows:

§ 4041.29 Post-distribution certification.

(a) *Filing requirement.* The plan administrator must either—

(1) Within 30 days after the last distribution date for any affected party, file with PBGC a post-distribution certification (PBGC Form 501), completed in accordance with the instructions thereto; or

(2)(i) Within 30 days after the last distribution date for any affected party, certify to PBGC, in the manner prescribed in the instructions to PBGC Form 501, that the plan assets have been distributed as required, and

(ii) Within 60 days after the last distribution date for any affected party, file a post-distribution certification (PBGC Form 501), completed in accordance with the instructions thereto.

(b) *Assessment of penalties.* PBGC will assess a penalty for a late filing under paragraph (a) of this section only if the required information is filed more than 90 days after the distribution deadline (including extensions) under § 4041.28(a).

■ 15. Amend § 4041.30 by revising paragraph (d)(2) to read as follows:

§ 4041.30 Requests for deadline extensions.

* * * * *

(d) * * *

(2) *Post-distribution deadlines.* Extend a filing deadline under § 4041.29(a).

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

■ 16. The authority citation for part 4043 continues to read as follows:

Authority: 29 U.S.C. 1083(k), 1302(b)(3), 1343.

§ 4043.2 [Amended]

■ 17. Amend § 4043.2 by removing ''and'' and adding in its place '', ultimate parent, and U.S. entity'' in the introductory text, and removing the definition ''U.S. entity''.

§ 4043.3 [Amended]

■ 18. Amend § 4043.3 in paragraph (c) by removing ''Web site'' and adding in its place ''website''.

§ 4043.9 [Amended]

■ 19. Amend § 4043.9 in paragraph (e)(2)(i) by adding ''third-party'' after ''available''.

■ 20. Revise § 4043.23 to read as follows:

§ 4043.23 Active participant reduction.

(a) *Reportable event.* A reportable event occurs for a plan:

(1) *Single-cause event.* (i) On each date in a plan year when, as a result of a new single cause, the ratio of the aggregate number of individuals who ceased to be active participants because of that single-cause, to the number of active participants at the beginning of such plan year, exceeds 20 percent.

(ii) Examples of single-cause events include a reorganization or restructuring, the discontinuance of an operation or business, a natural disaster, a mass layoff, or an early retirement incentive program.

(2) *Attrition event.* At the end of a plan year if the sum of the number of active participants covered by the plan at the end of such plan year, plus the number of individuals who ceased to be active participants during the same plan year that are reported to PBGC under paragraph (a)(1) of this section, is less than 80 percent of the number of active participants at the beginning of such plan year.

(b) *Determination rules*—(1) *Determination dates.* The number of active participants at the beginning of a plan year may be determined by using the number of active participants at the end of the previous plan year, and the number of active participants at the end of a plan year may be determined by using the number of active participants at the beginning of the next plan year.

(2) *Active participant.* ''Active participant'' for purposes of this section means a participant who—

(i) Is receiving compensation from any member of the plan's controlled group for work performed for any member of the plan's controlled group;

(ii) Is on paid or unpaid leave granted for a reason other than a layoff;

(iii) Is laid off from work for a period of time that has lasted less than 30 days; or

(iv) Is absent from work due to a recurring reduction in employment that occurs at least annually.

(3) *Employment relationship.* For purposes of determining whether a participant is an active participant, a participant does not cease to be active if the participant leaves employment with one member of a plan's controlled group to become employed by another controlled group member.

(c) *Reductions due to cessations and withdrawals.* For purposes of paragraph (a) of this section, a reduction in the number of active participants is to be disregarded to the extent that it—

(1) Is attributable to an event described in sections 4062(e) or 4063(a) of ERISA, and

(2) Is timely reported to PBGC under section 4062(e) and/or section 4063(a) of ERISA before the due date of the notice required by paragraph (a) of this section.

(d) *Waivers*—(1) *Small plan.* Notice under this section is waived if the plan had 100 or fewer participants for whom flat-rate premiums were payable for the plan year preceding the event year.

(2) *Low-default-risk.* Notice under this section is waived if each contributing sponsor of the plan and the highest level U.S. parent of each contributing sponsor are low-default-risk on the date of the event.

(3) *Well-funded plan.* Notice under this section is waived if the plan is in the well-funded plan safe harbor for the event year.

(4) *Public company.* Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8–K disclosing the event under an item of the Form 8–K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

(5) *Statutory events.* Notice is waived for an active participant reduction event described in section 4043(c)(3) of ERISA except to the extent required under this section.

(e) *Extension—attrition event.* For an event described in paragraph (a)(2) of this section, the notice date is extended until the premium due date for the plan year following the event year.

(f) *Examples*—(1) *Determining whether a single-cause event occurred (Example 1).* A calendar-year plan had 1,000 active participants at the beginning of the current plan year. As the result of a business unit being shut down, 160 participants are permanently laid off on July 30. Before July 30, and as part of the course of regular business operations, some active participants terminated employment, some retired and some new hires became covered by the plan. Because reductions due to attrition are disregarded for purposes of determining whether a single-cause event has occurred, it is not necessary for the sponsor to tabulate an exact active participant count as of July 30. Rather, the relevant percentage for determining whether a single-cause event occurred is determined by dividing the number of active participants laid-off as a result of the business unit shut down to the beginning of year active participant count. Because that ratio is less than 20 percent (*i.e.,* 160/1,000 = .16, or 16 percent), a single-cause event under paragraph (a)(1) of this section did not occur on July 30. However, if, as a result of the business unit shutdown, additional layoffs occur later in the same year, a single-cause event may

subsequently be triggered (See Example 3 in paragraph (f)(3) of this section).

(2) *Determining whether an attrition event occurred in year when a single-cause event occurred (Example 2).*—(i) Assume the same facts as in Example 1 in paragraph (f)(1) of this section except that the number of active participants laid off on July 30 was 230 and thus, a single-cause event occurred. Further, assume that the event was timely reported to PBGC (*i.e.,* on or before August 30). Lastly, assume the active participant count as of year-end is 600.

(ii) To prevent duplicative reporting (*i.e.,* to ensure that the participants who triggered a single-cause reporting requirement do not also trigger an attrition event), the 230 participants who triggered that single-cause reporting requirement are not taken into account for purposes of determining whether an attrition event occurred. This is accomplished by increasing the year-end count by 230. Therefore, the applicable percentage for the attrition determination is 83 percent (*i.e.,* (600 + 230)/1,000 = .83). Because 83 percent is greater than 80 percent, an attrition event has not occurred.

(3) *Single-cause event spread out over multiple dates (Example 3).* (i) Assume the same facts as in Example 1 in paragraph (f)(1) of this section except that the layoffs resulting from the business unit shut down are spread out over several months. Table 1 to paragraph (f)(3) summarizes the applicable calculations:

TABLE 1 TO PARAGRAPH (f)(3)

Single-cause event spread out over multiple dates			
Date	Number laid-off	Aggregate reduction	Applicable percentage
February 1	50	50	50/1,000 = 5 percent.
May 15	50	100	100/1,000 = 10 percent.
September 1	110	210	210/1,000 = 21 percent.
November 1	40	250	250/1,000 = 25 percent.

(ii) A single-cause event occurs on September 1 because that is the first time the applicable percentage exceeds 20 percent. This event must be reported by October 1. The November 1 layoff does not trigger a subsequent single-cause event because the layoff is part of the same single-cause event already timely reported to PBGC. However, they will be considered in the determination of whether an attrition event occurs at year-end as explained in paragraph (f)(3)(iii) of this section.

(iii) As illustrated in Example 2 in paragraph (f)(2) of this section, for purposes of determining whether an attrition event has occurred, the year-end count is increased by the number of participants that triggered a single-cause event. In this case, that number is 210. The fact that an additional 40 active participants were laid off as a result of the business unit shut down after the single-cause event occurred does not affect the calculation because it was not already reported to PBGC. For example, if the year-end active participant count is 560, the number that gets compared to the beginning-of-year active participant count is 770 (*i.e.,* 560 + 210 = 770). Because 770 is less than 80 percent of 1,000, an attrition event has occurred and must be reported.

(4) *Multiple single-cause events in same plan year (Example 4).* Assume the same facts as in Example 1 in paragraph (f)(1) of this section except that the July 30 shutdown of the business unit resulted in 205 layoffs on that date. A single-cause event occurred and is timely reported. Later in the same plan year, the company announces an early retirement incentive program and 210 employees participate in the program with the last employees participating in the program retiring on November 15 of the plan year. A new single-cause event has occurred as of November 15 resulting in a reporting obligation of the active participant reduction due to the retirement incentive program (210/1000 = 21 percent).

■ 21. Amend § 4043.26 by revising paragraph (a)(1) to read as follows:

§ 4043.26 Inability to pay benefits when due.

(a) * * *

(1) *Current inability.* A plan is currently unable to pay benefits if it fails to provide any participant or beneficiary the full benefits to which the person is entitled under the terms of the plan, at the time the benefit is due and in the form in which it is due. A plan is not treated as being currently unable to pay benefits if its failure to pay is caused solely by—

(i) A limitation under section 436 of the Code and section 206(g) of ERISA (dealing with funding-based limits on benefits and benefit accruals under single-employer plans),

(ii) The need to verify a person's eligibility for benefits,

(iii) The inability to locate a person, or

(iv) Any other administrative delay, to the extent that the delay is for less than the shorter of two months or two full benefit payment periods.

* * * * *

■ 22. Amend § 4043.27 by revising paragraph (d)(3) to read as follows:

§ 4043.27 Distribution to a substantial owner.

* * * * *

(d) * * *

(3) *Public company.* Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8–K disclosing the event under an item of the Form 8–K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

■ 23. Amend § 4043.29 by revising the section heading and paragraphs (a), (b)(6), and (c) to read as follows:

§ 4043.29 Change in controlled group.

(a) *Reportable event.* (1) A reportable event occurs for a plan when there is a transaction that results, or will result, in one or more persons' (including any person who is or was a contributing sponsor) ceasing to be a member of the plan's controlled group (other than by merger involving members of the same controlled group).

(2) For purposes of this section, the term ''transaction'' includes, but is not limited to, a legally binding agreement, whether or not written, to transfer ownership, an actual transfer of ownership, and an actual change in ownership that occurs as a matter of law or through the exercise or lapse of pre-existing rights. Whether an agreement is legally binding is to be determined without regard to any conditions in the agreement. A transaction is not

reportable if it will result solely in a reorganization involving a mere change in identity, form, or place of organization, however effected.

(b) * * *

(6) *Public company.* Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8–K disclosing the event under an item of the Form 8–K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

(c) *Examples.* The following examples assume that no waiver applies.

(1) *Controlled group breakup.* Company A (the contributing sponsor of Plan A), and Company B (the contributing sponsor of Plan B) are in the same controlled group with Parent Company AB. On March 31, Parent Company AB and Company C enter into an agreement to sell the stock of Company B to Company C, a company outside of the controlled group. The transaction will close on August 31 and Company B will continue to maintain Plan B. Both Company A (Plan A's contributing sponsor) and the plan administrator of Plan A are required to report that Company B will leave Plan A's controlled group. Company B (Plan B's contributing sponsor) and the plan administrator of Plan B are required to report that Company A and Parent Company AB are no longer part of Plan B's controlled group. Both reports are due on April 30, 30 days after they entered into the agreement to sell Company B.

(2) *Change in contributing sponsor.* Plan Q is maintained by Company Q. Company Q enters into a binding contract to sell a portion of its assets and to transfer employees participating in Plan Q, along with Plan Q, to Company R, which is not a member of Company Q's controlled group. There will be no change in the structure of Company Q's controlled group. On the effective date of the sale, Company R will become the contributing sponsor of Plan Q. A reportable event occurs on the date of the transaction (*i.e.,* the date the binding contract was executed), because as a result of the transaction, Company Q (and any other member of its controlled group) will cease to be a member of Plan Q's controlled group. If on the notice due date the change in the contributing sponsor has not yet become effective, Company Q has the reporting obligation. If the change in the contributing sponsor has become effective by the notice due date, Company R has the reporting obligation.

(3) *Dissolution of controlled group member.* Company A (which maintains Plan A) and Company B are in the same controlled group with Parent Company AB. Pursuant to an asset sale agreement, Company B sells its assets to a company outside of the controlled group. After the sale, Company B will be dissolved and no longer operating. Since Company B will no longer be a member of Plan A's controlled group, a reportable event occurs on the date Company B enters into the asset sale agreement. Note that this event may also be required to be reported as a liquidation event under 29 CFR 4043.30.

(4) *Merger of controlled group members.* Company A (which maintains Plan A) and Company B are in the same controlled group with Parent Company AB. Parent Company AB decides to merge the operations of Company B into Company A. Although Company B will no longer be a member of Plan A's controlled group, no report is due given Company B is merging with Company A.

■ 24. Revise § 4043.30 to read as follows:

§ 4043.30 Liquidation.

(a) *Reportable event.* A reportable event occurs for a plan when a member of the plan's controlled group—

(1) Resolves to cease all revenue-generating business operations, sell substantially all its assets, or otherwise effect or implement its complete liquidation (including liquidation into another controlled group member) by decision of the member's board of directors (or equivalent body such as the managing partners or owners) or other actor with the power to authorize such cessation of operations, sale, or a liquidation, unless the event would be reported under paragraph (a)(2) or (3) of this section;

(2) Institutes or has instituted against it a proceeding to be dissolved or is dissolved, whichever occurs first; or

(3) Liquidates in a case under the Bankruptcy Code, or under any similar law.

(b) *Waivers*—(1) *De minimis 10-percent segment.* Notice under this section is waived if the person or persons that liquidate under paragraph (a) of this section do not include any contributing sponsor of the plan and represent a de minimis 10-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity.* Notice under this section is waived if each person that liquidates under paragraph (a) of this section is a foreign entity other than a foreign parent.

(3) *Reporting under insolvency event.* Notice under this section is waived if reporting is also required under § 4043.35(a)(3) or (4) and notice has been provided timely to PBGC for the same event under that section.

(c) *Public company extension.* If any contributing sponsor of the plan, or the parent company within a parent-subsidiary controlled group of such contributing sponsor, is a public company, the due date for notice under this section is extended until the earlier of—

(1) The date the contributing sponsor or parent company timely files a SEC Form 8–K disclosing the event under an item of the Form 8–K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits); or

(2) The date when a press release with respect to the liquidation described under paragraph (a) of this section is issued in the U.S. in the English language.

(d) *Examples*—(1) *Liquidation within a controlled group.* Plan A's controlled group consists of Company A (its contributing sponsor), Company B, Company Q (the parent of Company A and Company B). Company B represents the most significant portion of cash flow for the controlled group. Company B experiences an unforeseen event that negatively impacts operations and results in an increase in debt. The controlled group liquidates Company B by ceasing all operations, settling its debts, and merging any remaining assets into Company Q. (For purposes of this example, it does not matter under which of paragraphs (a)(1) through (3) of this section reporting is triggered). The transaction is to be treated as a tax-free liquidation for tax purposes. Both Company A (Plan A's contributing sponsor) and the plan administrator of Plan A are required to report that Company B will liquidate within the controlled group.

(2) *Cessation of operations.* Plan A is sponsored by Company A. The owners of Company A decide to cease all revenue-generating operations. Certain administrative employees will wind down the business and continue to be employed until the wind down is complete, which could take several months. Company A is required to report a liquidation reportable event 30 days after the decision is made to cease all revenue-generating operations.

(3) *Sale of assets.* Plan A is sponsored by Company A. In a meeting of the

Board of Directors of Company A, the Board resolves to sell all the assets of Company A to Company B. Under the asset sale agreement with Company B, Company B will not assume Plan A; Company A expects to undertake a standard termination of Plan A. Company A is required to report a liquidation event 30 days after the Board resolved to sell the assets of Company A.

■ 25. Amend § 4043.31 by revising paragraph (c)(6) to read as follows:

§ 4043.31 Extraordinary dividend or stock redemption.

* * * * *

(c) * * *

(6) *Public company.* Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8–K disclosing the event under an item of the Form 8–K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

■ 26. Amend § 4043.32 by revising paragraph (c)(4) to read as follows:

§ 4043.32 Transfer of benefit liabilities.

* * * * *

(c) * * *

(4) *Public company.* Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8–K disclosing the event under an item of the Form 8–K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

■ 27. Amend § 4043.35 by adding paragraph (b)(3) to read as follows:

§ 4043.35 Insolvency or similar settlement.

* * * * *

(b) * * *

(3) *Liquidation event.* Notice under paragraph (a)(3) or (4) of this section is waived if reporting is also required under § 4043.30 and notice has been provided timely to PBGC for the same event under that section.

§ 4043.81 [Amended]

■ 28. Amend § 4043.81 by removing paragraph (c).

PART 4233—PARTITIONS OF ELIGIBLE MULTIEMPLOYER PLANS

■ 29. The authority citation for part 4233 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1413.

Appendix A to Part 4233—[Amended]

■ 30. Amend the two model notices in appendix A by removing the phone number ''(202) 326–4000 x6535'' under PBGC Contact Information after ''Phone:'' and adding in its place ''(202) 229–6047'', and by removing the phone number ''(202) 326–4488'' under PBGC Participant and Plan Sponsor Advocate Contact Information after ''Phone:'' and adding in its place ''(202) 229–4448''.

Issued in Washington, DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2020–01628 Filed 2–3–20; 8:45 am]

BILLING CODE 7709–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2010–0682; FRL 10004–55–OAR]

RIN 2016–AT18

National Emission Standards for Hazardous Air Pollutants: Petroleum Refinery Sector

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action sets forth the U.S. Environmental Protection Agency's (EPA's) decision on aspects of the Agency's proposed reconsideration of the December 1, 2015, final rule: Petroleum Refinery Sector Residual Risk and Technology Review (RTR) and New Source Performance Standards (NSPS). This action also finalizes proposed amendments to clarify a compliance issue raised by stakeholders subject to the rule, to correct referencing errors, and to correct publication errors associated with amendments to the final rule which were published on November 26, 2018.

DATES: This final action is effective on February 4, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0682. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed in the index, some information is not publicly available, (*e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet, and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov/,* or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, please contact Ms. Brenda Shine, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3608; fax number: (919) 541–0516; email address: *shine.brenda@epa.gov.* For information about the applicability of the national emission standards for hazardous air pollutants (NESHAP) to a particular entity, contact Ms. Maria Malave, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; and email address: *malave.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: *Acronyms and abbreviations.* A number of acronyms and abbreviations are used in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined:

AEGL acute exposure guideline level
CAA Clean Air Act
CFR Code of Federal Regulations
DCU delayed coking unit
EPA Environmental Protection Agency
ERPG emergency response planning guideline
FCCU fluid catalytic cracking unit
HAP hazardous air pollutants
ICR information collection request
lb/day pounds per day
LEL lower explosive limit
MACT maximum achievable control technology
MIR maximum individual risk
MPV miscellaneous process vent
NESHAP national emissions standards for hazardous air pollutants
NSPS new source performance standards

NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OECA Office of Enforcement and Compliance Assurance
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PRA Paperwork Reduction Act
PRD pressure relief device
psig pounds per square inch gauge
PSM Process Safety Management
PTE potential to emit
RCA/CAA root cause analysis and corrective action analysis
REL reference exposure level
RFA Regulatory Flexibility Act
RMP Risk Management Plan
RTR residual risk and technology review
SRU sulfur recovery unit
$\mu g/m^3$ micrograms per cubic meter
UMRA Unfunded Mandates Reform Act
VOC volatile organic compounds
°F degrees Fahrenheit

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

I. General Information

A. What is the source of authority for the reconsideration action?

The statutory authority for this action is provided by sections 112, 301, and 307(d)(7)(B) of the Clean Air Act (CAA) (42 U.S.C. 7412, 7601, and 7607(d)(7)(B)).

B. Does this action apply to me?

Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS [1] code
Petroleum Refining Industry	324110

[1] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source categories listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of these NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

C. Where can I get a copy of this document and other related information?

The docket number for this final action regarding the sector rules for the Petroleum Refinery source category is Docket ID No. EPA–HQ–OAR–2010–0682.

In addition to being available in the docket, an electronic copy of this document will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at *https://www.epa.gov/stationary-sources-air-pollution/petroleum-refinery-sector-risk-and-technology-review-and-new-source.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents on this same website.

D. Judicial Review and Administrative Reconsideration

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by April 6, 2020. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

This section also provides a mechanism for the EPA to reconsider the rule ''[i]f the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC West Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background Information

The EPA promulgated NESHAP pursuant to CAA sections 112(d)(2) and (3) for petroleum refineries located at major sources in three separate rules. These standards are also referred to as maximum achievable control technology (MACT) standards. The first rule, promulgated on August 18, 1995, and codified at 40 CFR part 63, subpart CC (also referred to as Refinery MACT 1), regulates miscellaneous process vents, storage vessels, wastewater, equipment leaks, gasoline loading racks, marine tank vessel loading, and heat

exchange systems. The second rule, promulgated on April 11, 2002, and codified at 40 CFR part 63, subpart UUU (also referred to as Refinery MACT 2), regulates process vents on catalytic cracking units (CCUs, including fluid catalytic cracking units (FCCUs)), catalytic reforming units, and sulfur recovery units (SRUs). The third rule, promulgated on October 28, 2009, amended Refinery MACT 1 to include MACT standards for heat exchange systems, which were not originally addressed in Refinery MACT 1. This same rulemaking included updating cross-references to the General Provisions in 40 CFR part 63.

The EPA conducted a residual risk and technology review (RTR) of Refinery MACT 1 and 2, publishing proposed amendments on June 30, 2014 (June 2014 proposal). These proposed amendments included technical corrections and clarifications raised in a 2008 industry petition for reconsideration of NSPS for Petroleum Refineries (40 CFR part 60, subpart Ja). After soliciting, receiving, and addressing public comments, the EPA published final amendments on December 1, 2015. The December 2015 final rule (December 2015 rule) included a determination pursuant to CAA section 112(f) that the remaining risk after promulgation of the revised NESHAP is acceptable and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. The December 2015 rule also finalized changes to Refinery MACT 1 and 2 pursuant to CAA section 112(d)(2) and (3), notably revising the requirements for flares and pressure relief devices (PRDs), removing startup, shutdown, and malfunction exemptions, and adding requirements for delayed cokers. Additional amendments were also promulgated pursuant to CAA section 112(d)(6) to require a fenceline monitoring work practice standard as an advancement in the way fugitive emissions are managed and mitigated. The December 2015 rule also finalized technical corrections and clarifications to Refinery NSPS subparts J and Ja to address issues raised by the American Petroleum Institute (API) in their 2008 petition for reconsideration of the final NSPS Ja rule that had not been previously addressed. These included corrections and clarifications to provisions for sulfur recovery plants, performance testing, and control device operating parameters.

The EPA received three separate administrative petitions for reconsideration of the December 2015 rule. Two petitions were jointly filed by the API and American Fuel and Petrochemical Manufacturers (AFPM). The first of these petitions was filed on January 19, 2016, and requested that the EPA reconsider the maintenance vent provisions in Refinery MACT 1 for sources constructed on or before June 30, 2014; the alternate startup, shutdown, or hot standby standards for FCCUs constructed on or before June 30, 2014, in Refinery MACT 2; the alternate startup and shutdown for SRUs constructed on or before June 30, 2014, in Refinery MACT 2; and the new CRUs purging limitations in Refinery MACT 2. The request pertained to providing and/or clarifying the compliance time for these sources. Based on this request and additional information received, the EPA issued a proposal on February 9, 2016 (81 FR 6814), and a final rule on July 13, 2016 (81 FR 45232), fully responding to the January 19, 2016, petition for reconsideration.

The second petition from API and AFPM was filed on February 1, 2016, and outlined a number of specific issues related to the work practice standards for PRDs and flares, and the alternative water overflow provisions for delayed coking units (DCUs), as well as a number of other specific issues on other aspects of the rule. The third petition was filed on February 1, 2016, by Earthjustice on behalf of Air Alliance Houston, California Communities Against Toxics, the Clean Air Council, the Coalition for a Safe Environment, the Community In-Power & Development Association, the Del Amo Action Committee, the Environmental Integrity Project, the Louisiana Bucket Brigade, the Sierra Club, the Texas Environmental Justice Advocacy Services, and Utah Physicians for a Healthy Environment. The Earthjustice petition claimed that several aspects of the revisions to Refinery MACT 1 were not proposed, and, thus the public was precluded from commenting on them during the public comment period, including: (1) Work practice standards for PRDs and flares; (2) alternative water overflow provisions for DCUs; (3) reduced monitoring provisions for fenceline monitoring; and (4) adjustments to the risk assessment to account for these new work practice standards. On June 16, 2016, the EPA sent letters to petitioners granting reconsideration on issues where petitioners claimed they had not been provided an opportunity to comment. These petitions and letters granting reconsideration are available for review in the rulemaking docket (see Docket ID Item Nos. EPA–HQ–OAR–2010–0682–0860, EPA–HQ–OAR–2010–0682–0891, and EPA–HQ–OAR–2010–0682–0892).

On October 18, 2016 (81 FR 71661), the EPA proposed for public comment the issues for which reconsideration was granted in the June 16, 2016, letters. The EPA solicited public comment on five issues in the proposal: (1) The work practice standards for PRDs; (2) the work practice standards for emergency flaring events; (3) the assessment of risk as modified based on implementation of these PRD and emergency flaring work practice standards; (4) the alternative work practice standards for DCUs employing the water overflow design; and (5) the provision allowing refineries to reduce the frequency of fenceline monitoring at sampling locations that consistently record benzene concentrations below 0.9 micrograms per cubic meter ($\mu g/m^3$). In that notice, the EPA also proposed two minor clarifying amendments to correct a cross referencing error and to clarify that facilities complying with overlapping equipment leak provisions must still comply with the PRD work practice standards in the December 2015 rule. We received public comments from 17 parties. Copies of all comments submitted are available at the EPA Docket Center Public Reading Room. Comments are also available electronically through *https://www.regulations.gov/* by searching Docket ID No. EPA–HQ–OAR–2010–0682.

In section III of this preamble, the EPA sets forth its final decisions on each of the five reconsideration items included in the October 18, 2016 (81 FR 71661), proposed notice of reconsideration (October 2016 proposed notice of reconsideration). Additionally, section III of this preamble summarizes the history of each of the five reconsideration items as well as the two proposed clarifying amendments included in the proposed notice of reconsideration, summarizes the public comments received on the proposed notice of reconsideration, and presents the EPA's responses to these comments.

As described in section III.D of this preamble, specific to reconsideration item (4), the alternative work practice standards for DCUs employing the water overflow design, the EPA proposed and finalized amendments to the DCU water overflow provisions to address comments on the October 2016 proposed notice of reconsideration. On April 10, 2018 (April 2018 proposal) (83 FR 15458), the EPA proposed a number of technical amendments to Refinery MACT 1 and 2 and the Refinery NSPS, which included a proposed requirement to use a vapor disengaging device for

DCUs using the water overflow provisions. On November 26, 2018, (November 2018 rule) (83 FR 60696), the EPA finalized the technical amendments from the April 2018 proposal, including requirements for DCUs using the water overflow provisions, after considering public comments received on the April 2018 proposal.

III. Final Action

A. Issue 1: Work Practice Standard for PRDs

1. What is the history of work practice standards for PRDs?

In the June 2014 proposal, the EPA proposed to revise Refinery MACT 1 to establish operating and pressure release requirements that apply to all PRDs and to prohibit atmospheric releases of hazardous air pollutants (HAP) from PRDs. To ensure compliance, we proposed to require that sources monitor PRDs using a system that is capable of recording the time and duration of each pressure release and notifying operators that a pressure release has occurred. Many commenters suggested that a prohibition on atmospheric PRD releases did not reflect the manner in which the best performing facilities operate, was unachievable and/or very costly, and would have negative environmental impacts due to additional flares that would need to be installed and operated in standby mode to accept the PRD releases. Some commenters suggested that we should instead consider as MACT the rules on PRDs that apply to refineries in the South Coast Air Quality Management District (SCAQMD) and the Bay Area Air Quality Management District (BAAQMD).

The two California district rules are similar in that they both establish comprehensive regulatory programs to address the group or system of PRDs at refineries by requiring monitoring, root cause analysis, and corrective action, and by applying only to those PRD with the greatest emissions potential through a combination of applicability thresholds. Based on these comments, pursuant to CAA section 112(d)(2) and (3), we identified the SCAQMD rule as representing the requirements applicable to the best performers for PRDs. Consistent with the requirements of the SCAQMD rule and considering additional measures included in the BAAQMD rule, we established work practice standards for PRDs in the December 2015 rule (see 40 CFR 63.648(j)(3)) for new and existing sources. The work practice standard is a comprehensive set of requirements that apply to PRDs at refineries and focuses on reducing the size and frequency of atmospheric releases of HAP from PRDs, with an emphasis on prevention, monitoring, correction, and limitations on the frequency of release events. For further details on our analysis of the SCAQMD and BAAQMD rules and our use of those rules to establish a work practice standard for PRDs that is representative of the requirements that apply at best performing refineries, refer to the December 1, 2015, document at 80 FR 75216–18 and the memorandum in the docket titled ''Pressure Relief Device Control Option Impacts for Final Refinery Sector Rule,'' July 30, 2015 (Docket ID Item No. EPA–HQ–OAR–2010–0682–0750).

The work practice standard included in the December 2015 rule is comprised of four parts. The first component of the work practice standard requires that owners or operators monitor PRDs using a system that is capable of recording the time and duration of each pressure release and notifying operators that a pressure release has occurred. Second, the work practice standard requires refinery owners or operators to establish preventative measures for each affected PRD to minimize the likelihood of a direct release of HAP to the atmosphere as a result of pressure release events. Third, in the event of an atmospheric release, the work practice standard requires refinery owners or operators to conduct a root cause analysis to determine the cause of a PRD release event. If the root cause was due to operator error or negligence, then the release would be a violation of the work practice standard. A second release due to the same root cause for the same equipment in a 3-year period would be a violation of the work practice standard. A third release in a 3-year period would be a violation of the work practice standard, regardless of the root cause—although *force majeure* events, as defined in the December 2015 rule, would not count in determining whether there has been a second or third event. The fourth component of the work practice standard is a requirement for corrective action. For any event other than a *force majeure* event, the owner or operator would be required to conduct a corrective action analysis and implement corrective action. Refiners have 45 days to complete the root cause analysis and implement corrective action after the release event. The results of the root cause analysis and identification of the corrective action are required to be included in the periodic reports which are due on a semi-annual basis.

Consistent with the District rules, the work practice standard does not apply to the following PRDs that have very low potential to emit (PTE) based on their type of service, size, and pressure (40 CFR 63.648(j)(5)): PRDs that only release material that is liquid at standard temperature and pressure and that is hard-piped to a controlled drain system, PRDs that do not have a PTE of 72 pounds per day (lbs/day) or more of volatile organic compounds (VOC), PRDs with design release pressure of less than 2.5 pounds per square inch gauge (psig), PRDs on mobile equipment, PRDs in heavy liquid service, and PRDs that are designed solely to release due to liquid thermal expansion. These PRDs are subject to the operating and pressure release requirements in 40 CFR 63.648(j)(1) and (2), which apply to all PRDs, but not the pressure release management requirements in 40 CFR 63.648(j)(3).

We requested public comment on the work practice standard for PRDs as provided in 40 CFR 63.648(j)(3) and (5) through (7), including the number and type of release/event allowances; the type of PRDs subject to the work practice standard; and the definition of ''*force majeure* event'' in 40 CFR 63.641. We also requested public comment on the recordkeeping and reporting requirements associated with the work practice standard in 40 CFR 63.655(g)(10)(iii) and (i)(11).

The following is a summary of the comments received in response to our October 2016 proposed notice of reconsideration and our responses to these comments.

2. What comments were received on the work practice standards for PRDs?

Comment A.1: Some commenters were generally supportive of the final work practice standards for PRDs while other commenters disagreed with numerous aspects of the final work practice standards. The commenters who did not support the work practice standards claimed that they are unlawful because they do not provide for standards that are continuous and that apply at all times, pursuant to section 112 of the CAA as construed by the Court in the 2008 vacatur of the malfunction exemptions in the MACT General Provisions. *Sierra Club* v. *EPA,* 551 F.3d 1019, 1027–28 (D.C. Cir. 2008). (''Congress has required that there must be continuous section 112-compliant standards.''). The commenter also noted that Congress in H.R. Rep. No. 95–294, at 92 (1977), reprinted in 1977 U.S.C.C.A.N. 1077, 1170 also provided

that the term ''continuous'' emission standard requirement does not allow merely ''temporary, periodic, or limited systems of control.'' The commenters believe that because the work practice standards do not limit emissions to an amount certain during a PRD release event, there is effectively no emission limitation that applies during these times. Additionally, commenters do not believe that the work practice standards are justified under CAA section 112(h) because they believe the EPA erred in determining that the application of measurement methodology was not feasible in the case of PRDs and cited available wireless technology or monitoring of PRD releases.

Response A.1: We disagree that the standards do not apply at all times. The work practice standards for PRDs require a number of preventative measures that operators must undertake to prevent PRD release events, and the installation and operation of continuous monitoring device(s) to identify when a PRD release has occurred. These measures must be complied with at all times. The monitoring technology suggested by the commenters is in fact best suited to this application and is one of the acceptable methods that facility owners or operators may use to comply with the continuous monitoring requirement. Although that technology is adequate for identifying PRD releases, we disagree that it is adequate for accurately measuring emissions for purposes of determining compliance with a numeric emission standard. The technology cited is a wireless monitor that provides an indication that the PRD released, but it does not provide information on release quantity or composition. PRD release events are characterized by short, high pressure non-steady state conditions which make such releases difficult to quantitatively measure. As detailed in the preamble to the December 2015 rule (80 FR 75218), we specifically considered the issues related to constructing a conveyance and quantitatively measuring PRD releases and concluded that these measures were not practicable. Refinery operators can estimate emissions based on vessel operating conditions (temperature and pressure) and vessel contents when a release occurs, but these estimates do not constitute a measurement of emissions or emission rate within the meaning of CAA section 112(h). As such, we maintain our position that the application of a work practice standard is appropriate for PRDs.

Comment A.2: Commenters indicated that another reason they believe that the PRD work practice standard is illegal is that PRDs are not independent emission points and instead function in venting emissions from other emission points during a malfunction. For example, commenters pointed out that some equipment that vents to the atmosphere and, therefore, must meet the miscellaneous process vent standard, may also contain PRDs that vent HAP emissions to the atmosphere, bypassing the requirements established for miscellaneous process vents. The commenters believe that the EPA has simply created an exemption allowing equipment connected to PRDs to violate their emission standards without triggering a violation or potential enforcement and penalty liability. Finally, the commenters indicated that the EPA should retain the work practice standards for PRD on top of the existing emission standards for connected equipment to assure compliance and attempt to prevent fugitive emissions.

Response A.2: The commenters incorrectly suggest that the PRD work practice standard replaces the existing emission standards for ''connected equipment.'' The amendments to the NESHAP addressing PRDs do not affect requirements in the NESHAP that apply to equipment associated with the PRD. For example, compliance with the PRD requirements apply in addition to requirements for miscellaneous process vents for the same equipment, which addresses the commenter's suggestion.

We disagree that PRDs are simply bypasses for emissions that are subject to emission limits and controls and that they, thus, allow for uncontrolled emissions without violation or penalty. The PRDs are generally safety devices that are used to prevent equipment failures that could pose a danger to the facility and facility workers. The PRD releases are triggered by equipment or process malfunction. As such, they do not occur frequently or routinely and do not have the same emissions or release characteristics that routine emission sources have, even if the PRD and the vent are on the same equipment. This is because conditions during a PRD release (temperature, pressure, and vessel contents) differ from those that occur that result in routine emissions as miscellaneous process vents. In contrast, emissions from miscellaneous process vents are predictable and must be characterized for emission potential and applicable control requirements prior to operation in the facility's notification of compliance status report. In addition, PRDs must operate in a closed position and, as discussed earlier, must be continuously monitored to identify when releases have occurred. If an affected pressure relief device releases to the atmosphere, the owner and operator is required to perform root cause analysis and corrective action analysis (RCA/CAA) as well as implement corrective actions and comply with the specified reporting requirements. The work practice standard also includes criteria for releases from affected PRD which would result in a violation at 40 CFR 63.648(j)(3)(v).

Comment A.3: Commenters indicated that, even if the work practice standards for PRDs are justified, the work practice standards do not comply with the CAA requirements to assure both the average limitation achieved by the relevant best-performing sources and the maximum degree of emission reduction that is achievable. The commenters asserted that there is no discussion in the record or analysis that allowing 1–2 uncontrolled releases every 3 years reflects, at minimum, the average of the best performers' reductions and indicated that the EPA cannot simply replicate rules in place that specify PRD requirements. The commenters indicated that the EPA should have reviewed data, such as the 2007 SCAQMD Staff Report (Docket ID Item No. EPA–HQ–OAR–2010–0869–0024) which shows releases from Los Angeles area refineries ranged from 0.4–0.89 tons of VOC per year, to establish that no source has done better or cannot do better than those rules allow. The commenters also asserted that the EPA's promulgated work practice standards for PRDs are not as stringent as the SCAQMD and BAAQMD requirements that they are modelled after.

Response A.3: Section 112 of the CAA requires MACT for existing sources to be no less stringent than ''the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information). . .'' [(CAA section 112(d)(3)(A)]. ''Emission limitation'' is defined in the CAA as ''. . . a requirement established by the State or Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice, or operational standard promulgated under this chapter'' [CAA section 302(k)]. The EPA specifically considers existing rules from state and local authorities in identifying the ''emission limitations'' for a given source. We then identify the best performers to identify the MACT floor (the no less stringent than level) for that source. The EPA identified the

SCAQMD rule requirements as the MACT floor because it represented the requirements applicable to the best performing sources. The commenters appear to suggest that the EPA should identify an emissions level achieved in practice through implementation of the work practices in the two California rules and that the EPA is obligated to require sources to meet that emissions level. However, this is contrary to the predicate for the EPA establishing work practice standards. Work practice standards are established in place of a numeric limit where it is not feasible to establish such limits. Thus, in a case such as this, where the EPA has determined that it is appropriate to establish work practice standards (because it is infeasible to establish numeric limits), it was reasonable for the EPA to identify the work practice standards that impose the most stringent requirements and, thus, represent what applies to the best performers and then to require those work practice standards as MACT.

We recognize that the final standards for PRDs do not exactly mirror the SCAQMD provisions, but this is because, having established the MACT floor, we consider options for going beyond the MACT floor. As noted in the memorandum in the docket titled ''Pressure Relief Device Control Option Impacts for Final Refinery Sector Rule,'' July 30, 2015 (Docket ID Item No. EPA–HQ–OAR–2010–0682–0750), we looked at the BAAQMD standard as a more stringent work practice standard, and while we did not directly adopt the BAAQMD rule requirements, we did adopt several aspects of that rule. Specifically, we adopted the three prevention measures requirements in the BAAQMD with limited modifications. We also did not include a provision similar to that in the SCAQMD rule that excludes releases less than 500 lbs/day from the requirement to perform a root cause analysis; that provision in the SCAQMD rule does not include any other obligation to reduce the number of these events. Rather than allowing unlimited releases less than 500 lbs/day, we require a root cause analysis for releases of any size. We considered these to be reasonable and cost-effective enhancements to the SCAQMD rule. However, because we count small releases that the SCAQMD rule does not regulate at all, we considered it reasonable to provide a higher number of releases prior to considering the owner or operator to be in violation of the work practice standard. After considering the PRD release event limits in both the SCAQMD and BAAQMD rules, we determined it was reasonable and appropriate to establish PRD requirements consistent with those provisions in the SCAQMD and BAAQMD rules that provide flare work practice standards. Therefore, the final requirements provide that three events from the same PRD in a 3-calendar-year period is a violation of the work practice standard. We also note that a facility cannot simply choose to release pollutants from a PRD; any release that is caused willfully or caused by negligence or operator error is considered a violation. Additionally, a second PRD release event in a 3-calendar-year period for the same root cause is a violation.

With the implementation of the three prevention measures and the elimination of the 500 lbs/day applicability threshold, we specifically evaluated and adopted requirements beyond the MACT floor (*i.e.,* more stringent than the SCAQMD rule) and established requirements that we deemed to be cost effective and that we determined would achieve emission reductions equivalent to or better than the SCAQMD requirements.

The EPA further notes that the reported emissions the commenters claim the EPA should rely on are not actually measured emissions but rather engineering calculations of release quantities. As such, even if it were possible to establish a numeric emissions limit, there would be concerns about relying on the information cited by the commenters. Finally, we note that the commenter's summary of PRD release data from the 2007 SCAQMD Staff Report (Docket ID Item No. EPA–HQ–OAR–2010–0869–0024) suggests that the SCAQMD PRD requirements appear to be effective at reducing PRD emissions compared to states that do not have similar work practice standards.

In summary, the work practice standard we finalized provides a comprehensive program to manage entire populations of PRDs and includes prevention measures, continuous monitoring, root cause analysis, and corrective actions, and addresses the potential for violations for multiple releases over a 3-year period. We followed the requirements of section 112 of the CAA, including CAA section 112(h), in establishing what work practice constituted the MACT floor; we then identified certain additional provisions which were more stringent than the MACT floor requirements that we determined were cost effective, and we finalized the work practice standards, as enhanced by those additional provisions, as MACT.

Comment A.4: Commenters claimed that the EPA's malfunction exemptions are arbitrary and capricious under the CAA because the EPA did not finalize the prohibition on atmospheric releases from PRDs, as included in the June 2014 proposal. The commenters noted that the EPA finalized similar provisions prohibiting PRD releases in MACT standards for Group IV Polymers and Resins, Pesticide Active Ingredient Manufacturing, and Polyether Polyols Production. The commenters further stated that the Court recently upheld this type of prohibition [*Mexichem Specialty Resins, Inc.* v *EPA,* 787 F.3d 544, 560–61 (D.C. Cir. 2015)] and urged the EPA to finalize the standards for PRD as proposed. The commenters also suggested that the EPA's justification for not finalizing a prohibition on atmospheric PRDs was based on environmental disbenefits of having additional flare capacity on standby to control these unpredictable and infrequent events. According to the commenters, flares can be operated with spark ignition systems that would only operate when triggered by a flare event, and, therefore, the commenters suggested that the EPA overestimated the environmental disbenefits.

Response A.4: During the comment period on the June 2014 proposal, comments both from industry and environmental advocacy groups suggested we consider requiring the work practice standards established in regulations adopted by the BAAQMD and SCAQMD rules for PRD releases. In light of those comments and the statutory requirement that the EPA evaluate the best performing facilities in determining the appropriate MACT standard, the Agency considered whether the work practice standards established in the SCAQMD and BAAQMD rules represented what was achieved by the best performers. The BAAQMD and SCAQMD rules are the only rules we are aware of that have been established to address the infrequent and unpredictable nature of PRD releases for petroleum refineries. As noted in the previous response, the EPA established a MACT standard based on the SCAQMD rule and incorporated several of the key elements of the BAAQMD standard into the PRD requirements promulgated for new and existing sources in the December 2015 rule.

After determining a standard based on the best performing sources, we examined whether to establish a more stringent standard (requiring all PRD releases to be routed to a control

device). We rejected such an approach based on the economic impacts. We estimated that requiring control of all atmospheric PRDs would cost approximately 41 million dollars per year (annually) compared to the estimated economic impact of the work practice standards of 3.3 million dollars per year. (Cost is not a consideration in setting the MACT floor, but it is relevant to our determination whether to establish additional requirements more stringent than that floor.) We also estimated that secondary emissions for additional flaring in the event all PRDs were routed to a control device would increase greenhouse gas emissions by 104,000 megagrams of carbon dioxide equivalents per year and increase nitrogen oxide emissions by 85 tons per year (see memorandum in the docket titled ''Pressure Relief Device Control Option Impacts for Final Refinery Sector Rule,'' July 30, 2015, Docket ID Item No. EPA–HQ–OAR–2010–0682–0750).

Regarding the comment that flares could be equipped with spark ignition systems, we note that such systems are not compliant with the long-standing requirements in 40 CFR 60.18 and 63.11 or the new requirements in 40 CFR 63.670 that flares be operated with a pilot present at all times. The EPA has previously rejected the use of spark ignition systems because these systems may not reliably ignite on demand which would result in an atmospheric release of the pollutants routed to the flare.

Comment A.5: Commenters stated that the EPA's malfunction exemption for *force majeure* events in the PRD work practice standard is arbitrary and capricious under CAA section 112 because it creates periods of time when no emissions standard applies. Further, commenters added that *force majeure* is a term defined by contracts law to provide a defense to avoid meeting a party's responsibility under a contract and applies only where a party has specifically negotiated and agreed to its use. As such, commenters claimed that the concept of *force majeure* does not exist or belong in the context of compliance with a non-contractual federal law, such as the CAA. Refineries should not be able to decide when to comply with the CAA requirements.

Commenters stated that it is unlawful and arbitrary to promulgate a definition of *force majeure* that does not codify criteria for determining whether a *force majeure* event or a violation has occurred (*i.e.,* the determination is left to the Administrator). The commenters added that the EPA does not have the authority to decide when such an event has occurred, rather the Court must decide whether a violation warranting a penalty has occurred with the burden of proof resting on the refinery.

Response A.5: The PRD work practice standard requires redundant prevention measures, which are designed to limit the duration and quantity of releases from all atmospheric PRDs regardless of the cause. These requirements apply at all times; thus, the final work practice standards do have requirements that apply to PRDs at all times and they are not contrary to the CAA requirements in CAA section 112. We also note that facilities are also required to initiate a root cause analysis to assess the cause of the release, including releases determined to be caused by a *force majeure* event.

We disagree that because *force majeure* is a term typically used in contract law that it cannot or should not be used in the context of regulations establishing standards under the CAA. We have determined that a *force majeure* provision is part of the MACT floor for regulating PRDs at refineries and, as such, should be included as part of the MACT standard. The definition of *force majeure* event in the December 2015 final rule is based specifically on a clause included in the SCAQMD rule, which served as the basis for the MACT standard. Rather than repeating this clause at each instance, we determined that is was preferential to use and define the term *force majeure* event. We find that the December 2015 final rule's definition of *force majeure* event has adequate specificity to allow determination of whether a PRD release event was caused by a *force majeure* event. The definition specifies events that are beyond the control of the operator, including natural disasters, acts of war or terrorism, external power curtailments (excluding curtailments due to interruptible service agreements), and fire or explosions originating at near or adjoining facilities outside of the refinery owner or operator's control that impact the refinery's ability to operate. The commenters suggest that criteria are needed for determining whether a *force majeure* event has occurred. We disagree; the examples provided in the definition provide sufficient specificity to help guide a decisionmaker in deciding whether to pursue an enforcement action because they believe a violation has occurred that was not caused by a *force majeure* event and for a court or other arbiter to rule on any claim. Regarding the comment that the Court, not the Administrator, should determine when a *force majeure* event has occurred, we note that the regulations do not specify that the Administrator would make a binding determination of whether a *force majeure* event has occurred, and the issue could be argued and resolved by the Court in the context of a citizen suit.

Comment A.6: One commenter supported the work practices for PRD and emergency flaring with the exception of the additional backstop measures in 40 CFR 63.648(j)(3)(iv) and (v) and 40 CFR 63.670(o)(7)(iv), respectively. The commenter explained that these backstops arbitrarily limit the number of release events for PRD and emergency flaring events and are not needed to demonstrate continuous compliance with the work practice standards.

Response A.6: For PRDs, these are the applicable standards that were determined to be MACT and are modeled after the backstop within the SCAQMD rule. With respect to the flare work practice requirements, our goal is to ensure continuous compliance with the emission limits applicable to the gas streams that are discharged to the flare. We determined that optimal HAP destruction occurs under specific conditions, which include limited periods of visible emissions. Therefore, we established these requirements in parallel with the PRD requirements to help limit the size and duration of these emergency flaring events and optimize flare performance. We consider these backstop measures for PRD and emergency flaring to be critical to ensure that the prevention measures implemented are effective, that the root-cause analyses conducted are thorough, and that the corrective action measures implemented are effective.

Comment A.7: Commenters stated the final rule provided criteria for releases that will be considered a violation of the pressure release management work practices in 40 CFR 63.648(j)(v)(B) and (C) based on a ''3 calendar year period,'' but the Agency did not explain how this time period runs nor how it will be assessed or reported to the EPA and to the public. The commenter noted that the EPA stated in the preamble (80 FR 75212) relative to the flare work practice provisions, the violation criteria is based on a ''rolling 3-year period,'' but a rolling 3-year period is not in the regulatory text for either the flare or PRD work practice.

Response A.7: The regulatory text at 40 CFR 63.648(j)(3)(B) and (C) clearly states that the time period is based on a 3-calendar-year period. We consider 2020 to be one calendar year. A 3-calendar-year period in 2020 would include events that occurred in 2018, 2019, and 2020. It is a rolling average to the extent that, in 2021, one would consider events that occurred in 2019,

2020, and 2021. As indicated in 40 CFR 63.655(g)(10)(iii), each pressure release to the atmosphere, including the duration of the release, the estimated quantity of each organic HAP released, and the results of the RCA/CAA completed during the reporting period must be included as part of the reporting obligation.

Comment A.8: Commenters stated that the EPA should add to the reporting requirements for the PRD and flare work practice standards by requiring an initial report to the EPA, state, and local regulators within 1 hour of the start of a release event or within 1 hour of the operator reasonably knowing of its occurrence. They maintained that the initial report should include the process unit the flare or PRD is associated with and initial identification of the cause of the event. The initial report should be followed by a report containing the contents of 40 CFR 63.655(g)(10) and (11) within 30 days after the event and additionally include whether the PRD or flare has had an emissions release or smoking event in the past 3 years, including references or copies of previously submitted reports. Commenters added that this would be consistent with the Agency's attempt to match the SCAQMD requirements for PRDs. Finally, commenters suggested that the EPA should require all malfunction reports be made publicly available online at the same time they are submitted to the EPA.

Response A.8: The SCAQMD rule has notification and reporting requirements for atmospheric PRD releases in excess of the reportable quantity limits in 40 CFR part 117, part 302, and part 355, including releases in excess of 100 pounds of VOC (Rule 1173(i)(3)). The notification must occur within 1 hour of the release or within 1 hour of the time a person should have reasonably known of its occurrence. A written report must be submitted within 30 days of the atmospheric release. These requirements closely mirror those under other EPA programs, such as the Superfund Amendments and Reauthorization Act 313 (SARA 313). We note that refinery owners or operators are already required to report emissions events through various state and federal requirements, including immediate notifications of releases exceeding reportable quantities under SARA 313, and while we acknowledge that these reports would be submitted to a different branch within the EPA, we believe any additional reporting requirements would be redundant, unnecessary, and inefficient. Therefore, we are not revising the recordkeeping and reporting requirements in the December 2015 rule as requested by the commenter.

Comment A.9: Commenters stated that the exemptions for specific types of pressure relief devices are unlawful and arbitrary. Commenters contended that the only justification the EPA has made for providing these PRD exemptions is that the emissions are expected to be small. Commenters asserted that there is no *de minimis* threshold for regulating emission points within a source category and, thus, the EPA's attempt to exempt certain types of PRDs is illegal.

Response A.9: We modeled the applicability of the PRD provisions after the SCAQMD rule, based on a MACT floor analysis and considering the appropriate requirements for these types of PRDs. It is likely that the SCAQMD rule did not apply the PRD-specific requirements to certain PRDs due to their low emissions release potential. As part of our ''beyond the floor'' analysis, we determined that it was not cost effective to include control of these PRDs as part of the work practice standard for PRDs. However, these PRDs are regulated under other provisions of the MACT. We note that, if the PRD is in gas or vapor service, refinery owners and operators are still required to monitor the PRD after the release to verify the device is operating with an instrument reading of less than 500 parts per million. Liquid PRDs are still subject to repair if a leak is found during visual inspection.

3. What is the EPA's final decision on the work practice standards for PRDs?

The PRD work practice standards were developed in accordance with the CAA, establishing a MACT floor based on consideration of the SCAQMD and BAAQMD work practice standards. The sources complying with these requirements are the best performing sources. It was necessary to establish these requirements as work practice standards under CAA section 112(h) because quantitative measurement of flow rates during PRD release events is not practicable due to technological and economic limitations with measuring highly transient flows. The inclusion of *force majeure* event allowances and restrictions of the applicability of the pressure release management requirements to specified types of PRDs are consistent with the MACT floor and are necessary components of the work practice standards. We consider a complete prohibition of atmospheric PRD to be ''beyond the MACT floor'' and we are declining to set a ''beyond the floor'' requirement on the basis of cost and environmental disbenefits. We have not been presented with any comments and/or information received in response to the October 2016 proposed notice of reconsideration relative to the PRD work practice standards which will result in any changes to the December 2015 rule.

B. Issue 2: Work Practice Standard for Emergency Flaring

1. What is the history of work practice standards for emergency flaring?

In the June 2014 proposal, the EPA proposed to amend the operating and monitoring requirements for petroleum refinery flares. As discussed in the proposal at 79 FR 36904, we determined that the requirements for flares in the General Provisions at 40 CFR 63.18 were not adequate to ensure compliance with the Refinery MACT standards. In general, at the time the MACT standards were promulgated, flares used as air pollution control devices were expected to achieve a 98-percent HAP destruction efficiency. However, because flows of waste gases to the flares had diminished based on reductions achieved by the increased use of flare gas recovery systems, there have been times when the waste gas to the flare contained insufficient heat content to adequately combust and, thus, a 98-percent HAP destruction efficiency was not being achieved. In addition, the practice of applying assist media to the flare (particularly steam to prevent smoking of the flare tip) had led to a decrease in the combustion efficiency of flares.

To ensure that a 98-percent HAP destruction efficiency was being met, as contemplated at the time the MACT standard was promulgated, we proposed revisions to Refinery MACT 1 that required flares to operate with a continuously-lit pilot flame at all times when gases are sent to the flare, with no visible emissions except for periods not to exceed 5 minutes during any 2 consecutive hours, and to meet flare tip velocity limits and combustion zone operating limits at all times when gases are flared.

During the comment period on the June 2014 proposal, we received comments that the EPA's concern over insufficient heat content of the waste gas or over-assisting flares is less problematic in attaining a high level of destruction efficiency at the flare in emergency situations, where the flow in the flare exceeds the smokeless capacity of the flare. The commenters suggested that better combustion was assured closer to the incipient smoke point of the flare and that flow velocity limits and limits on visible emissions should not apply during emergency flaring events.

In the December 2015 rule, we determined that it was appropriate to set different standards for when a flare is operating below its smokeless capacity and when it is operating above its smokeless capacity. We finalized the proposed requirements (with minor revisions) to apply when a flare is operating below its smokeless capacity.

In the December 2015 rule, we established a work practice standard that applies to each affected flare with a potential to exceed its smokeless capacity. The work practice standard requires owners or operators to develop flare management plans to identify the flare system smokeless capacity and flare components, waste gas streams that are flared, monitoring systems and their locations, procedures that will be followed to limit discharges to the flare that cause the flare to exceed its smokeless capacity, and prevention measures implemented for PRDs that discharge to the flare header. The work practice standard requires a continuously-lit pilot flame, combustion-zone operating limits, and the monitoring, recordkeeping, and reporting requirements apply at all times—whether the flare is operating below, at, or above its smokeless capacity, including during a *force majeure* event. These requirements are the most critical in ensuring that a 98-percent destruction efficiency is being met during emergency release events.

In addition, where a flare exceeds its smokeless capacity, a work practice standard requires refinery owners or operators to conduct a root cause analysis and take corrective action for any flaring event that exceeds the flare's smokeless capacity and that also exceeds the flare tip velocity and/or visible emissions limit. Refiners have 45 days to complete the root cause analysis and implement corrective action after an event. The results of the root cause analysis and corrective action are due with the periodic reports on a semi-annual basis. If the root cause analysis indicates that the exceedance of the flare tip velocity and/or the visible emissions limit is caused by operator error or poor maintenance, the exceedance is a violation of the work practice standard. A second event causing an exceedance of either the flare tip velocity or the visible emissions limit within a rolling 3-year period from the same root cause on the same equipment is a violation of the standard. A third exceedance of the velocity or visible emissions limit occurring from the same flare in a rolling 3-year period is a violation of the work practice standard, regardless of the root cause. However, *force majeure* events are excluded from the event count.

We requested public comment on the above smokeless capacity work practice standard in 40 CFR 63.670(o), including the requirements to maintain records of prevention measures in 40 CFR 63.670(o)(1)(ii)(B) and (iv); the requirement to establish a single smokeless design capacity in 40 CFR 63.670(o)(1)(iii)(B); the number and type of releases/events that constitute a violation; the phrase ''. . . and the flare vent gas flow rate is less than the smokeless design capacity of the flare'' in 40 CFR 63.670(c) and (d); the proposed correction to paragraph 40 CFR 63.670(o)(1)(ii)(B); and other provisions in 40 CFR 63.670(o)(3) through (7). We also requested public comment on the recordkeeping and reporting requirements associated with these work practice standards in 40 CFR 63.655(g)(11)(iv) and (i)(9)(x) through (xii).

In reviewing the regulatory text for this proposed action, we also determined that 40 CFR 63.670(o)(1)(ii)(B) contains an incorrect reference to pressure relief devices for which preventative measures must be implemented. The correct reference is paragraph 40 CFR 63.648(j)(3)(ii), not 40 CFR 63.648(j)(5). We proposed to correct this referencing error.

2. What comments were received on the work practice standards for emergency flaring?

Comment B.1: Some commenters were generally supportive of the final work practice standards for emergency flares, while other commenters disagreed with numerous aspects of the final work practice standards. The commenters who disagree indicated that establishing these work practice standards for emergency flaring is unlawful because they do not provide for standards that are continuous and that apply at all times, as directed by section 112 of the CAA and as upheld by the Court in the 2008 vacatur of the malfunction exemptions in the MACT General Provisions. *Sierra Club* v. *EPA,* 551 F.3d 1019, 1027–28 (D.C. Cir. 2008) (''Congress has required that there must be continuous section 112-compliant standards.''); see also H.R. Rep. No. 95–294, at 92 (1977), reprinted in 1977 U.S.C.C.A.N. 1077, 1170 (''continuous'' emission standard requirement does not allow merely ''temporary, periodic, or limited systems of control''). The commenters state that because the work practice standards do not limit emissions to any certain amount during an emergency flaring event, there is effectively no emission limitation that applies during these times. Additionally, the commenters do not believe that the work practice standards are justified under CAA section 112(h) for emergency flaring because measurement technology is available to measure what is sent to the flare.

Response B.1: We disagree that the standards do not apply at all times. The work practice combustion efficiency standards (specifically limits on the net heating value in combustion zone) apply at all times, including during periods of emergency flaring. With respect to setting work practice standards under CAA section 112(h), we note that the combustion efficiency standards were established as work practice standards. In the case of flaring, emissions are not conveyed through a stack and are difficult to measure. The EPA's practice has been to establish work practice standards for regulating flares (see, *e.g.,* General Provisions in 40 CFR parts 60 and 63, the combustion efficiency requirements in this rule, and flaring work practice standards in the Petroleum Refinery NSPS, subpart Ja). These work practice standards do take advantage of upstream measurement systems, but we do not agree that upstream measurement systems are the same as measuring emissions from the flare following combustion nor are they, standing alone, a sufficient emissions limitation or standard.

Comment B.2: Commenters stated that, even if the work practice standards for flares operating above the smokeless capacity are justified, the work practice standards do not comply with the CAA requirements that the emissions limitation is as stringent as the average emission limitation achieved by the best-performing sources, and the maximum degree of emission reduction that is achievable. Commenters explained that the EPA provided an allowance for up to two smoking flare events per flare in a 3-year period based on API-supplied information reporting that the average refinery flare experiences an event every 4.4 years and an assumption that the best performing flares have one smoking event every 6 years. The commenters contended that these figures are based on unverified data submitted in an API/AFPM survey and its use is arbitrary and capricious. The commenters maintained that instead of using the API/AFPM survey data, the EPA should have reviewed data including emissions data from their own studies as well as emissions data available from Texas Commission on Environmental Quality (TCEQ), SCAQMD, or BAAQMD when developing these standards. The commenters suggested that the EPA

establish standards based on the duration and amount of gas routed to a flare during a malfunction event that causes the flare to operate above its smokeless capacity, in addition to the cap on the number of exceptions.

Response B.2: First, one must recognize that the flare is not a specific emission source within Refinery MACT 1 standards and, thus, we did not seek to establish a MACT floor for flares at the time that we promulgated Refinery MACT 1. Rather, we identified flares as an acceptable means for meeting otherwise applicable requirements and we established flare operational standards that we believed would achieve a 98-percent destruction efficiency on a continual basis. Recognizing that flares were not achieving the 98-percent reduction efficiency in practice, we proposed additional requirements in the June 2014 proposal to ensure that flares operate as intended at the time we promulgated Refinery MACT 1.

Regarding the operational standards for flares operating above the smokeless capacity, we note that these flare emissions are emissions due to a sudden increase in waste gas entering the flare, typically resulting from a malfunction or an emergency shutdown at one or more pieces of equipment that vents emissions to the flare. The commenter's suggestion that the EPA should establish standards on the duration and amount of gas discharged to a flare during malfunction events misses the mark. Flares are associated with a wide variety of process equipment and the emissions routed to a flare during a malfunction can vary widely based on the cause of the malfunction and the type of associated equipment. Thus, it is not feasible to establish a one-size-fits-all standard on the amount of gas allowed to be routed to flares during a malfunction. Moreover, we note that routing emissions to the flare will result in less pollution than the other alternative, which would be to emit directly to the atmosphere. We note that we do not set similar limits for thermal oxidizers, baghouses, or other control devices that we desire to remain operational during malfunction events to limit pollutant emissions to the extent practicable. However, we did establish work practice standards that we believe will be effective in reducing the size and duration of flaring events that exceed the smokeless capacity of the flare to improve overall flare performance. We are establishing these work practice standards for flares in order to ensure 98-percent destruction of HAP discharged to the flare (as contemplated at the time Refinery MACT 1 was promulgated) during both normal operating conditions when the flare is used solely as a control device and malfunction releases where the flare acts both as a safety device and a control device.

Comment B.3: Commenters stated that the EPA's malfunction exemption for *force majeure* events for emergency flaring is arbitrary and capricious under CAA section 112 because it creates periods of time when no emissions standard applies.

Response B.3: As noted in Response A.5 to similar comments regarding PRD release events, it is very difficult to guard perfectly against acts of God and acts of terrorism. The EPA does not believe it can develop measures that would effectively limit emissions during all such acts. Regardless, we disagree that *force majeure* events are exempt from regulation. Several of the work practice standards apply during these events. Specifically, flares are required to comply with the requirements for a continuously lit pilot flame and combustion efficiency standards (*i.e.,* limits on the net heating value in combustion zone) at all times, including during periods of emergency flaring caused by a *force majeure* event.

Comment B.4: Commenters requested that the EPA delete from the rule the requirements at 40 CFR 63.670(o)(1)(ii)(B) and (o)(1)(iv), claiming the requirements are highly burdensome. These requirements require an owner or operator to include as part of the flare management plan (FMP) records of prevention measures and design and operating details for PRDs that are routed to flares. Alternatively, commenters recommended that the rule only require this information be included in the FMP for those PRDs (*i.e.,* a single PRD or a single set of PRDs which protect a single piece of equipment) whose potential for release is great enough to exceed the smokeless capacity of the flare.

Response B.4: Because PRDs are expected to be the primary source of a release that might cause a flaring event that could exceed the smokeless capacity of the flare, we determined that the identification of the PRDs that are vented to the flare is a critical component of the FMP. We also recognize that consideration of prevention measures for PRDs that can discharge to a flare will help to reduce the number of flaring events that exceed the smokeless capacity of the flare. Consequently, we include consideration of prevention measures for PRDs as one of three critical items, listed in 40 CFR 63.670(o)(1)(ii)(A) through (C), that each owner or operator of a flare must consider within the flare minimization assessment requirement of the FMP. While submission of the FMP is primarily a one-time event, we expect that these prevention measures for PRDs discharged to the flare will be an active and growing list as owners and operators implement corrective actions after a release event exceeding the smokeless capacity of the flare and exceeding the visible emissions limit and/or the flare tip velocity limit. As noted in 40 CFR 63.670(o)(2)(ii), the plan must be updated periodically to account for changes in the operation of the flare, but we do not consider new prevention measures implemented for PRDs that discharge to the flare to constitute a change in the operation of the flare. Thus, this updated listing can be in an electronic database and it is not required to be updated in the FMP unless the FMP is otherwise required to be updated or re-submitted according to the provisions in 40 CFR 63.670(o)(2)(ii). We do not consider this effort to be a significant burden beyond what is already required for hazards analysis and the commenter did not provide any data to quantify or substantiate the claims that this effort is ''highly burdensome.''

We considered the suggestion to limit this requirement to PRDs with high potential release rates. However, many flares may receive discharges from dozens of PRDs across multiple process units. In an emergency event, it is possible that several of these PRDs associated with different equipment can relieve at the same time. While any one PRD may not exceed the flare's smokeless capacity, the combination of PRD releases may. Thus, we determined that it is appropriate to require all PRDs discharged to the flare to be identified and applicable prevention measures should be evaluated regardless of the release potential of an individual PRD.

3. What is the EPA's final decision on the work practice standards for emergency flaring?

The emergency flaring work practice standards were developed to ensure that flares achieve the 98-percent reduction assumed at the time MACT 1 was promulgated. In determining the means to ensure that flares achieve the 98-percent reduction, the EPA considered available data for best performing flare sources. The inclusion of the *force majeure* provisions in the work practice standard do not alter the work practice requirements for a continuously lit pilot flame and combustion efficiency standards, which apply at all times. The flare requirements in Refinery MACT 1 were established as work practice

standards and the operational standards established in the December 2015 final rule and affirmed in this action are also work practice standards under CAA section 112(h). Work practice standards are appropriate for flares because pollutants emitted from the flare cannot be emitted through a conveyance designed and constructed to emit or capture such pollutants. We have not been presented with any comments and/or information received in response to the proposed notice of reconsideration relative to the emergency flaring work practice standards which will result in any changes to these requirements as promulgated in the December 2015 rule.

C. Issue 3: Assessment of Risk From the Petroleum Refinery Source Categories After Implementation of the PRD and Emergency Flaring Work Practice Standards

1. What is the history of the assessment of risk from the Petroleum Refinery source categories after implementation of the PRD and emergency flaring work practice standards?

The results of our residual risk review for the Petroleum Refinery source categories were published in the June 2014 proposal (79 FR 36934 through 36942), and included assessment of chronic and acute inhalation risk, as well as multipathway and environmental risk, to inform our decisions regarding acceptability and ample margin of safety. The results indicated that the cancer risk to the individual most exposed (maximum individual risk or ''MIR'') based on allowable HAP emissions is no greater than approximately 100-in-1 million, which is the presumptive limit of risk acceptability, and that the MIR based on actual HAP emissions is no greater than 60-in-1 million, but may be closer to 40-in-1 million. In addition, the maximum chronic noncancer target organ-specific hazard index (TOSHI) due to inhalation exposures was less than 1. The evaluation of acute noncancer risks, which was conservative, showed the potential for adverse health effects from acute exposures is unlikely. Based on the results of a refined site-specific multipathway analysis, we also concluded that the cancer risk to the individual most exposed through ingestion is considerably less than 100-in-1 million.

In the December 2015 rule, we established work practice standards for PRD releases and emergency flaring events, which under the June 2014 proposal would not have been allowed. Because we did not consider such non-routine emissions under our risk assessment for the June 2014 proposal, we performed a screening level analysis of risk associated with these emissions for the December 2015 rule as discussed in detail in ''Final Residual Risk Assessment for the Petroleum Refining Source Sector'' in Docket ID Item No. EPA–HQ–OAR–2010–0682–0800. Our analysis showed that HAP emissions could increase the MIR based on actual emissions by as much as 2-in-1 million, which is not substantially different than the level of risk estimated at proposal. We also estimated that chronic noncancer TOSHIs attributable to the additional exposures from non-routine flaring and PRD HAP emissions are well below 1. When the additional chronic noncancer TOSHI from the screening analysis are added to the TOSHI estimated in the June 2014 proposal, all chronic noncancer TOSHIs remain below 1. Further, our screening analysis also projected that maximum acute exposure to non-routine PRD and flare emissions would result in a maximum hazard quotient (HQ) of 14 from benzene emissions based on a reference exposure level (REL). An exceedance of an REL value does not necessarily indicate that an adverse health effect will occur. Because of the infrequent occurrence of such events and the probability that someone would be at the exact most highly impacted exposure locations at the time of the elevated ambient levels, the EPA risk assessors believe there is a very low probability of any adverse exposure. Based on the risk analysis performed for the June 2014 proposal and the screening assessment to consider how conclusions from that analysis would be affected by the additional non-routine flare and PRD emissions allowed under the December 2015 rule, we determined that the risk posed after implementation of the revisions to the MACT standards is acceptable and that the standards as promulgated provide an ample margin of safety to protect public health.

We requested public comment on the screening analysis and the conclusions reached based on that analysis in conjunction with the risk analysis performed for the June 2014 proposal.

2. What comments were received on the assessment of risk from the Petroleum Refinery source categories after implementation of the PRD and emergency flaring work practice standards?

Comment C.1: Commenters explained that the EPA performed a screening level risk assessment to account for the additional risk from the PRD and emergency flare work practice standards based on ''approximately 430 records of PRD and flare HAP pollutant release events'' from 25 facilities, as reported in response to the detailed Petroleum Refinery information collection request (ICR), and that this assessment resulted in an additional 2-in-1 million lifetime cancer risk and an acute risk that is 14 times higher than what the Agency considers safe. The commenters contended that these risks were based on biased-low industry-estimated emissions data when they should have been based on a true maximum additional cancer or acute risk from a serious fire, explosion, or *force majeure* event, or even from one of the largest historical leaks or emergency flaring events. Commenters referenced numerous malfunction events which they asserted demonstrate the long history of these types of releases from refineries that could have been prevented by advanced planning, inspections, upgrades, and maintenance and claimed these events could have been used for the purpose of estimating additional risks from PRD releases and smoking flare events. In addition to not basing the risks on a worst-case scenario, the commenters said the EPA did not explain how the risk model predicted worst case 1-hour and annual average concentrations for PRDs and flares or whether the concentrations presented in the final risk assessment were total HAP or benzene. In any case, the commenters asserted that these concentrations are higher than what the California EPA has deemed health protective for acute and chronic exposure, and while they are lower than the EPA's 2003 Integrated Risk Information System values, the EPA should consider that these exposures occur in combination with other emissions from refineries.

Response C.1: The December 2015 rule established work practice standards that require advanced planning, inspections, upgrades, and maintenance of equipment through the implementation of prevention measures, root cause analysis, and corrective action. Under CAA section 112(f)(2), the EPA is required to estimate the risk remaining after the implementation of the MACT, which for this emissions source is the promulgated work practice standards. This approach is consistent with the way that EPA has performed its risk analysis for all previously promulgated risk reviews under CAA section 112(f)(2). In the screening analysis, we used release information collected under the authority of CAA section 114 which represents annual releases occurring prior to the implementation of these work practice

standards and the data and assumptions used as inputs to the screening analysis are a reasonable representation of the worst-case releases allowed under the promulgated standard and that may be expected subsequent to the implementation of the work practice standards.

In response to the commenters' statement that the EPA did not explain how the risk model predicted worst case 1-hour and annual average concentrations for PRDs and flares or whether the concentrations presented in the final risk assessment were total HAP or benzene, as noted in the risk report (appendix 13 of Docket ID Item No. EPA–HQ–OAR–2010–0682–0800), the EPA estimated concentrations using a conservative (health protective) screening dispersion modeling approach. Further, the risks were estimated based on all reported emissions (*i.e.,* not only benzene). Acute risks (HQs) are estimated on a pollutant-by-pollutant basis.

With regard to the comment that the EPA should consider the California Office of Environmental Health Hazard Assessment health benchmarks, in May 2018, based on examination of the California EPA's acute (1-hour) REL for benzene, and taking into account aspects of the methodology used in the derivation of the value and how this assessment stands in comparison to the Agency for Toxic Substances and Disease Registry's toxicological assessment, EPA toxicologists decided it is not appropriate to use the benzene REL value to support the EPA's RTR rules. In lieu of using the REL in RTR risk assessments, the EPA is now evaluating acute benzene risks by comparing potential exposure levels to the emergency response planning guidelines (ERPG)–1 values. In this case, the acute HQ value from non-routine PRD and flare emissions is 0.07 when comparing ambient levels to the ERPG–1.

Comment C.2: Commenters asserted that the EPA's risk assessment and determinations are unlawful and are arbitrary and capricious because the EPA has not followed its own policy and guidelines in summing cancer risk and treating a lifetime cancer risk above 100-in-1 million as showing the need for section CAA section 112(f) standards. The commenters stated that the EPA found an inhalation-based cancer risk of 100-in-1 million from routine emissions, an additional cancer risk of 2-in-1 million from non-routine PRD and flare emissions, and an additional cancer risk of 4-in-1 million from non-inhalation or multipathway emissions. The sum of these risks is 106-in-1 million, and, therefore, above the presumptive acceptability threshold of 100-in-1 million, yet the EPA has continued to maintain that risks are acceptable. The commenters also contended that in addition to never adding these risks, the EPA has not provided a reasoned justification in the record for not doing so. The commenters added that the EPA recognized risks were unacceptable for a similar set of risks (*e.g.,* lead smelting and ferroalloys) as those in the Petroleum Refinery RTR, and, thus, the risk for the Petroleum Refinery RTR should also be found unacceptable.

Further, the commenters noted that the EPA's refined multipathway risk assessment for one refinery, for which the EPA indicates that the sum of the multipathway and inhalation risks for that facility is less than 100-in-1 million, conflicts with the fact that the inhalation risk alone is at least 100-in-1 million; it is unclear how combined risks would not exceed 100-in-1 million. Finally, the commenters stated that the EPA has not supported the conclusion based on data in the record that after performing a refined risk assessment on one refinery that cancer risk for all facilities can be discounted.

Response C.2: As an initial matter, it is important to note that a risk level of 100-in-1 million is a presumptive limit of acceptability, not a threshold for acceptability or regulatory action. As stated in the Benzene NESHAP (54 FR 38044, 38061, September 14, 1989), in determining the need for residual risk standards, we strive to limit to no higher than approximately 100-in-1 million the estimated cancer risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years and, in the ample margin of safety decision, to protect the greatest number of persons possible to an individual lifetime risk level of no higher than approximately 1-in-1 million. In determining whether risk is acceptable under CAA section 112(f), these levels are not rigid lines, and we weigh the cancer risk values with a series of other health measures and factors, including the specific uncertainties of the emissions, health effects, and risk information for the relevant source category, in both the decision regarding risk acceptability and in the ample margin of safety determination. The source category-specific decision of what constitutes an acceptable level of risk and whether it is necessary to promulgate more stringent standards to provide an ample margin of safety is a holistic one; that is, the EPA considers all potential health impacts—chronic and acute, cancer and noncancer, and multipathway—along with their uncertainties.

With regard to the analysis performed for the refinery standards at issue here, the estimated risk of 100-in-1 million is based on a risk analysis using the MACT-allowable HAP emissions from a model plant, while the estimated risk based on actual HAP emissions from refineries is no greater than approximately 60-in-1 million and may be closer to 40-in-1 million based on updated data received during the comment period. The model plant screening approach used to assess MACT-allowable HAP emissions used several health protective assumptions including co-locating all sources at a refinery at a single location. The screening analysis used to estimate risk from non-routine PRD and flare emissions is also based on several health protective assumptions. Because of the conservative nature of these screening analyses, the EPA does not typically add their results (*i.e.,* risk estimates from the model plant non-routine PRD and flare emissions to risk estimates from model plant allowable emissions). Further, we do not add the multipathway (non-inhalation) risks to inhalation risks because it is highly unlikely that the person exposed to the highest inhalation risk is the same person exposed to the highest refined multipathway (ingestion) risks. Overall risk results are presented to one significant digit, thus, even if we were to add the non-inhalation risk of 4-in-1 million to the 100-in-1 million risk from inhalation, we would still assess the total risk based on allowable emissions as 100-in-1 million.

Regarding the refined multipathway analysis performed on a single facility, as stated in the risk report, the EPA performed the refined analysis to gain a better understanding of the uncertainty associated with the multipathway Tier I and II screening analyses. The site, Marathon Ashland Petroleum facility (NEI6087) near Garyville in St. John the Baptist Parish, Louisiana, was among those that exceeded the Tier I screen for any HAP known to be persistent and bio-accumulative in the environment (PB–HAP), and it was among the refineries that had the greatest exceedance of a Tier II threshold for any PB–HAP. It also was selected based on the feasibility, with respect to the modeling framework, of obtaining model parameters for the region surrounding the refinery. The exposure estimates (and the risks calculated for those exposures) are anticipated to be among the highest that might be encountered for this source category because of the proximity of waterbodies

as well as agricultural lands. We note that many of the refineries did not exceed the Tier I screen, and for those that did, the levels of the exceedances were generally less than the level of exceedance exhibited by the facility selected for the refined assessment. Because the other facilities had a similar or lower exceedance of the screening level, the results of the refined assessment for this facility led us to conclude that if refined analyses were performed for other sites, the risk estimates would similarly be reduced from their Tier II estimates.

Comment C.3: A commenter stated that the EPA acknowledged that people of color and those with low incomes are disproportionately exposed to risk from refinery emissions. The commenter asserted that the EPA has not provided a rational explanation why the unfair distribution of this risk does not lead to an unacceptable risk finding or at least require additional protections to assure an ample margin of safety to protect public health for all exposed persons.

Response C.3: Following the analysis that CAA section 112(f)(2) requires, the EPA determined that the risk posed by emissions from the Petroleum Refinery source category were acceptable. After considering whether additional standards were required to provide an ample margin of safety to protect public health, including the health of people of color and those with low income, the EPA established additional control requirements for storage vessels. The December 2015 rule reduces risk for millions of people living near petroleum refineries and provides an ample margin of safety to protect public health. The NESHAP accordingly provides an ample margin of safety for all proximate populations, including people of color and those with low incomes.

Comment C.4: A commenter stated that the EPA's risk assessment and determination are unlawful and are arbitrary and capricious because they are based on internally contradictory findings that, although acute risk is high (citing an HQ of 14 due to benzene from non-routine PRD and flare emissions), exposure to these non-routine emissions will rarely occur. The commenter asserted that the EPA's own record shows that non-routine emissions occur frequently: Every 4.4 to 6 years at all refineries, 16.7 percent probability of having an event in any given year, and that over a long period of time, such as 20 years, half of the best performers would have two events in a 3-year period. The commenter added that the December 2015 rule will allow these non-routine emissions events to happen even more frequently. The commenter further asserted that the EPA's justification to discount this high acute risk was by stating that it could have used the acute exposure guideline level (AEGL) or ERPG level to develop a lower acute risk value than the value developed for the published risk assessment which was based on the REL. The commenter stated that the AEGL and ERPG level are designed to be used in a true emergency and not to set health protective standards that will generally apply at all times, adding that the AEGL, unlike the REL, does not incorporate consideration of vulnerability, such as for children, or community exposure over time. The commenter stated that the use of the AEGL and ERPG numbers would be expected to substantially underestimate risk and using them as justification to discount the high acute risk is arbitrary and capricious.

Response C.4: As an initial matter, we disagree with the characterization that the work practice standards in the December 2015 rule for flares and PRDs will allow non-routine events to occur more frequently than they do now. Prior to promulgation of the flare requirements and the PRD provisions, the MACT did not include any specific regulatory requirements that applied to these events. As noted in sections III.A and B above, the final work practice standards include requirements that are designed to reduce the number and magnitude of these types of releases. The commenters have not explained why the new requirements would increase the frequency and/or magnitude of these events.

In May 2018, based on examination of California EPA's acute (1-hour) REL for benzene, and considering aspects of the methodology used in the derivation of the value and how this assessment stands in comparison to the Agency for Toxic Substances and Disease Registry's toxicological assessment, EPA toxicologists decided it is not appropriate to use the benzene REL value to support the EPA's RTR rules. In lieu of using the REL in RTR risk assessments, the EPA is now evaluating acute benzene risks by comparing potential exposure levels to the ERPG–1 values. In this case, the acute HQ value from non-routine PRD and flare emissions is 0.07 when comparing ambient levels to the ERPG–1. To better characterize the potential health risks associated with estimated worst-case acute exposures to HAP, and in response to a key recommendation from the Science Advisory Board's peer review of the EPA's RTR risk assessment methodologies, we now examine a wider range of available acute health metrics than we do for our chronic risk assessments. This is in acknowledgement that there are generally more data gaps and uncertainties in acute reference values than there are in chronic reference values. The acute REL represents a health-protective level of exposure, with effects not anticipated below those levels, even for repeated exposures. Although the potential for effects increases as exposure concentration increases above the acute REL, the level of exposure greater than the REL that would cause health effects is not specifically known. Therefore, when an REL is exceeded and an AEGL–1 or ERPG–1 level is available (*i.e.,* levels at which mild, reversible effects are anticipated in the general public for a single exposure), we typically use them as an additional comparative measure, as they provide an upper bound for exposure levels above which exposed individuals could experience effects. The worst-case maximum estimated 1-hour exposure to benzene outside the facility fence line is less than the AEGL–1 or ERPG–1 levels.

3. What is the EPA's final decision on the risk assessment?

As supported by the screening analysis published with the December 2015 rule, the additional risk from the PRD and emergency flaring work practice standards did not significantly alter the risk estimates in the EPA's 2014 analysis. In response to the current proposal, we did not receive any new information or other basis that would support a change to the risk analysis and the determination that the risk from the source category is acceptable and that, as modified by the December 2015 rule, the MACT standards provide an ample margin of safety to protect public health.

D. Issue 4: Alternative Work Practice Standards for DCUs Employing the Water Overflow Design

1. What is the history of the alternative work practice standards for DCUs employing the water overflow design?

In the December 2015 rule, we finalized MACT standards for DCU decoking operations. The rule provided that existing DCU-affected sources must comply with a 2 psig or 220 degrees Fahrenheit (°F) limit in the drum overhead line determined on a rolling 60-event basis prior to venting to the atmosphere, draining, or deheading the coke drum. New DCU-affected sources must comply with a 2.0 psig or 218 °F limit in the drum overhead line on a per-event, not-to-exceed basis. In the

December 2015 rule, we also finalized an alternative requirement that we did not propose to address DCU with water overflow design, where pressure monitoring would not be appropriate. As part of these provisions, we included a new requirement in the December 2015 rule for DCU with water overflow design to hard-pipe the overflow drain water to the receiving tank via a submerged fill pipe (pipe below the existing liquid level) whenever the overflow water exceeds 220 °F.

We requested public comment on the alternative work practice standard for delayed coking units employing a water overflow design provided in 40 CFR 63.657(e).

In response to the comments received on the October 2016 proposed notice of reconsideration regarding the alternative work practice standards for DCU employing the water overflow design, we proposed amendments on April 10, 2018 (April 2018 proposal) (see 83 FR 15458), to the water overflow requirements in 40 CFR 63.657(e). The EPA has issued a final rule which was promulgated on November 26, 2018 (November 2018 rule) fully addressing this issue and responding to all of the comments on the proposal for this rule as well as the April 2018 proposal.

E. Issue 5: Alternative Sampling Frequency for Burden Reduction for Fenceline Monitoring

1. What is the history of the alternative sampling frequency for burden reduction for fenceline monitoring?

In the December 2015 rule, we revised Refinery MACT 1 to establish a work practice standard requiring refinery owners to monitor benzene concentrations around the fenceline or perimeter of the refinery. We promulgated new EPA Methods 325A and B which specify monitor siting and quantitative sample analysis procedures. The work practice is designed to improve the management of fugitive emissions at petroleum refineries through the use of passive monitors by requiring sources to implement corrective measures if the benzene concentration in air attributable to emissions from the refinery exceeds a fenceline benzene concentration action level. The work practice requires refinery owners to maintain fenceline benzene concentrations at or below the concentration action level of 9 $\mu g/m^3$. In the December 2015 rule, we included provisions that were not proposed that would allow for reduced monitoring frequency (after 2 years of continual monitoring) at monitoring locations that record concentrations below 0.9 $\mu g/m^3$ [see 40 CFR 63.658(e)(3)].

We requested public comment on the provision allowing refineries to reduce the frequency of fenceline monitoring at monitoring locations that consistently record benzene concentrations below 0.9 $\mu g/m^3$.

2. What comments were received on the alternative sampling frequency for fenceline monitoring?

Comment E.1: Commenters asserted that setting the threshold for reducing the frequency of fenceline monitoring at 0.9 $\mu g/m^3$ is arbitrary and capricious. The commenters stated that the EPA's modeling predicted that more than half (81 of 142) of the refineries modeled would have fenceline concentrations equal to or less than 0.4 $\mu g/m^3$, and, thus, it is unlikely these facilities will have any monitors register concentrations in excess of the threshold. Therefore, these refineries will likely qualify for reduced monitoring, although they could have malfunctioning equipment causing benzene levels to be double the EPA's modeled amount.

The commenter added that while the fenceline concentrations modeled by the EPA do not include background ambient concentrations of benzene which will contribute to the benzene concentration measured at each monitor, it is still likely that the eligibility threshold for reduced frequency monitoring is too high and will allow operators to reduce the monitoring frequency at downwind monitors. The commenter supported this statement by referencing the API Corrected Fenceline Monitoring Results, Docket ID Item No. EPA–HQ–OAR–2010–0682–0752, which showed that at least 25 percent of facilities would be eligible for reduced monitoring at more than half of the monitoring sites based on the 0.9 $\mu g/m^3$ threshold.

Response E.1: We disagree that entire refineries will be able to qualify for reduced monitoring frequency. As the commenters themselves noted, the Agency's modeled concentrations provide only the impact of refinery emissions on the ambient air concentration (the ΔC) and do not include background concentrations. The modeling does not allow us to evaluate the total (refinery plus background) concentration level at any one location. Second, we note that the API study was a 3-month study that occurred primarily in the winter months when fugitive emissions are expected to be at their lowest. We also considered the Corpus Christi year-long study and a comparison of the concentrations observed throughout the year. That study showed that benzene concentrations at the fenceline are higher during warmer weather because most fugitive emission sources, such as storage tanks and wastewater, have a significant temperature dependency. The reduced monitoring provisions require 2 full years (52 consecutive 2-week samples) where the highest single value, not the average concentration at that location, is less than 0.9 $\mu g/m^3$. Based on the data we have available, we consider that only a few monitoring locations will qualify for reduced frequency monitoring based on this 2-year requirement that all sample concentrations at the location are less than 0.9 $\mu g/m^3$.

In addition, we selected this value to be consistent with the minimum detection limit we required for an alternative monitoring method. It seemed incongruous to allow an alternative monitoring method with a detection limit of 0.9 $\mu g/m^3$ to be used to comply with the rule but then establish a burden reduction alternative that used a lower concentration level. Ultimately, we are confident that only a limited number of sampling locations at any petroleum refinery will meet the burden reduction criteria. We considered it reasonable to provide incentives for refinery owners or operators to achieve even greater reductions than are required by the 9 $\mu g/m^3$ ΔC action level, and the final burden reduction provisions provide such an incentive without compromising the overall objectives of the program.

Comment E.2: One commenter stated that the provisions allowing refineries to reduce the frequency of fenceline monitoring are unlawful and are arbitrary and capricious. To support this statement, the commenter stated that a reduction in burden to the fenceline monitoring program will not allow the program to serve its intended purpose: To enable operators to identify leaks or operating problems at equipment that cannot practically be monitored, tested, or evaluated for compliance on a frequent basis. In further support of their argument, the commenters explained that the risk findings for the December 2015 rule hinge on the frequency of the fenceline monitoring cycle. The commenter stated that the EPA is on record stating that if the emission inventories or risk assessment do understate actual emissions, as some commenters have alleged, the fenceline monitoring and corrective action requirements will ensure refineries reduce their actual emissions to levels comparable to their emissions inventories, and that in doing so, will

ensure communities surrounding petroleum refineries would be protected to acceptable risk levels. Therefore, the commenter asserted that it is imperative for the EPA to maintain the 2-week monitoring cycle to ensure operators are quickly identifying malfunctioning equipment and to close the gap between actual and reported emissions.

On the other hand, some commenters stated that the alternative monitoring provisions did not go far enough at reducing burden. Some commenters suggested that after 2 years of demonstrating a background-corrected maximum fenceline annual average concentration (ΔC) below the action level, monitoring frequency be reduced to a 2-week period every quarter for all monitoring locations. If the background-corrected annual average benzene concentration based on the quarterly monitoring exceeds the action level, a return to more frequent monitoring could be required RCA/CAA requirement. The reduced monitoring frequency could be available again after 1 year of meeting the action level. Another commenter recommended that the reduced monitoring provision be removed in favor of a one-time demonstration that the annual fenceline benzene ΔC concentration is less than 50 percent of the action level during normal operations.

Response E.2: With respect to the commenter's opposition to the alternative sampling frequency, it is important to understand that the alternative sampling frequency provision in the December 2015 rule does not reduce the frequency by which the ΔC values must be determined. This is because the reduced sampling frequency provision will impact only selected locations that have monitored benzene concentrations below 0.9 μg/m^3 based on 2 full years of data. Refineries will still collect samples at all other locations during each 2-week period and will still determine the ΔC value for each sampling interval and include the ΔC for the sampling interval in the annual average ΔC value calculation. Therefore, we still expect the fenceline monitoring program as included in the December 2015 rule to achieve its purpose of more timely detection and correction of issues that can lead to high fugitive emissions.

The burden reduction alternatives suggested by some commenters would significantly limit the effectiveness of the fenceline monitoring program to identify issues early. A one-time determination completely defeats this purpose and could not possibly be done in a manner representative of the variety of circumstances that can occur throughout the year or the lifetime of a facility. The purpose of the fenceline monitoring program is to allow for detection and correction of issues that may cause abnormally high emissions, such as large leaks in valves, tears in rim seals of floating roof storage vessels, and other unexpected, difficult to predict events. A one-time determination does not allow the fenceline monitoring program to timely and effectively identify these issues on an on-going basis.

While quarterly determinations would be more effective than a one-time determination for on-going fugitive management, quarterly determinations are less effective in improving fugitive emissions management than continual 2-week sampling. First, for large leak events, the emissions may continue for months prior to being detected under quarterly monitoring versus being detected in a week or two under continual 2-week sampling. Thus, the emission reduction achieved by the quarterly monitoring would not be as great as by continual 2-week monitoring. Second, under the quarterly monitoring option, there would be large periods of time when no monitoring will be performed. The passive diffusive tubes cannot be deployed over such a long time period. Thus, we assume that quarterly monitoring would consist of a 2-week sampling period once every quarter. As such, for more than 80 percent of the time, no monitoring would be conducted at the fenceline. Consequently, quarterly monitoring would often miss periodic emission events, such as tank cleaning and/or filling, which can lead to high short-term emissions. These short-term events can contribute significantly to a facility's emissions and their contribution would be captured via the continual 2-week sampling, but likely missed under a quarterly monitoring approach. In order to effectively manage all fugitive emission sources, including periodic releases, we determined that the continual 2-week sampling period should be maintained for the overall program. By providing a monitoring skip period only to locations that do not exceed 0.9 μg/m^3 for any sampling interval for 2 full years (52 consecutive 2-week sampling periods), we maintain continual 2-week sampling at all locations that may contribute to an exceedance of the action level and ensure on-going enhanced management of fugitive emissions.

Comment E.3: Commenters stated that the rule does not include provisions for re-instating the monitoring frequency for those monitors which may at one time qualify for reduced monitoring.

Response E.3: We disagree. Section 63.658(e)(v) of the final rule provides that any location with a value above 0.9 μg/m^3 while reduced monitoring is being implemented will subject the owner or operator to a 3-month ''probationary period'' where samples must be collected every 2 weeks at that location. If the concentrations during the probationary period are all at or below 0.9 μg/m^3, the owner or operator may continue with the monitoring frequency prior to the excursion. If any other sample during the probationary period exceeds 0.9 μg/m^3, then the owner or operator must comply with the more stringent monitoring requirements and would not be eligible for reduced monitoring frequency until completion of a new 2-year period at that more stringent monitoring frequency.

Comment E.4: A commenter stated that despite the EPA's claims that it is allowing less frequent monitoring to reduce burden, there is no quantified or otherwise evaluated data available in the record related to the actual burden reduction.

Response E.4: We did not specifically develop burden reduction estimates associated with this provision for several reasons. First, fenceline monitoring must be performed for a full 2 years prior to the burden reduction provisions applying to any monitoring location, so estimating the burden of the fenceline monitoring provisions without consideration of the burden reduction provisions provides an accurate estimate of the annual burden for the first 2 years. Second, we were uncertain how many monitoring locations would qualify for the burden reduction provision. Third, with respect to the burden estimate for the December 2015 rule as provided in the Supporting Statement for the Office of Management and Budget's (OMB's) ICR, we estimated the costs of the on-going fenceline monitoring program assuming all samples would continue to be collected during the 3-year period covered by the ICR.

Based on the burden estimate detail provided in the attachments to the memorandum, ''Fenceline Monitoring Impact Estimates for Final Rule'' (see Docket ID Item No. EPA–HQ–OAR–2010–0682–0749), we estimate that each time a sample does not need to be collected at a specific location there will be a burden reduction of 0.3 technical hours (0.25 hours reduced during sample collection and 0.05 hours reduced during sample analyses). Considering management and clerical hours, the total burden reduction per sample skipped would be 0.35 hours and approximately $29. As an example

of potential burden reduction, if a facility could use the monthly reduced monitoring provisions for two locations in a given year (26 skipped samples, 13 at each site), the burden reduction for that facility would be 9 hours and $745 each year.

Comment E.5: One commenter recommended that the EPA reduce burden by providing a mechanism to use existing HAP ambient monitoring programs as an acceptable alternative to the EPA fenceline monitoring program.

Response E.5: We provided a mechanism and criteria by which a refinery owner or operator may submit a request for an alternative test method to the passive diffusive tube fenceline monitoring methods (EPA Methods 325A and 325B). These provisions are included at 40 CFR 63.658(k) of the final rule.

3. What is EPA's final decision on the alternative sampling frequency for fenceline monitoring?

For fenceline monitoring requirements, the alternative sampling frequency requirements will not alter the effectiveness of the program as the requirements do not change the facility-level procedures and frequency for calculating and reporting ΔC (see Response E.1). Furthermore, the 0.9 μg/m^3 threshold for reducing the frequency of fenceline monitoring is appropriate based on the available data and it is consistent with the minimum detection limit required for alternative monitoring methods. We have not been presented with any comments and/or information in response to the October 2016 proposed notice of reconsideration relative to the alternative sampling frequency for fenceline monitoring which will result in any changes to the December 2015 rule.

F. Additional Proposed Clarifying Amendments

1. What is the history of the proposed clarifying amendments?

The EPA proposed to amend provisions related to the overlap requirements for equipment leaks that are contained in Refinery MACT 1 and in the Refinery Equipment Leak NSPS (40 CFR part 60, subpart GGGa). The Refinery MACT 1 provision at 40 CFR 63.640(p)(2) states that equipment leaks that are subject to the provisions in the Refinery Equipment Leak NSPS (40 CFR part 60, subpart GGGa) are only required to comply with the provisions in the Refinery Equipment Leak NSPS. However, the Refinery Equipment Leak NSPS does not include the new work practice standards finalized in the final Refinery MACT 1 at 40 CFR 63.648(j) which apply to releases from PRDs. We intended that these new work practice standards would be applicable to all PRDs at refineries, including those PRDs subject to the requirements in the Refinery Equipment Leaks NSPS. In order to provide clarity and assure that refiners subject to these provisions fully understand their compliance obligations, we proposed to modify the equipment leak requirement to provide that PRDs in organic HAP service must comply with the requirements in Refinery MACT 1 at 40 CFR 63.648(j) for PRDs. We also proposed to amend the introductory text in 40 CFR 63.648(j) to reference the Refinery Equipment Leaks NSPS at 40 CFR 60.482–4a and amend paragraphs (j)(2)(i) through (iii) of Refinery MACT 1 to correct the existing reference to 40 CFR 60.485(b), to instead refer to 40 CFR 60.485(c) and 40 CFR 60.485a(c). As noted in section III.B.1 of this preamble, we also proposed to revise the incorrect cross-reference to PRD prevention measures at 40 CFR 63.670(o)(1)(ii)(B) from 40 CFR 63.648(j)(5) to 63.648(j)(3)(ii). However, we concluded it would be more accurate to cross-reference 40 CFR 63.648(j)(3)(ii)(A) through (E) rather than the entirety of 40 CFR 63.648(j)(3)(ii). Therefore, in the April 2018 proposal, we proposed this clarified revision and finalized this revision as proposed in the November 2018 rule.

2. What comments were received on the proposed clarifying amendments?

Comment F.1: Commenters asserted that the EPA's proposal to modify the provisions in 40 CFR 63.640(p)(2) by providing that PRDs in organic HAP service must comply with the requirements in 40 CFR 63.648(j) is arbitrary and capricious. Commenters opposed the proposed revisions claiming they would enshrine exemptions from NSPS equipment leak standards for new and modified PRD or allow for substitution of NSPS requirements for the work practice standards in 40 CFR 63.648(j), which they believe are exemptions from malfunction requirements. They added that these provisions amend the NSPS for Petroleum Refineries without satisfying the appropriate procedural and substantive legal tests required to do so.

Response F.1: It appears that the commenter misunderstands the proposed amendment. When we revised Refinery MACT 1 at 40 CFR 63.648(j) to add PRD requirements, we failed to recognize that the NSPS overlap provisions in 40 CFR 63.640(p)(2) could be used as a ''loophole'' by refinery owners and operators to not implement three prevention measures and to not perform the root cause analysis or implement corrective actions. This is because the NSPS subpart GGGa does not have any pressure release management requirements. In the absence of the proposed amendment, the existing overlap provision states that ''Equipment leaks that are also subject to the provisions of 40 CFR part 60, subpart GGGa, are required to comply only with the provisions specified in 40 CFR part 60, subpart GGGa.'' Thus, PRDs subject to 40 CFR part 60, subpart GGGa, were inadvertently exempted from the new PRD pressure release management requirements. We understand that the commenter does not support some of the provisions in the pressure release management requirements in the final Refinery MACT 1 rule, but these requirements are clearly more stringent than the NSPS subpart GGGa provisions for PRDs which only require monitoring of the PRD after a release, and do not have any restrictions or requirements to limit PRD releases. We note that in addition to the new PRD requirements established in the December 2015 rule, the Refinery MACT 1 PRD requirements at 40 CFR 63.648(j)(1) and (2) fully include those requirements that would apply under 40 CFR part 60, subpart GGGa. In reviewing standards covering the same pieces of equipment, we look to identify the overlapping standards and require the owner or operator to comply only with the most stringent standard. After the revisions to the PRD requirements in Refinery MACT 1, we determined that the equipment leak provisions for PRDs in Refinery MACT 1 are more stringent than those in 40 CFR part 60, subpart GGGa. By revising this overlap provision, we are requiring equipment leak sources that are subject to both rules to comply with the 40 CFR part 60, subpart GGGa for most equipment leak sources but PRDs must comply with the PRD requirements in Refinery MACT 1. This revision will require PRDs that are also subject to 40 CFR part 60, subpart GGGa, to implement prevention measures for PRDs, conduct root cause analyses, and implement corrective actions to prevent a similar release from occurring. Because compliance with 40 CFR part 60, subpart GGGa is not sufficient to demonstrate compliance with Refinery MACT 1 PRD provisions, revision of the existing overlap provisions was deemed critical to ensure all Refinery MACT 1 PRDs comply with the new pressure release management requirements.

The commenter is also mistaken that this provision amends the NSPS. Rather, it defines what sources subject to Refinery MACT 1 must do to comply with Refinery MACT 1. Specifically, for equipment leaks at facilities subject to *both* Refinery MACT 1 and 40 CFR part 60, subpart GGGa, owners and operators must comply with the requirements in Refinery MACT 1 (40 CFR part 63, subpart CC) for PRDs associated with the leaking equipment because the requirements in Refinery MACT 1 for PRDs are more stringent than those in 40 CFR part 60, subpart GGGa. The NSPS requirements are not modified by this change to 40 CFR part 63, subpart CC and remain in effect for PRDs associated with equipment leaks that are not subject to Refinery MACT 1.

Comment F.2: Commenters supported the clarification to the overlap provisions for equipment leaks in 40 CFR 63.640(p)(2), but also request that a delay of repair provision be included in 40 CFR 63.648 because other equipment leak rules (such as 40 CFR part 60, subparts GGG and GGGa) potentially applicable to refinery PRDs include such delay of repair provisions. The commenters noted that PRDs subject to 40 CFR part 60, subpart GGG, are made subject to 40 CFR 63.648(j) by 40 CFR 63.640(p)(1).

Response F.2: By proposing a technical correction to 40 CFR 63.640(p)(2), the EPA was not proposing to re-open the substantive requirements of 40 CFR 63.640 nor of other provisions, such as 40 CFR 63.648 that may be referenced in 40 CFR 63.640. We also disagree that PRDs are allowed to comply with delay of repair provisions in the NSPS (subparts GGG/GGGa or VV/Vva) beyond taking the equipment out of VOC service. In any case, we determined that it was contrary to safety and good air pollution control practices to continue to operate a process unit without a properly functioning PRD as PRDs are, primarily, safety devices.

3. What is the EPA's final decision on the proposed clarifying amendments?

We are finalizing the amendment that equipment leaks that are subject to the provisions of the Refinery Equipment Leak NSPS pursuant to 40 CFR 63.640(p)(2) must comply with the requirements in Refinery MACT 1 at 40 CFR 63.648(j) for PRDs, as proposed. We are also finalizing the amendment to the introductory text in 40 CFR 63.648(j) to reference Refinery Equipment Leaks NSPS at 40 CFR 60.482–4a and the amendment to paragraphs (j)(2)(i) through (iii) of Refinery MACT 1 to correct the existing reference to 40 CFR 60.485(b), which should refer to 40 CFR 60.485(c) and 40 CFR 60.485a(c), as proposed. Finally, as noted in the history of these clarifying amendments, we addressed the proposed amendments at 40 CFR 63.670(o)(1)(ii)(B) in a final rule issued in November 2018 to more accurately cross-reference 40 CFR 63.648(j)(3)(ii)(A) through (E) rather than the entirety of 40 CFR 63.648(j)(3)(ii).

G. Corrections to November 2018 Final Rule

There were a number of publication errors associated with the November 2018 rule. Several of these errors were associated with inaccurate amendatory instructions or editorial errors in the final amendment package. We are correcting these errors to finalize the amendments consistent with the intent of the preamble to the November 2018 final rule (83 FR 60696). Table 2 of this preamble provides a summary of the publication and editorial errors in the November 2018 rule that we are correcting in this final action.

TABLE 2—SUMMARY OF CORRECTIONS TO NOVEMBER 2018 RULE

Provision	Issue	Final revision
Refinery MACT 1		
40 CFR 63.641, definition of ''Reference control technology for storage vessels''.	Incorrect amendatory instructions; the Code of Federal Regulations could not implement revisions as instructed.	Revise instructions and reprint the entire definition to more easily implement revisions to the definition of ''Reference control technology for storage vessels'' consistent with the intent of the preamble to the November 2018 final rule.
40 CFR 63.643(c)(1)(v)	There is a comma after the word ''less.'' It should be a period.	Amend 40 CFR 63.643(c)(1)(v) to replace the comma after the word ''less'' with a period.
40 CFR 63.655(f)(1)(iii)	Subordinate paragraphs (A) and (B) were inadvertently removed due to incorrect amendatory instructions.	Amend 40 CFR 63.655(f)(1)(iii) to include subordinate paragraphs (A) and (B) consistent with the intent of the preamble to the November 2018 final rule.
40 CFR 63.655(f)(2)	Subordinate paragraphs (i) through (iii) were inadvertently removed due to incorrect amendatory instructions.	Amend 40 CFR 63.655(f)(2) to include subordinate paragraphs (i) through (iii) consistent with the intent of the preamble to the November 2018 final rule.
40 CFR 63.655(h)(10)	The introductory text associated with this paragraph was missing from the regulatory text included in the rule as published in the **Federal Register**.	Amend 40 CFR 63.655(h)(10) introductory text to read as ''*Extensions to electronic reporting deadlines.*''
40 CFR 63.655(i)(11) ''. . . For each pilot-operated pressure relief device subject to the requirements at 40 CFR 63.648(j)(4)(ii) or (iii), . . .''.	Pilot-operated PRDs are not subject to requirements at 40 CFR 63.648(j)(4)(iii) so the inclusion of ''or (iii)'' was incorrect.	Amend 40 CFR 63.655(i)(11) introductory text to remove ''or (iii).''
40 CFR 63.660(i)(2)(iii). ''Use a cap, blind flange, plug, or a second valve for an open-ended valves or line . . .''.	Use of the plural in referencing ''. . . an open-ended valves . . .'' is incorrect grammar.	Amend 40 CFR 63.660(i)(2)(iii) to read ''Use a cap, blind flange, plug, or a second valve for an open-ended valve or line . . .''
40 CFR 63.670(d)(2)	Equation term NHV_{vg} incorrectly references paragraph (l)(4) and should instead reference (k)(4).	Amend the reference in the equation term NHV_{vg} in 40 CFR 63.670(d)(2) from (l)(4) to (k)(4).

TABLE 2—SUMMARY OF CORRECTIONS TO NOVEMBER 2018 RULE—Continued

Provision	Issue	Final revision
Refinery MACT 2		
Table 4 to Subpart UUU, Item 9.c. "XRF procedure in appendix A to this subpart 1; . . .".	The "1" should be superscripted as it is intended to identify footnote 1.	Amend Item 9.c. of Table 4 to Subpart UUU to read. "XRF procedure in appendix A to this subpart; [1] . . ."

IV. Summary of Cost, Environmental, and Economic Impacts

As described in section III of this preamble, the EPA is not revising the 2015 Rule requirements for: (1) The work practice standards for PRDs; (2) the work practice standards for emergency flaring events; (3) the assessment of risk as modified based on implementation of these PRD and emergency flaring work practice standards; or (4) the provision allowing refineries to reduce the frequency of fenceline monitoring at sampling locations that consistently record benzene concentrations below 0.9 μg/m^3. In this action, the EPA is finalizing two clarifying amendments which were included in the proposed notice of reconsideration. These amendments are not expected to have any cost, environmental, or economic impacts. Therefore, the burden estimates and economic impact analysis associated with the December 2015 rule (available in Docket ID No. EPA–HQ–OAR–2010–0682) have not been altered as a result of this action. We note that in the November 2018 rule, the EPA revised the requirements for the alternative water overflow provisions for DCUs. A discussion of the cost, environmental, and economic impacts of the amendments for the water overflow provisions for DCUs were included in the April 2018 proposal and the November 2018 rule.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was, therefore, not submitted to OMB for review.

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

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

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations at 40 CFR part 63, subparts CC and UUU, and has assigned OMB control numbers 2060–0340 and 2060–0554. The revisions adopted in this action are clarifications and technical corrections that do not affect the estimated burden of the existing rule. Therefore, we have not revised the information collection request for the existing rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. The rule revisions being made through this action consist of clarifications and technical corrections which do not change the expected economic impact analysis performed for the December 2015 rule. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effect on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the environmental health or safety risks addressed by this action do not present a disproportionate risk to children. The actions taken in this rulemaking are technical clarifications and corrections and they do not affect risk for any populations.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The actions taken in this rulemaking are technical clarifications and corrections and they do not affect the risk for any populations.

L. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 63

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

Dated: January 14, 2020.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency is amending 40 CFR part 63 as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart CC—National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries

■ 2. Section 63.640 is amended by revising paragraph (p)(2) to read as follows:

§ 63.640 Applicability and designation of affected source.

* * * * *

(p) * * *

(2) Equipment leaks that are also subject to the provisions of 40 CFR part 60, subpart GGGa, are required to comply only with the provisions specified in 40 CFR part 60, subpart GGGa, except that pressure relief devices in organic HAP service must only comply with the requirements in § 63.648(j).

* * * * *

■ 3. Section 63.641 is amended by revising the definition of ''Reference control technology for storage vessels'' to read as follows:

§ 63.641 Definitions.

* * * * *

Reference control technology for storage vessels means either:

(1) For Group 1 storage vessels complying with § 63.660:

(i) An internal floating roof, including an external floating roof converted to an internal floating roof, meeting the specifications of §§ 63.1063(a)(1)(i), (a)(2), and (b) and 63.660(b)(2);

(ii) An external floating roof meeting the specifications of §§ 63.1063(a)(1)(ii), (a)(2), and (b) and 63.660(b)(2); or

(iii) [Reserved]

(iv) A closed-vent system to a control device that reduces organic HAP emissions by 95 percent, or to an outlet concentration of 20 parts per million by volume (ppmv).

(v) For purposes of emissions averaging, these four technologies are considered equivalent.

(2) For all other storage vessels:

(i) An internal floating roof meeting the specifications of § 63.119(b) of subpart G except for § 63.119(b)(5) and (6);

(ii) An external floating roof meeting the specifications of § 63.119(c) of subpart G except for § 63.119(c)(2);

(iii) An external floating roof converted to an internal floating roof meeting the specifications of § 63.119(d) of subpart G except for § 63.119(d)(2); or

(iv) A closed-vent system to a control device that reduces organic HAP emissions by 95 percent, or to an outlet concentration of 20 parts per million by volume.

(v) For purposes of emissions averaging, these four technologies are considered equivalent.

* * * * *

■ 4. Section 63.643 is amended by revising paragraph (c)(1)(v) to read as follows:

§ 63.643 Miscellaneous process vent provisions.

* * * * *

(c) * * *

(1) * * *

(v) If, after applying best practices to isolate and purge equipment served by a maintenance vent, none of the applicable criterion in paragraphs (c)(1)(i) through (iv) of this section can be met prior to installing or removing a blind flange or similar equipment blind, the pressure in the equipment served by the maintenance vent is reduced to 2 psig or less. Active purging of the equipment may be used provided the equipment pressure at the location where purge gas is introduced remains at 2 psig or less.

* * * * *

■ 5. Section 63.648 is amended by revising paragraphs (j) introductory text and (j)(2)(i) through (iii) to read as follows:

§ 63.648 Equipment leak standards.

* * * * *

(j) Except as specified in paragraph (j)(4) of this section, the owner or operator must comply with the requirements specified in paragraphs (j)(1) and (2) of this section for pressure relief devices, such as relief valves or rupture disks, in organic HAP gas or vapor service instead of the pressure relief device requirements of § 60.482–4 of this chapter, § 60.482–4a of this chapter, or § 63.165, as applicable. Except as specified in paragraphs (j)(4) and (5) of this section, the owner or operator must also comply with the requirements specified in paragraph (j)(3) of this section for all pressure relief devices in organic HAP service.

* * * * *

(2) * * *

(i) If the pressure relief device does not consist of or include a rupture disk, conduct instrument monitoring, as specified in § 60.485(c) of this chapter, § 60.485a(c) of this chapter, or § 63.180(c), as applicable, no later than 5 calendar days after the pressure relief device returns to organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

(ii) If the pressure relief device includes a rupture disk, either comply with the requirements in paragraph (j)(2)(i) of this section (not replacing the rupture disk) or install a replacement disk as soon as practicable after a pressure release, but no later than 5 calendar days after the pressure release. The owner or operator must conduct instrument monitoring, as specified in § 60.485(c) of this chapter, § 60.485a(c) of this chapter or § 63.180(c), as applicable, no later than 5 calendar days after the pressure relief device returns to organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

(iii) If the pressure relief device consists only of a rupture disk, install a replacement disk as soon as practicable

after a pressure release, but no later than 5 calendar days after the pressure release. The owner or operator may not initiate startup of the equipment served by the rupture disk until the rupture disc is replaced. The owner or operator must conduct instrument monitoring, as specified in § 60.485(c) of this chapter, § 60.485a(c) of this chapter, or § 63.180(c), as applicable, no later than 5 calendar days after the pressure relief device returns to organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

* * * * *

■ 6. Section 63.655 is amended by revising paragraphs (f)(1)(iii), (f)(2), adding a paragraph (h)(10) subject heading, and revising paragraph (i)(11) introductory text to read as follows:

§ 63.655 Reporting and recordkeeping requirements.

* * * * *

(f) * * *

(1) * * *

(iii) For miscellaneous process vents controlled by control devices required to be tested under §§ 63.645 and 63.116(c), performance test results including the information in paragraphs (f)(1)(iii)(A) and (B) of this section. Results of a performance test conducted prior to the compliance date of this subpart can be used provided that the test was conducted using the methods specified in § 63.645 and that the test conditions are representative of current operating conditions. If the performance test is submitted electronically through the EPA's Compliance and Emissions Data Reporting Interface (CEDRI) in accordance with § 63.655(h)(9), the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in the Notification of Compliance Status in lieu of the performance test results. The performance test results must be submitted to CEDRI by the date the Notification of Compliance Status is submitted.

(A) The percentage of reduction of organic HAP's or TOC, or the outlet concentration of organic HAP's or TOC (parts per million by volume on a dry basis corrected to 3 percent oxygen), determined as specified in § 63.116(c) of subpart G of this part; and

(B) The value of the monitored parameters specified in table 10 of this subpart, or a site-specific parameter approved by the permitting authority, averaged over the full period of the performance test.

* * * * *

(2) If initial performance tests are required by §§ 63.643 through 63.653, the Notification of Compliance Status report shall include one complete test report for each test method used for a particular source. On and after February 1, 2016, for data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test, you must submit the results in accordance with § 63.655(h)(9) by the date that you submit the Notification of Compliance Status, and you must include the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted in the Notification of Compliance Status. All other performance test results must be reported in the Notification of Compliance Status.

(i) For additional tests performed using the same method, the results specified in paragraph (f)(1) of this section shall be submitted, but a complete test report is not required.

(ii) A complete test report shall include a sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(iii) Performance tests are required only if specified by §§ 63.643 through 63.653 of this subpart. Initial performance tests are required for some kinds of emission points and controls. Periodic testing of the same emission point is not required.

* * * * *

(h) * * *

(10) *Extensions to electronic reporting deadlines.*

* * * * *

(i) * * *

(11) For each pressure relief device subject to the pressure release management work practice standards in § 63.648(j)(3), the owner or operator shall keep the records specified in paragraphs (i)(11)(i) through (iii) of this section. For each pilot-operated pressure relief device subject to the requirements at § 63.648(j)(4)(ii), the owner or operator shall keep the records specified in paragraph (i)(11)(iv) of this section.

* * * * *

■ 7. Section 63.660 is amended by revising paragraph (i)(2)(iii) to read as follows:

§ 63.660 Storage vessel provisions.

* * * * *

(i) * * *

(2) * * *

(iii) Use a cap, blind flange, plug, or a second valve for an open-ended valve or line following the requirements specified in § 60.482–6(a)(2), (b), and (c).

* * * * *

■ 8. Section 63.670 is amended by revising paragraph (d)(2) to read as follows:

§ 63.670 Requirements for flare control devices.

* * * * *

(d) * * *

(2) V_{tip} must be less than 400 feet per second and also less than the maximum allowed flare tip velocity (V_{max}) as calculated according to the following equation. The owner or operator shall monitor V_{tip} using the procedures specified in paragraphs (i) and (k) of this section and monitor gas composition and determine NHV_{vg} using the procedures specified in paragraphs (j) and (l) of this section.

$$Log_{10}(V_{max}) = \frac{NHV_{vg} + 1{,}212}{850}$$

Where:

V_{max} = Maximum allowed flare tip velocity, ft/sec.

NHV_{vg} = Net heating value of flare vent gas, as determined by paragraph (k)(4) of this section, Btu/scf.

1,212 = Constant.

850 = Constant.

* * * * *

Subpart UUU—National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

■ 9. Revise Table 4 to Subpart UUU of Part 63 to read as follows:

Table 4 to Subpart UUU of Part 63—Requirements for Performance Tests for Metal HAP Emissions From Catalytic Cracking Units

As stated in §§ 63.1564(b)(2) and 63.1571(a)(5), you shall meet each requirement in the following table that applies to you.

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You must . . .	Using . . .	According to these requirements . . .
1. Any	a. Select sampling port's location and the number of traverse ports.	Method 1 or 1A in appendix A–1 to part 60 of this chapter.	Sampling sites must be located at the outlet of the control device or the outlet of the regenerator, as applicable, and prior to any releases to the atmosphere.
	b. Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, or 2F in appendix A–1 to part 60 of this chapter, or Method 2G in appendix A–2 to part 60 of this chapter, as applicable.	
	c. Conduct gas molecular weight analysis.	Method 3, 3A, or 3B in appendix A–2 to part 60 of this chapter, as applicable.	
	d. Measure moisture content of the stack gas.	Method 4 in appendix A–3 to part 60 of this chapter.	
	e. If you use an electrostatic precipitator, record the total number of fields in the control system and how many operated during the applicable performance test.		
	f. If you use a wet scrubber, record the total amount (rate) of water (or scrubbing liquid) and the amount (rate) of make-up liquid to the scrubber during each test run.		
2. Subject to the NSPS for PM in 40 CFR 60.102 and not elect § 60.100(e).	a. Measure PM emissions.	Method 5, 5B, or 5F (40 CFR part 60, appendix A–3) to determine PM emissions and associated moisture content for units without wet scrubbers. Method 5 or 5B (40 CFR part 60, appendix A–3) to determine PM emissions and associated moisture content for unit with wet scrubber.	You must maintain a sampling rate of at least 0.15 dry standard cubic meters per minute (dscm/min) (0.53 dry standard cubic feet per minute (dscf/min)).
	b. Compute coke burn-off rate and PM emission rate (lb/1,000 lb of coke burn-off).	Equations 1, 2, and 3 of § 63.1564 (if applicable).	
	c. Measure opacity of emissions.	Continuous opacity monitoring system	You must collect opacity monitoring data every 10 seconds during the entire period of the Method 5, 5B, or 5F performance test and reduce the data to 6-minute averages.
3. Subject to the NSPS for PM in 40 CFR 60.102a(b)(1) or elect § 60.100(e), electing the PM for coke burn-off limit.	a. Measure PM emissions.	Method 5, 5B, or 5F (40 CFR part 60, appendix A–3) to determine PM emissions and associated moisture content for units without wet scrubbers. Method 5 or 5B (40 CFR part 60, appendix A–3) to determine PM emissions and associated moisture content for unit with wet scrubber.	You must maintain a sampling rate of at least 0.15 dscm/min (0.53 dscf/min).
	b. Compute coke burn-off rate and PM emission rate (lb/1,000 lb of coke burn-off).	Equations 1, 2, and 3 of § 63.1564 (if applicable).	

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You must . . .	Using . . .	According to these requirements . . .
	c. Establish site-specific limit if you use a COMS.	Continuous opacity monitoring system	If you elect to comply with the site-specific opacity limit in § 63.1564(b)(4)(i), you must collect opacity monitoring data every 10 seconds during the entire period of the Method 5, 5B, or 5F performance test. For site specific opacity monitoring, reduce the data to 6-minute averages; determine and record the average opacity for each test run; and compute the site-specific opacity limit using Equation 4 of § 63.1564.
4. Subject to the NSPS for PM in 40 CFR 60.102a(b)(1) or elect § 60.100(e).	a. Measure PM emissions.	Method 5, 5B, or 5F (40 CFR part 60, appendix A–3) to determine PM emissions and associated moisture content for units without wet scrubbers. Method 5 or 5B (40 CFR part 60, appendix A–3) to determine PM emissions and associated moisture content for unit with wet scrubber.	You must maintain a sampling rate of at least 0.15 dscm/min (0.53 dscf/min).
5. Option 1a: Elect NSPS subpart J requirements for PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	See item 2 of this table.		
6. Option 1b: Elect NSPS subpart Ja requirements for PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	See item 3 of this table.		
7. Option 1c: Elect NSPS requirements for PM concentration, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	See item 4 of this table.		
8. Option 2: PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	See item 3 of this table.		
9. Option 3: Ni lb/hr limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	a. Measure concentration of Ni. b. Compute Ni emission rate (lb/hr).	Method 29 (40 CFR part 60, appendix A–8) Equation 5 of § 63.1564.	
	c. Determine the equilibrium catalyst Ni concentration.	XRF procedure in appendix A to this subpart; [1] or EPA Method 6010B or 6020 or EPA Method 7520 or 7521 in SW–8462; or an alternative to the SW–846 method satisfactory to the Administrator.	You must obtain 1 sample for each of the 3 test runs; determine and record the equilibrium catalyst Ni concentration for each of the 3 samples; and you may adjust the laboratory results to the maximum value using Equation 1 of § 63.1571, if applicable.
	d. If you use a continuous opacity monitoring system, establish your site-specific Ni operating limit.	i. Equations 6 and 7 of § 63.1564 using data from continuous opacity monitoring system, gas flow rate, results of equilibrium catalyst Ni concentration analysis, and Ni emission rate from Method 29 test.	(1) You must collect opacity monitoring data every 10 seconds during the entire period of the initial Ni performance test; reduce the data to 6-minute averages; and determine and record the average opacity from all the 6-minute averages for each test run. (2) You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial Ni performance test; measure the gas flow as near as practical to the continuous opacity monitoring system; and determine and record the hourly average actual gas flow rate for each test run.

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You must . . .	Using . . .	According to these requirements . . .
10. Option 4: Ni per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	a. Measure concentration of Ni.	Method 29 (40 CFR part 60, appendix A–8). Equations 1 and 8 of § 63.1564.	
	b. Compute Ni emission rate (lb/1,000 lb of coke burn-off).		
	c. Determine the equilibrium catalyst Ni concentration.	See item 9.c. of this table	You must obtain 1 sample for each of the 3 test runs; determine and record the equilibrium catalyst Ni concentration for each of the 3 samples; and you may adjust the laboratory results to the maximum value using Equation 2 of § 63.1571, if applicable.
	d. If you use a continuous opacity monitoring system, establish your site-specific Ni operating limit.	i. Equations 9 and 10 of § 63.1564 with data from continuous opacity monitoring system, coke burn-off rate, results of equilibrium catalyst Ni concentration analysis, and Ni emission rate from Method 29 test.	(1) You must collect opacity monitoring data every 10 seconds during the entire period of the initial Ni performance test; reduce the data to 6-minute averages; and determine and record the average opacity from all the 6-minute averages for each test run. (2) You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial Ni performance test; measure the gas flow rate as near as practical to the continuous opacity monitoring system; and determine and record the hourly average actual gas flow rate for each test run.
	e. Record the catalyst addition rate for each test and schedule for the 10-day period prior to the test.		
11. If you elect item 5 Option 1b in Table 1, item 7 Option 2 in Table 1, item 8 Option 3 in Table 1, or item 9 Option 4 in Table 1 of this subpart and you use continuous parameter monitoring systems.	a. Establish each operating limit in Table 2 of this subpart that applies to you.	Data from the continuous parameter monitoring systems and applicable performance test methods.	
	b. Electrostatic precipitator or wet scrubber: Gas flow rate.	i. Data from the continuous parameter monitoring systems and applicable performance test methods.	(1) You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial performance test; determine and record the average gas flow rate for each test run. (2) You must determine and record the 3-hr average gas flow rate from the test runs. Alternatively, before August 1, 2017, you may determine and record the maximum hourly average gas flow rate from all the readings.
	c. Electrostatic precipitator: Total power (voltage and current) and secondary current.	i. Data from the continuous parameter monitoring systems and applicable performance test methods.	(1) You must collect voltage, current, and secondary current monitoring data every 15 minutes during the entire period of the performance test; and determine and record the average voltage, current, and secondary current for each test run. Alternatively, before August 1, 2017, you may collect voltage and secondary current (or total power input) monitoring data every 15 minutes during the entire period of the initial performance test. (2) You must determine and record the 3-hr average total power to the system for the test runs and the 3-hr average secondary current from the test runs. Alternatively, before August 1, 2017, you may determine and record the minimum hourly average voltage and secondary current (or total power input) from all the readings.

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You must . . .	Using . . .	According to these requirements . . .
	d. Electrostatic precipitator or wet scrubber: Equilibrium catalyst Ni concentration.	Results of analysis for equilibrium catalyst Ni concentration.	You must determine and record the average equilibrium catalyst Ni concentration for the 3 runs based on the laboratory results. You may adjust the value using Equation 1 or 2 of § 63.1571 as applicable.
	e. Wet scrubber: Pressure drop (not applicable to non-venturi scrubber of jet ejector design).	i. Data from the continuous parameter monitoring systems and applicable performance test methods.	(1) You must collect pressure drop monitoring data every 15 minutes during the entire period of the initial performance test; and determine and record the average pressure drop for each test run. (2) You must determine and record the 3-hr average pressure drop from the test runs. Alternatively, before August 1, 2017, you may determine and record the minimum hourly average pressure drop from all the readings.
	f. Wet scrubber: Liquid-to-gas ratio.	i. Data from the continuous parameter monitoring systems and applicable performance test methods.	(1) You must collect gas flow rate and total water (or scrubbing liquid) flow rate monitoring data every 15 minutes during the entire period of the initial performance test; determine and record the average gas flow rate for each test run; and determine the average total water (or scrubbing liquid) flow for each test run. (2) You must determine and record the hourly average liquid-to-gas ratio from the test runs. Alternatively, before August 1, 2017, you may determine and record the hourly average gas flow rate and total water (or scrubbing liquid) flow rate from all the readings. (3) You must determine and record the 3-hr average liquid-to-gas ratio. Alternatively, before August 1, 2017, you may determine and record the minimum liquid-to-gas ratio.
	g. Alternative procedure for gas flow rate.	i. Data from the continuous parameter monitoring systems and applicable performance test methods.	(1) You must collect air flow rate monitoring data or determine the air flow rate using control room instrumentation every 15 minutes during the entire period of the initial performance test. (2) You must determine and record the 3-hr average rate of all the readings from the test runs. Alternatively, before August 1, 2017, you may determine and record the hourly average rate of all the readings. (3) You must determine and record the maximum gas flow rate using Equation 1 of § 63.1573.

[1] Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure).

[2] EPA Method 6010B, Inductively Coupled Plasma-Atomic Emission Spectrometry, EPA Method 6020, Inductively Coupled Plasma-Mass Spectrometry, EPA Method 7520, Nickel Atomic Absorption, Direct Aspiration, and EPA Method 7521, Nickel Atomic Absorption, Direct Aspiration are included in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, Revision 5 (April 1998). The SW–846 and Updates (document number 955–001–00000–1) are available for purchase from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, (202) 512–1800; and from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650. Copies may be inspected at the EPA Docket Center, William Jefferson Clinton (WJC) West Building (Air Docket), Room 3334, 1301 Constitution Ave. NW, Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 380, 383, and 384

[Docket No. FMCSA–2007–27748]

RIN 2126–AC25

Extension of Compliance Date for Entry-Level Driver Training

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule with request for comment.

SUMMARY: FMCSA is amending its December 8, 2016, final rule, ''Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators'' (ELDT final rule), by extending the compliance date for the rule from February 7, 2020, to February 7, 2022. This action will provide FMCSA additional time to complete development of the Training Provider Registry (TPR). The TPR will allow training providers to self-certify that they meet the training requirements and will provide the electronic interface that will receive and store entry-level driver training (ELDT) certification information from training providers and transmit that information to the State Driver Licensing Agencies (SDLAs). The extension also provides SDLAs with time to modify their information technology (IT) systems and procedures, as necessary, to accommodate their receipt of driver-specific ELDT data from the TPR. FMCSA is delaying the entire ELDT final rule, as opposed to a partial delay as proposed, due to delays in implementation of the TPR that were not foreseen when the proposed rule was published.

DATES: This interim final rule is effective February 4, 2020. Comments on this interim final rule must be received on or before March 20, 2020.

Petitions for Reconsideration of this interim final rule must be submitted to the FMCSA Administrator no later than March 5, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4325, *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2007–27748 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods.

SUPPLEMENTARY INFORMATION:

This interim final rule is organized as follows:

I. Rulemaking Documents

A. Submitting Comments

If you submit a comment, please include the docket number for this interim final rule (Docket No. FMCSA–2007–27748), indicate the specific section of this document to which each section 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/#!docketDetail;D=FMCSA-2007-27748,* 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 and may change this interim final rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Confidential Business Information

Confidential business information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the interim final rule contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this interim final rule, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this interim final rule.

Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Any comments FMCSA receives which are not specifically designated as CBI will be placed in the public docket for this rulemaking.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov/#!docketDetail;D=FMCSA-2007-27748* 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., 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.dot.gov/privacy.*

II. Executive Summary

A. Purpose and Summary of the Interim Final Rule

FMCSA extends the compliance date for the 2016 final rule, ''Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators'' (81 FR 88732, December 8, 2016), from February 7, 2020, to February 7, 2022. The two-year extension applies to all requirements established by the ELDT final rule, including:

1. The date by which training providers must begin uploading driver-specific training certification information into the TPR, an electronic database that will contain ELDT information;

2. The date by which SDLAs must confirm that applicants for a commercial driver's license (CDL) have complied with ELDT requirements prior to taking a specified knowledge or skills test;

3. The date by which training providers wishing to provide ELDT must be listed on the TPR; and

4. The date by which drivers seeking a CDL or endorsement must complete the required training, as set forth in the ELDT final rule.

This extension is necessary so that FMCSA can complete the IT infrastructure to support the TPR, which will allow training providers to self-certify, request listing on the TPR, and upload the driver-specific ELDT completion information to the TPR. Completion of the TPR technology platform is also necessary before driver-specific ELDT completion information can be transmitted from the TPR to the SDLAs. This delay also provides SDLAs time to make changes, as necessary, to their IT systems and internal procedures to allow them to receive the driver ELDT completion information transmitted from the TPR.

In addition to providing for this delay, FMCSA is also making clarifying and conforming changes to the regulations established by the ELDT final rule, as proposed. FMCSA does not make any other substantive changes to the requirements established by the ELDT final rule.

B. Costs and Benefits

In the 2016 ELDT final regulatory impact analysis (RIA), entry-level drivers, motor carriers, training providers, SDLAs, and the Federal government were estimated to incur costs for compliance and implementation. In 2019, FMCSA published a separate final rule that amended the existing ELDT regulations by adopting a new Class A CDL theory instruction upgrade curriculum to reduce the training time and costs incurred by Class B CDL holders upgrading to a Class A CDL.

In the 2016 and 2019 final rules, FMCSA projected costs and benefits beginning in 2020. Because FMCSA is delaying ELDT implementation to 2022, this regulatory evaluation accounts for the costs and benefits that will therefore not be realized in years 2020 through 2021, as well as the temporal shift of the 2016 and 2019 final rules' costs and benefits to years 2022 and beyond. Because FMCSA estimated the net impact of the 2016 and 2019 final rules to include both costs and benefits, we estimate the delay to result in cost savings and disbenefits. Updated to 2018 dollars,[1] the 2016 final rule resulted in annualized costs of $390 million at a 3 percent discount rate and $391 million at a 7 percent discount rate. The 2016 final rule resulted in annualized benefits of $251 million at a 3 percent discount rate and $252 million at a 7 percent discount rate, also updated to 2018 dollars. The 2019 final rule reduced those annualized costs by $19 million (in 2018 dollars) at both 3 percent and 7 percent discount rates, and did not have an impact on benefits. The Agency estimates this final rule will result in annualized cost savings of $179 million and $196 million at 3 percent and 7 percent discount rates, respectively, over a 4-year period from 2020 through 2023.[2] The Agency estimates this final rule will result in annualized forgone benefits of $108 million at a 3 percent discount rate and $112 million at a 7 percent discount rate. In the summary table below, FMCSA presents the changes in total costs and benefits that will result from this rule relative to the baseline.

[1] All estimates in this analysis have been updated from 2014 dollars to 2018 dollars using a multiplier of 1.065. The GDP deflator for 2014 is 103.680 and the deflator for 2018 is 110.389. 110.389/103.680 = 1.065. This is based on Implicit Price Deflators for Gross Domestic Product (GDP) from on the Bureau of Economic Analysis (BEA) archive of National Accounts (NIPA) data that were initially published on March 1, 2019 in connection with the Initial estimates for 2018 Q4. Accessed April 2019 at *https://apps.bea.gov/histdata/fileStructDisplay.cfm?HMI=7&DY=2018&DQ=Q4&DV=Initial&dNRD=March-1-2019.*

[2] In the previous ELDT RIAs, the Agency annualized impacts across a 10-year period. FMCSA annualizes the costs and benefits of this final rule across 4 years as, compared to the baseline, there will be no change in costs or benefits under this NPRM for years 5 through 10 (2024–2029). While FMCSA did not use the following values in the analysis, for comparison with the previous rules, the cost savings of this final rule annualized across 10 years would be $78 million at a 3% discount rate and $95 million at a 7% discount rate. The forgone benefits annualized over 10 years would be $47 million at a 3% discount rate and $54 million at a 7% discount rate.

TOTAL COSTS AND BENEFITS OF THE FINAL RULE

[In millions of 2018 dollars]

Year	Costs			Benefits		
	Discount rate			Discount rate		
	Undiscounted	3%	7%	Undiscounted	3%	7%
2020	($420)	($420)	($420)	($86)	($86)	($86)
2021	(343)	(333)	(320)	(146)	(142)	(137)
2022	87	79	68	(120)	(113)	(105)
2023	9	9	8	(62)	(61)	(50)
Total	(666)	(664)	(664)	(414)	(403)	(378)
Annualized		(179)	(196)		(108)	(112)

III. Abbreviations and Acronyms

AAMVA American Association of Motor Vehicle Administrators
ANPRM Advance Notice of Proposed Rulemaking
BTW Behind the Wheel
CDL Commercial Driver's License
CDLIS Commercial Driver's License Information System
CFR Code of Federal Regulations
CMV Commercial Motor Vehicle
CMVSA Commercial Motor Vehicle Safety Act
DOT U.S. Department of Transportation
ELDT Entry-Level Driver Training
E.O. Executive Order
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
FR Federal Register
FRFA Final Regulatory Flexibility Analysis
IT Information Technology
NEPA National Environmental Policy Act of 1969
NPRM Notice of Proposed Rulemaking
OMB Office of Management and Budget
PIA Privacy Impact Assessment
PII Personally Identifiable Information
PRA Paperwork Reduction Act
RIA Regulatory Impact Analysis
RIN Regulation Identifier Number
SDLA State Driver Licensing Agency
SORN Systems of Records Notice
§ Section symbol
TPR Training Provider Registry
U.S.C. United States Code

IV. Legal Basis

The legal basis of the ELDT final rule, set forth at 81 FR 88738–88739, also serves as the legal basis for this interim final rule. A summary of the statutory authorities identified in that discussion follows.

FMCSA's authority to amend the ELDT final rule by extending the compliance date and making other necessary clarifying and conforming changes is derived from several concurrent statutory sources. The Motor Carrier Act of 1935, as amended, codified at 49 U.S.C. 31502(b), authorizes the Secretary of Transportation (the Secretary) to prescribe requirements for the safety of motor carrier operations. The rule also relies on the Motor Carrier Safety Act of 1984, as amended, codified at 49 U.S.C. 31136(a)(1) and (2), requiring the Secretary to establish regulations to ensure that CMVs are operated safely, and that responsibilities placed on CMV drivers do not impair their ability to safely operate CMVs. The rule does not address medical standards for drivers or physical effects related to CMV driving (49 U.S.C. 31136(a)(3) and (4)). The Agency does not anticipate that drivers will be coerced as a result of this rule (49 U.S.C. 31136(5)). The Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended, codified generally in 49 U.S.C. chapter 313, established the CDL program and required the Secretary to promulgate implementing regulations, including minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle (49 U.S.C. 31305(a)). The specific statutory provision underlying the ELDT final rule, enacted as part of The Moving Ahead for Progress in the 21st Century Act and codified at 49 U.S.C. 31305(c), required the Secretary to establish minimum entry-level driver training standards for certain individuals required to hold a CDL.

The Administrator of FMCSA is delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. chapters 311, 313, and 315, as they relate to CMV operators, programs, and safety.

V. Regulatory History

ELDT Final Rule

The ELDT 2016 final rule established minimum training standards for individuals applying for a Class A or Class B CDL for the first time; individuals upgrading their CDL to a Class B or Class A; and individuals obtaining the following endorsements for the first time: Hazardous materials (H), passenger (P), and school bus (S). The final rule also defined curriculum standards for theory and behind-the-wheel (BTW) instruction for Class A and B CDLs and the P and S endorsements, and theory instruction requirements for the H endorsement. Additionally, the rule required that SDLAs verify ELDT completion before allowing the applicant to take a skills test for a Class A or Class B CDL, or a P or S endorsement; or a knowledge test prior to obtaining the H endorsement.

The final rule also established the TPR, an online database which would allow ELDT providers to electronically register with FMCSA and certify that individual driver-trainees completed the required training. The rule set forth eligibility requirements for training providers to be listed on the TPR, including a certification, under penalty of perjury, that their training programs meet those requirements. The final rule, when fully implemented, will require training providers to enter driver-specific ELDT information, which FMCSA will then verify before transmitting to the SDLA. The process is designed to deliver a finished ''product'' (*i.e.,* verified driver-specific ELDT information) to the end user, the SDLA.

NPRM to Partially Extend the ELDT Compliance Date

On July 18, 2019, FMCSA published a notice of proposed rulemaking (NPRM) titled ''Partial Extension of Compliance Date for Entry-Level Driver Training'' (84 FR 34324). That NPRM proposed delaying, from February 7, 2020 to February 7, 2022, two provisions from the ELDT final rule published on December 8, 2016 (81 FR 88732). The NPRM is discussed further below.

VI. Discussion of Proposed Rule

The NPRM proposed a new compliance date of February 7, 2022, for two provisions of the ELDT final rule: The requirement that training providers upload driver-specific training certification information to the TPR, and the requirement that SDLAs confirm driver applicants are in compliance with the ELDT requirements prior to taking a skills test for a Class A or Class B CDL, or a P or S endorsement, or prior to taking the knowledge test to obtain the H endorsement. In the NPRM, FMCSA explained that the proposed delay was necessary to allow both the Agency and SDLAs to complete the requisite IT infrastructure to accommodate the two requirements. The NPRM, which did not propose extending the compliance date for any other ELDT requirement, also proposed several clarifying and conforming changes to the ELDT final rule. FMCSA received 56 comments on the NPRM. No public meeting was requested and none was held.

VII. Discussion of Comments And Changes to the Proposed Rule

FMCSA received 56 comments on the proposed rule. Of these, 40 commenters requested that FMCSA delay all provisions of the ELDT final rule. These comments endorsing a delay of the rule in its entirety were filed by individuals, State organizations, and several industry organizations. Commenters noted that a partial delay would cause confusion, particularly regarding how SDLAs should verify driver applicant compliance with the training requirements without being able to check using the electronic system envisioned by the ELDT final rule. Commenters questioned the effectiveness of enforcement if the SDLAs were not verifying training completion prior to administering required tests. They also argued that the partial extension would place an undue burden on the driver applicants, who would incur the costs of taking the new training even though there would not be ''proof'' of that training in the TPR for another two years. Several of these commenters went on to argue that the partial delay could make it harder to recruit drivers, particularly in rural areas.

Six additional commenters opposed the proposed partial delay, with two of these commenters specifically stating the ELDT final rule should be implemented on the original compliance date of February 7, 2020. The commenters opposing the partial delay included the Commercial Vehicle Training Association (CVTA) and the National Association of Publicly Funded Truck Driving Schools (NAPFTDS), as well as individual commenters. CVTA and NAPFTDS stated that FMCSA must take into consideration how the partial delay could impact motor carrier liability, and one individual noted that the partial delay would make enforcement ineffective. One individual noted that the States have had plenty of notice, and another cited the need for full implementation as soon as possible to improve highway safety.

Five commenters expressed support for the proposed partial delay, with two of these commenters (Instructional Technologies, Inc. and the SAGE Truck Driving Schools Corporation) specifically commenting on the IT issues discussed in the NPRM. Two of these commenters (Power and Communications Contractors Association and American Truck Dealers/National Automobile Dealers Association) offered lukewarm support, stating that they preferred full implementation of the ELDT final rule as originally intended, but that in light of the IT issues discussed in the NPRM they agreed a partial delay was necessary.

Two commenters, the American Trucking Associations, Inc. and Owner-Operator Independent Drivers' Association, requested that FMCSA answer questions prior to implementing a partial delay. These questions related to the actions SDLAs would be expected to take in order to verify that driver applicants had received the required ELDT prior to administering testing, in the absence of being able to receive ELDT verification from the TPR.

Three commenters offered no position on the NPRM, and offered no substantive comments.

The Agency agrees with the enforcement concerns raised by commenters, noting that the partial delay proposed in the NPRM would have placed SDLAs in an unfavorable position of having to take applicants' word, or create a new paperwork burden, that they completed their required training prior to appearing at an SDLA for required testing. FMCSA also recognizes the potential impacts on motor carrier's liability, as noted by CVTA and NAPFTDS. Given the delay in developing the IT infrastructure, however, FMCSA is not making a determination whether these concerns, alone, would have been enough to warrant a full delay.

FMCSA is issuing this interim final rule to delay all of the ELDT final rule's requirements by 2 years, to February 7, 2022. As discussed below in section VIII., FMCSA cannot complete the development of the IT system required to implement the ELDT final rule in full by the original compliance date of February 7, 2020. FMCSA acknowledges that delaying the implementation for the entire ELDT final rule addresses many of the implementation questions presented by commenters, and that the majority of commenters requested the full delay of the ELDT final rule.

As discussed above in Section II. B., ''Costs and Benefits,'' delaying the full ELDT final rule will also delay the qualitative safety benefits associated with that rule, which would not have occurred with a partial delay, as proposed. However, due to the fact that FMCSA cannot complete development of the TPR in time for the February 2, 2020, compliance date, the Agency must extend the compliance date for all requirements set forth in the ELDT final rule to February 7, 2022. The specific impacts of the full two-year delay are discussed below in Section XI, ''Regulatory Analyses.''

VIII. Discussion of Interim Final Rule

FMCSA extends the compliance date for the 2016 final rule, ''Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators'' (81 FR 88732, December 8, 2016), from February 7, 2020, to February 7, 2022. The 2-year extension applies to all requirements established by the ELDT final rule, including:

1. The date by which training providers must begin uploading driver-specific training certification information into the TPR, an electronic database that will contain ELDT information;

2. The date by which SDLAs must confirm that applicants for a CDL have complied with ELDT requirements prior to taking a specified knowledge or skills test;

3. The date by which training providers wishing to provide ELDT must be listed on the TPR; and

4. The date by which drivers seeking a CDL or endorsement must complete the required training, as set forth in the ELDT final rule.

This extension is necessary so that FMCSA can complete the IT infrastructure to support the TPR, which will allow training providers to self-certify, request listing on the TPR, and upload the driver-specific ELDT completion information to the TPR. Despite the Agency's best efforts, due to IT development issues largely beyond its control, FMCSA cannot complete any portion of the TPR in time for the February 7, 2020, compliance date

established by the ELDT final rule. These issues include changes in Department of Transportation (DOT) internal requirements for cloud-based IT systems, which added time to the development process, which in turn made it impossible for FMCSA to implement a TPR that would be able to accept training provider registrations by February 7, 2020.

Completion of the TPR technology platform is also necessary before driver-specific ELDT completion information can be transmitted from the TPR to the SDLAs. FMCSA has determined that two years will provide sufficient time for the Agency to develop and complete this infrastructure, as well as for the SDLAs to make changes, as necessary, to their IT systems and internal procedures to allow them to receive the driver's ELDT completion information transmitted from the TPR.

In addition to providing for this delay, FMCSA is also making clarifying and conforming changes to the regulations established by the ELDT final rule, as proposed. FMCSA does not make any other substantive changes to the requirements established by the ELDT final rule.

Administrative Procedure Act—''Good Cause'' Exception

FMCSA has good cause to proceed with the immediate delay of the compliance date for the entire rule, including the two regulatory provisions not included in the NPRM proposing a partial delay.[3] The Administrative Procedure Act (APA) provides that notice and public comment procedures are not required when an Agency finds there is ''good cause'' to dispense with such procedures and incorporates the finding and a brief statement of reasons to support the finding in the rule issued. Good cause exists when the agency determines that notice and public comment procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(3)(B)). In this case, FMCSA finds that allowing for notice and comment on delaying the training provider curriculum and registration requirements and the driver applicant training portions of the ELDT final rule is impracticable and contrary to the public interest. Despite the Agency's best efforts, due to IT development issues largely beyond its control, FMCSA cannot complete any portion of the TPR in time for the February 7, 2020, compliance date established by the ELDT final rule. These issues include changes in Department of Transportation (DOT) internal requirements for cloud-based IT systems, which added time to the development process, which in turn made it impossible for FMCSA to implement a TPR that would be able to accept training provider registrations by February 7, 2020.

In addition to being impracticable to provide prior notice and comment on extending the compliance date for the final rule, it would also be contrary to the public interest by prolonging uncertainty among individuals seeking to obtain the impacted CDLs and endorsements as to what training provisions will apply to them. Additionally, questions regarding a firm compliance date could potentially delay motor carriers from hiring or otherwise utilizing those drivers until the uncertainty is lifted. FMCSA therefore finds that good cause exists to forgo prior notice and comment before extending the compliance date. Nonetheless, this interim final rule includes a 45-day comment period. FMCSA will consider and address any submitted comments in the final rule that will follow this interim final rule.

For the same reasons discussed above, FMCSA finds good cause for making this final rule effective less than 30 days after publication, in accordance with 5 U.S.C. 553(d).

IX. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

X. Section-by-Section Analysis

FMCSA revises the headings for Subparts E and F in part 380, as well as sections 380.600 and 380.603, by changing the compliance date for entry-level drivers to obtain the training found in Subpart F. In all places where it appears, the date is changed from February 7, 2020, to February 7, 2022.

In section 383.71, paragraphs (a)(3), (b)(11), and (e)(5), FMCSA changes the individual drivers' compliance date from February 7, 2020, to February 7, 2022. This delays by two years the date by which individuals seeking a Class A or B CDL for the first time, a passenger endorsement for the first time, a school bus endorsement for the first time, or a hazardous materials endorsement for the first time must complete the training prescribed in 49 CFR part 380, subpart F, prior to taking the skills test (for all but the hazardous materials endorsement) or knowledge test (for the hazardous materials endorsement).

In section 383.73, paragraphs (b)(11), (e)(9), and (p), FMCSA changes the States' compliance date from February 7, 2020, to February 7, 2022. This delays by two years the date by which a State must verify the applicant has completed the required ELDT, and also delays the date when a State must begin complying with the requirement to notify FMCSA if a training provider in that State does not meet the minimum requirements for CMV instruction. The Agency also revises the States' compliance date in section 384.230, from February 7, 2020, to February 7, 2022. In paragraph (a), this date identifies when a State must comply with the requirements of sections 383.73(b)(11) and (e)(9). In paragraphs (b)(1) and (b)(2), this date identifies when States must come into substantial compliance with the ELDT-related requirements of sections 383.73 and 384.230.

Unrelated to the changes made to delay the compliance date wherever it appears, FMCSA is making clarifying changes to existing ELDT-related requirements in section 383.73. In paragraphs (b)(3) and (b)(3)(ii), FMCSA removes references to the State performing a check for whether the applicant has completed required training prior to initial issuance of the CDL. This change reflects that, as intended by the ELDT final rule, the threshold for the SDLA's verification that an applicant completed the required ELDT is at the point of skills testing or, in the case of the H endorsement, knowledge testing. This change eliminates what would otherwise be a duplicative requirement inadvertently imposed on the States; the requirement that States verify the applicant received ELDT training before conducting skills testing is already set forth in section 383.73(b)(11). Similarly, FMCSA revises paragraph (e)(9) to clarify that the State must verify an applicant's completion of required ELDT at the point of testing, not issuance.

[3] Good cause need not be claimed for the two provisions that were part of the proposed partial delay, namely the training provider upload of driver-specific training completion information and the SDLA verification of driver-applicant training completion prior to conducting a skills test or, in the case of an H endorsement, a knowledge test.

XI. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The Office of Information and Regulatory Affairs has determined that this interim final rule is an economically significant regulatory action under E.O. 12866,[4] Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011). It also is significant under DOT regulatory policies and procedures because the economic costs and benefits of the rule exceed the $100 million annual threshold.

As discussed above, this interim final rule will delay, until February 7, 2022, the compliance date of the provisions in the 2016 Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators Final Rule (81 FR 88732) and the 2019 ELDT Commercial Driver's License Upgrade from Class B to Class A final rule (84 FR 8029), henceforth referred to as the ''2016 final rule'' and ''2019 final rule,'' respectively. FMCSA did not propose any substantive changes to the existing regulatory text in 49 CFR part 380, 383, or 384 in the NPRM.

In the 2016 ELDT final RIA, entry-level drivers, motor carriers, training providers, SDLAs, and the Federal government were estimated to incur costs for compliance and implementation starting in 2020. In 2019, FMCSA published a separate final rule that amended the existing ELDT regulations by adopting a new Class A CDL theory instruction upgrade curriculum to reduce the training time and costs incurred by Class B CDL holders upgrading to a Class A CDL.

In the 2016 and 2019 final rules, FMCSA projected costs and benefits beginning in 2020. Because FMCSA is delaying ELDT implementation by 2 years to 2022, this regulatory evaluation accounts for the costs and benefits that will therefore not be realized in years 2020 through 2021, as well as the temporal shift of the 2016 and 2019 final rules' costs and benefits to years 2022 and beyond. Because FMCSA estimated the net impact of the 2016 and 2019 final rules to include both costs and benefits, we estimate the delay to result in cost savings and disbenefits. Updated to 2018 dollars,[5] the 2016 final rule resulted in annualized costs of $390 million at a 3 percent discount rate and $391 million at a 7 percent discount rate. The 2019 final rule reduced those annualized costs by $19 million (in 2018 dollars) at both 3 percent and 7 percent discount rates. FMCSA estimates this final rule will result in annualized cost savings of $179 million and $196 million at 3 percent and 7 percent discount rates, respectively, over a 4-year period from 2020 through 2023.[6]

History of ELDT Rulemakings' Regulatory Impacts

The costs of the 2016 final rule included tuition expenses, the opportunity cost of time while in training, compliance audit costs, and implementation and monitoring of the TPR. The 2019 ELDT final rule established a new theory instruction upgrade curriculum that removed eight instructional units involving ''Non-Driving Activities'' for Class B CDL holders upgrading to a Class A CDL because Class B CDL holders have previous training or experience in the CMV industry. The 2019 final rule did not change the BTW training requirements set forth in the 2016 final rule. FMCSA estimated that the new theory curriculum resulted in cost savings by taking less time to complete, without impacting the benefits of the 2016 ELDT final rule.

Costs of the Interim Final Rule

In this regulatory evaluation, FMCSA estimates the impacts of this rule for years 2020 through 2023, and uses the 2016 and 2019 ELDT final rules as the baseline for its estimates. This rule will delay implementation of the ELDT final rules to 2022, making 2022 the first year in which regulatory impacts of the previous final rules will be realized. Accordingly, this final rule will result in net cost savings using the previous final rules as the baseline. The Agency presents the costs and cost savings of this rule below.

Entry-Level Driver Costs

The cost savings of this rule to entry-level drivers include costs that would have been incurred in 2020 through 2021 for identifying a training provider on the registry, the cost of tuition, and the opportunity cost of time spent in training. In Table 1 below, FMCSA presents the change in costs to entry-level drivers that will result from the rule relative to the baseline.

To illustrate the logic behind the cost impacts of this rule to entry-level drivers, the following example discusses those impacts that will occur in year 2020. In the 2016 final rule, FMCSA estimated that drivers would incur costs of $345 million[7] (at both 3 percent and 7 percent discount rates) in 2020. In the 2019 final rule, FMCSA estimated drivers would incur $8 million in cost savings (at both 3 percent and 7 percent discount rates) in 2020. Thus, FMCSA estimates that this rule will result in a net savings of $337 million in 2020 ($337 million = $345 million − $8 million), at both 3 percent and 7 percent discount rates, with a similar magnitude of savings in 2021.

FMCSA estimates the annualized cost savings of this rule to entry-level drivers will be $179 million over four years at a 3 percent discount rate and $193 million at a 7 percent discount rate as shown in Table 1.

TABLE 1—TOTAL COST OF FINAL RULE TO DRIVERS

[In millions of 2018 dollars]

Year	Undiscounted	Discounted at 3%	Discounted at 7%
2020	($337)	($337)	($337)
2021	(339)	(329)	(317)

[4] 58 FR 51735–51744 (Sept. 30, 1993).

[5] All estimates in this analysis have been updated from 2014 dollars to 2018 dollars using a multiplier of 1.065. The GDP deflator for 2014 is 103.680 and the deflator for 2018 is 110.389. 110.389/103.680 = 1.065. This is based on Implicit Price Deflators for Gross Domestic Product (GDP) from on the Bureau of Economic Analysis (BEA) archive of National Accounts (NIPA) data that were initially published on March-1-2019 in connection with the Initial estimates for 2018 Q4. Accessed April 2019 at *https://apps.bea.gov/histdata/fileStructDisplay.cfm?HMI=7&DY=2018&DQ=Q4&DV=Initial&dNRD=March-1-2019.*

[6] In the previous ELDT RIAs, the Agency annualized impacts across a 10-year period. FMCSA annualizes the costs and benefits of this final rule across 4 years as, compared to the baseline, there will be no change in costs or benefits under this NPRM for years 5–10 (2024–2029).

[7] All estimates in this analysis have been updated from 2014 dollars to 2018 dollars using a multiplier of 1.065 based on BEA NIPA data.

TABLE 1—TOTAL COST OF FINAL RULE TO DRIVERS—Continued

[In millions of 2018 dollars]

Year	Undiscounted	Discounted at 3%	Discounted at 7%
Total	(675)	(666)	(653)
Annualized		(179)	(193)

Motor Carrier Costs

In the 2016 final RIA, FMCSA valued the opportunity cost to motor carriers as represented by the forgone profit resulting from the amount of time drivers spend in training rather than driving.[8] In Table 2 below, FMCSA presents the change in costs to motor carriers that will result from this rule relative to the baseline.

To illustrate the logic behind the cost impacts of this rule to motor carriers, the following example discusses those impacts that would occur in year 2020. FMCSA estimated that the 2016 final rule would result in $21 million in costs to motor carriers in 2020 (at both 3 percent and 7 percent discount rates), and that the 2019 final rule would result in $1 million in cost savings (at both 3 percent and 7 percent discount rates). FMCSA estimates that this rule will result in $20 million in cost savings to motor carriers in 2020 (at both 3 percent and 7 percent discount rates), with a similar magnitude of savings in 2021. As this final rule only defers the compliance date to 2022, it will not impact motor carrier costs in 2022 through 2029 relative to the baseline.

FMCSA estimates that the annualized cost savings over four years to motor carriers will be $11 million at both 3 percent and 7 percent discount rates as presented in Table 2.

TABLE 2—TOTAL COST OF THE PROPOSED RULE TO MOTOR CARRIERS

[In millions of 2018 dollars]

Year	Undiscounted	Discounted at 3%	Discounted at 7%
2020	($20)	($20)	($20)
2021	(20)	(19)	(19)
Total	(40)	(39)	(39)
Annualized		(11)	(11)

Training Provider Costs

In the 2016 final RIA, FMCSA estimated that training providers would incur costs starting in 2020 for submitting documentation to the TPR and for preparing for and being subject to compliance audits. The 2019 final rule did not result in cost savings to training providers. FMCSA estimates that this rule, by deferring training provider costs to 2022, will result in cost savings of $4 million at both 3 percent and 7 percent discount rates on an annualized basis over 4 years.

State Driver Licensing Agency (SDLA) Costs: Delayed Information Technology (IT) System Upgrades

In the 2016 final rule, FMCSA assumed that SDLAs would upgrade their IT systems so that they can receive training completion information through the Commercial Driver's License Information System (CDLIS) and store the information in their State systems. That upgrade required States to create new fields in their State driver record databases by 2020. Because this rule will shift by 2 years the date by which this requirement must be satisfied, SDLAs will incur these costs in 2022 rather than 2020. This change is merely a temporal shift of a cost of the 2016 final rule.

FMCSA estimated in the 2016 final RIA that in 2020 this IT system upgrade would cost $1.2 million per SDLA, and therefore $60 million,[9] across all 51 SDLAs. FMCSA acknowledged in the 2016 final RIA that while some of these costs may be incurred prior to the effective date of the rule, FMCSA applied this entire cost to the first year of the analysis (2020). As noted above, this rule shifts these costs from 2020 to 2022, which will result in a cost savings to SDLAs of $1 million annualized over 4 years at a 3 percent discount rate and $2 million at a 7 percent discount rate. These estimates of cost savings represent the sum across all 51 SDLAs.

Federal Government Costs

This rule will delay by 2 years the Federal government's incurrence of administrative costs related to the TPR as well as compliance audit costs. FMCSA estimates annualized cost savings across 4 years of $554,000 and $715,000 at 3 percent and 7 percent discount rates, respectively. The rule will not delay or alter the Federal government's incurrence of IT costs related to the development of the TPR.

Maintenance and Repair Costs

In the 2016 final rule, FMCSA estimated there would be a cost savings for maintenance and repair of commercial motor vehicles operated by entry-level drivers. The 2016 final RIA considered those savings to be a benefit of that rule. This rule will defer the realization of those benefits by 2 years—

[8] Please see 2016 RIA page 76 for further details on motor carrier costs.

[9] Using estimates updated to 2018 dollars, 51 SDLAs x $1,171,180 = $59,730,159.

that is, from 2020 to 2022. While consistency with the 2016 final RIA would argue for accounting for this change as a disbenefit, the Agency recognizes that repair and maintenance expenses are borne directly by drivers and carriers (rather than an externality) and that it is therefore more appropriate to consider this impact of this rule as a cost rather than a disbenefit. Consequently, the Agency estimates the forgone cost savings of the rule as costs.

To estimate these costs, FMCSA applies the same methodology used in the analysis of the other cost impacts of this rule by applying an implicit gross domestic product (GDP) price deflator to the yearly estimates used in the 2016 final RIA and then discounting and annualizing those adjusted figures over 4 years. As established in the 2016 final RIA, the maintenance and repair cost savings were affected by an assumed 3-year period of knowledge retention of driver training.[10] In short, in both the 2016 final RIA and the analysis of this rule, the Agency assumes that driver behavior reverts linearly over a 3-year period (that is, in the first year of driving following pre-CDL training, a driver experiences the full amount of maintenance and repair cost savings; in year two (the second year of driving following pre-CDL training), he or she experiences 66.67 percent of that amount; in year three (the third year of driving following pre-CDL training), 33.33 percent of that amount and after three years of driving no cost savings remains). Accordingly, under this rule, while none of the 2016 final rule's maintenance and repair cost savings will be realized in 2020 through 2021, 33.33 percent of that rule's cost savings will be realized in 2022, 66.67 percent in 2023, and 100 percent in 2024. These impacts are reflected in Table 3 (year 2024 is excluded from Table 3 as there are no delta in 2024 relative to the baseline). On an annualized basis across 4 years, this rule will result in costs resulting from forgone maintenance and repair cost savings of $17 million at both 3 percent and 7 percent discount rates, as shown in Table 3.

TABLE 3—DISCOUNTED AND ANNUALIZED FORGONE MAINTENANCE AND REPAIR SAVINGS @$0.0034/VMT

[In millions of 2018 dollars]

Year	Undiscounted	3% Discount rate	7% Discount rate
2020	$14	$14	$14
2021	23	22	21
2022	19	17	16
2023	9	9	8
Total	64	62	59
Annualized		17	17

Total Costs of the Interim Final Rule

In Table 4 below, we show the annualized cost savings of this rule (over 4 years, from 2020 through 2023). FMCSA estimates the annualized cost savings of this rule to be $179 million at a 3 percent discount rate and $196 million at a 7 percent discount rate.

TABLE 4—TOTAL COST OF THE FINAL RULE

[In millions of 2018 dollars]

Year	Undiscounted	3% Discount rate	7% Discount rate
2020	($420)	($420)	($420)
2021	(343)	(333)	(320)
2022	87	79	68
2023	9	9	8
Total	(666)	(664)	(664)
Annualized		(179)	(196)

Benefits of the Interim Final Rule

FMCSA estimated the 2016 final rule to result in benefits to CMV operators, the transportation industry, the traveling public, and the environment. The Agency estimated benefits in two broad categories: Safety benefits and non-safety benefits. Training related to the performance of complex tasks was expected to improve performance; in the context of the training required by the 2016 final rule, improvement in task performance constitutes adoption of safer driving practices that the Agency expected to reduce the frequency and severity of crashes, thereby resulting in safer roadways for all. The Agency estimated training related to fuel efficient driving practices taught under the ''speed management'' and ''space management'' sections of the curriculum to reduce fuel consumption and consequently lower environmental impacts associated with carbon dioxide emissions. Similarly, safer driving and better-informed drivers were estimated to reduce maintenance and repair costs.[11]

In this analysis, FMCSA estimates the forgone benefits resulting from this rule for years 2020 through 2023, and uses the 2016 and 2019 ELDT final rules as the baseline for its estimates. As

[10] Please see 2016 RIA page 97 for further details on knowledge retention methodology.

[11] While maintenance and repair cost savings were analyzed as a benefit in the 2016 final RIA, today's analysis of the rule considers the deferral of those savings to be a cost rather than a disbenefit. Therefore, impacts of this rule to maintenance and repair expenses are discussed in the costs section only.

mentioned above, this rule will delay implementation of the ELDT final rules to 2022, making 2022 the first year in which benefits of the previous final rules will be realized, accounting for the assumptions made in the 2016 analysis around knowledge retention.[12]

Fuel Consumption

In the 2016 final rule, FMCSA projected there would be an increase in fuel economy attributable to the rule. The 2016 final RIA monetized fuel savings benefits beginning in 2020. This rule will defer the realization of those benefits to 2022. As per the discussion of the knowledge retention assumption in relation to the costs associated with maintenance and repair (presented earlier in this analysis), under this rule only 33.33 percent of the fuel savings benefits of the 2016 final rule will be realized in 2022. Likewise, 66.67 percent of the fuel savings benefits of the 2016 final rule will be realized in 2023, and 100 percent of those benefits will be realized in 2024. Therefore, as shown in Table 5, the value of forgone fuel savings that will result from this rule is equal to 100 percent of the 2016 final rule's fuel savings for years 2020 and 2021, 66.67 percent of the corresponding value for 2022, 33.33 percent for 2023, and zero for 2024.

TABLE 5—UNDISCOUNTED VALUE OF FORGONE FUEL SAVINGS

[In millions of 2018 dollars]

Year	2020	2021	2022	2023	Total
Forgone Savings	($84)	($142)	($117)	($60)	($403)

Discounting and annualizing (across 4 years [13]) the above disbenefits at the 3 percent and 7 percent discount rates produces the following, shown below.

TABLE 6—DISCOUNTED AND ANNUALIZED VALUE OF FORGONE FUEL SAVINGS

[3 percent discount rate, in millions of 2018 dollars]

Year	2020	2021	2022	2023	Total	Annualized
Forgone Savings	($84)	($138)	($110)	($60)	($392)	($106)

TABLE 7—DISCOUNTED AND ANNUALIZED VALUE OF FORGONE FUEL SAVINGS

[7 percent discount rate, in millions of 2018 dollars]

Year	2020	2021	2022	2023	Total	Annualized
Forgone Savings	($84)	($133)	($102)	($49)	($368)	($109)

Monetized CO_2 Impacts—Social Cost of Carbon Dioxide Emissions

FMCSA estimates the forgone climate benefits from this interim final rule using a measure of the domestic social cost of carbon (SC-CO_2).[14] The SC-CO_2 is a metric that estimates the monetary value of impacts associated with marginal changes in CO_2 emissions in a given year. FMCSA included an analysis of the climate benefits in the 2016 final rule using the SC-CO_2, therefore we are also including this analysis here. The SC-CO_2 estimates used in this regulatory evaluation focus on the direct impacts of climate change that are anticipated to occur within U.S. borders.[15] The SC-CO_2 estimates presented in Table 8 [16] below are interim values developed under E.O. 13783 [17] for use in regulatory analyses until an improved estimate of the impacts of climate change to the U.S. can be developed based on the best available science and economics.

[12] As established in the 2016 final RIA, the benefits of the 2016 final rule were affected by an assumed 3-year period of knowledge retention of driver training. In short, FMCSA assumed that driver behavior reverts linearly over a 3-year period (that is, in the first year of driving following pre-CDL training, a driver experiences the full benefit of training; in year two, he or she experiences 66.67 percent of the initial benefit; in year three, 33.33 percent of the initial benefit, and after year three no benefit remains). Thus, in today's analysis of the final rule, the estimated impacts to benefits for years 2022–2023 were adjusted to account for this assumption.

[13] In the previous ELDT RIAs, the Agency annualized impacts across a 10-year period. FMCSA annualizes the costs and benefits of this final rule across 4 years as, compared to the baseline, there is no change in costs or benefits under this NPRM for years 5 through 10 (2024–2029).

[14] For the estimates and methodology used in analyzing SC-CO_2 disbenefits, FMCSA relied on the Regulatory Impact Analysis for the Review of the Clean Power Plan by the Environmental Protection Agency, EPA–HQ–OAR–2017–0355–0110.

[15] FMCSA follows established precedent set forth in the aforementioned 2017 EPA RIA in focusing on domestic impacts. Circular A–4 states that analysis of economically significant proposed and final regulations ''should focus on benefits and costs that accrue to citizens and residents of the United States.'' EPA followed this guidance by adopting a domestic perspective in the RIA.

[16] These estimates were adjusted from 2011$ to 2018$ using a GDP deflator of 1.125 and then extrapolated. The aforementioned EPA RIA provided SC-CO_2 values in 5 year intervals from 2020–2050. FMCSA linearly extrapolated those figures to fill in the missing years needed for our analysis.

[17] E.O. 13783 directed agencies to ensure that estimates of the social cost of greenhouse gases used in regulatory analyses ''are based on the best available science and economics'' and are consistent with the guidance contained in OMB Circular A–4, ''including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates'' (E.O. 13783, Section 5(c)).

TABLE 8—INTERIM DOMESTIC SOCIAL COST OF CO_2 2020–2023 IN 2018 DOLLARS PER METRIC TON

Year	3 percent average discount rate	7 percent average discount rate
2020	$6.75	$1.13
2021	7.03	1.13
2022	7.31	1.13
2023	7.59	1.13

In Table 9 below, the Agency estimates the forgone reduction, in metric tons, of CO_2 emissions per year.

TABLE 9—CHANGE IN CO_2 EMISSIONS OF THE FINAL RULE

[In metric tons]

Scenario	2020	2021	2022	2023
Reference Case	325,754	541,599	432,936	216,288

Applying the interim domestic SC-CO_2 estimates presented in Table 8 to the estimated forgone reduction in CO_2 emissions attributable to this rule (as shown in Table 9), FMCSA monetizes the value of the forgone reduction. The resulting values are presented below in Tables 10, 11, and 12.

TABLE 10—VALUE OF FORGONE CO_2 EMISSIONS REDUCTIONS, BY YEAR

[In millions of 2018 dollars, undiscounted]

Discount rate and statistic	2020	2021	2022	2023	Total
3 percent Avg	($2)	($4)	($3)	($2)	($11)
7 percent Avg	(0.4)	(1)	(0.5)	(0.2)	(2)

TABLE 11—VALUE OF FORGONE CO_2 EMISSIONS REDUCTIONS, BY YEAR

[3% discount rate, in millions of 2018 dollars]

Discount rate and statistic	2020	2021	2022	2023	Total	Annualized
3 percent Avg	($2)	($4)	($3)	($2)	($10)	($3)
7 percent Avg	(0.4)	(1)	(0.5)	(0.2)	(2)	(0.4)

TABLE 12—VALUE OF FORGONE CO_2 EMISSIONS REDUCTIONS, BY YEAR

[7 percent discount rate, in millions of 2018 dollars]

Discount rate and statistic	2020	2021	2022	2023	Total	Annualized
3 percent Avg	($2)	($4)	($3)	($1)	($10)	($3)
7 percent Avg	(0.4)	(1)	(0.4)	(0.2)	(2)	(0.5)

Total Benefits of the Interim Final Rule

In Table 13 below, we show the annualized (over 4 years, from 2020 to 2023) benefits of this rule. FMCSA estimates the annualized forgone benefits for this rule to be $108 million at a 3 percent discount rate and $112 million at a 7 percent discount rate.[18]

TABLE 13—TOTAL BENEFITS OF THE FINAL RULE

[In millions of 2018 dollars]

Year	Undiscounted total	3 percent discount rate	7 percent discount rate
2020	($86)	($86)	($86)
2021	(146)	(142)	(137)
2022	(120)	(113)	(105)
2023	(62)	(61)	(50)
Total	(414)	(403)	(378)
Annualized	.....	(108)	(112)

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

This rule will result in total costs less than zero, and qualifies as an E.O. 13771 deregulatory action. The present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2020 (the year the rule goes into effect and cost savings will first be realized), is $627 million. On an annualized basis, these cost savings are $44 million.

For the purpose of E.O. 13771 accounting, the April 5, 2017, OMB guidance requires that agencies also calculate the costs and cost savings discounted to year 2016. In accordance with this requirement, the present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2016, is $478 million. On an annualized basis, these cost savings are $33 million.

C. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).[19]

D. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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.[20]Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

FMCSA is not required to complete a regulatory flexibility analysis, because, as discussed earlier in the ''Administrative Procedure Act—''Good Cause'' Exception'' section, this action is not subject to notice and comment under section 553(b) of the APA.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Mr. Richard Clemente, listed in the **FOR FURTHER INFORMATION CONTACT** section of this interim final rule. Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. 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 $165 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2018 levels) or more in any one year. Though this final rule will not result in such an expenditure, the Agency does discuss the effects of this rule in section XI, subsections A. and B., above.

[18] When aggregating total benefits for both 3 percent and 7 percent discount rates (Table 13), the Agency utilized the 3 percent average rate SC-CO_2 model (as seen in Table 8) for the forgone CO_2 emissions reductions inputs (Tables 11 and 12). Had we used the 7 percent average rate, the annualized values would have been $106 million at a 3 percent discount rate and $109 at a 7 percent discount rate.

[19] A ''major rule'' means any rule that the Administrator of Office of Information and Regulatory Affairs at the Office of Management and Budget finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, 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 (5 U.S.C. 804(2)).

[20] Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) see National Archives at *http://www.archives.gov/federal-register/laws/regulaotry-flexibility/601.html.*

G. Paperwork Reduction Act

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The 2016 ELDT final rule discussed the changes to the approved collection of information, but did not revise the supporting statement for that collection at that time, because the changes from the final rule would not take effect until after the expiration date of that approved collection (see PRA discussion at 81 FR 88732, 88788). This collection is currently being revised as part of its renewal cycle, and as required by the PRA (44 U.S.C. 3507(d)), FMCSA will submit its estimate of the burden of the proposal contained in this interim final rule to the Office of Management and Budget (OMB) for its review of the collection of information renewal. FMCSA published the 60-day notice in the **Federal Register** on July 3, 2019 (84 FR 31982). FMCSA will publish the 30-day notice in the **Federal Register**, reflecting the changes made by this IFR.

It is the agency's intent to obtain OMB approval for the revised collection of information in advance of the new compliance date so that training providers may complete the TPR registration process and begin uploading student certificates as soon as the TPR is available, even if prior to the new compliance date of February 7, 2022.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

H. E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' FMCSA determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Impact Statement.

I. E.O. 12988 (Civil Justice Reform)

This interim final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

J. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. While this interim final rule is economically significant, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

K. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this interim final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

L. Privacy

The Consolidated Appropriations Act, 2005, (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not change the collection of personally identifiable information (PII) as set forth in the 2016 ELDT final rule. The supporting PIA, available for review on the DOT website, *http://www.transportation.gov/privacy,* gives a full and complete explanation of FMCSA practices for protecting PII in general and specifically in relation to the ELDT final rule, which would also apply to this final rule.

As required by the Privacy Act (5 U.S.C. 552a), FMCSA and DOT will publish, with request for comment, a system of records notice (SORN) that will describe FMCSA's maintenance and electronic transmission of information affected by the requirements of the ELDT final rule that are covered by the Privacy Act. This SORN will be published in the **Federal Register** not less than 30 days before the Agency is authorized to collect or use PII retrieved by unique identifier.

M. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

N. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this interim final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because, though it is a ''significant regulatory action,'' it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

O. E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

P. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

Q. Environment

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) requires Federal agencies to

integrate environmental values into their decision-making processes by considering the potential environmental impacts of their actions. In accordance with NEPA, FMCSA's NEPA Order 5610.1 (NEPA Implementing Procedures and Policy for Considering Environmental Impacts), and other applicable requirements, FMCSA prepared an Environmental Assessment (EA) to review the potential impacts of the ELDT final rule. That EA is available for inspection or copying in the *Regulations.gov* website listed under **ADDRESSES**.

Because this interim final rule will only delay the compliance date of the ELDT final rule without any other substantive change to the regulations, FMCSA continues to rely upon the previously published EA to support this interim final rule. As noted in that EA, implementation of the 2016 ELDT final rule imposed new training standards for certain individuals applying for their CDL, an upgrade of their CDL, or hazardous materials, passenger, or school bus endorsement for their license. FMCSA found that noise, endangered species, cultural resources protected under the National Historic Preservation Act, wetlands, and resources protected under Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303, as amended by Public Law 109–59, would not be impacted. The impact areas that may be affected and were evaluated in the EA included air quality, hazardous materials transportation, solid waste, and public safety. Specifically, as outlined in the 2016 RIA for the ELDT final rule, FMCSA anticipated that an increase in driver training would result in improved fuel economy based on changes to driver behavior, such as smoother acceleration and braking practices. Such improved fuel economy is anticipated to result in lower air emissions and improved air quality for gases, including carbon dioxide. For today's final rule, FMCSA estimates the forgone environmental benefits for years 2020 through 2023. As mentioned above, today's final rule temporally shifts the benefits of the 2016 final rule by two years but otherwise retains the overall environmental impacts of the 2016 final rule.

R. E.O. 13783 (Promoting Energy Independence and Economic Growth)

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to the Director of OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. This interim final rule has not been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

List of Subjects

49 CFR Part 380

Administrative practice and procedure, Highway safety, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

For the reasons set forth in the preamble, FMCSA amends 49 CFR parts 380, 383, and 384 as follows:

PART 380—SPECIAL TRAINING REQUIREMENTS

■ 1. The authority citation for part 380 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31305, 31307, 31308, 31502; sec. 4007(a) and (b), Pub. L. 102–240, 105 Stat. 1914, 2151; sec. 32304, Pub. L. 112–141, 126 Stat. 405, 791; and 49 CFR 1.87.

§ 380.600 [Amended]

■ 2. Amend § 380.600 by removing the year ''2020'' and adding in its place the year ''2022''.

§ 380.603 [Amended]

■ 3. In § 380.603, amend paragraphs (b) and (c)(1) and (2) by removing the year ''2020'' and adding in its place the year ''2022''.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 4. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56; 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; secs. 5401 and 7208 of Pub. L. 114-94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

§ 383.71 [Amended]

■ 5. In § 383.71, amend paragraphs (a)(3), (b)(11), and (e)(5) by removing the year ''2020'' and adding in its place the year ''2022''.

■ 6. Amend § 383.73:

■ a. By revising paragraphs (b)(3) introductory text and (b)(3)(ii);

■ b. In paragraph (b)(11) by removing the year ''2020'' and adding in its place the year ''2022'';

■ c. By revising paragraph (e)(9); and

■ d. In paragraph (p) by removing the year ''2020'' and adding in its place the year ''2022''.

The revisions read as follows:

§ 383.73 State procedures.

* * * * *

(b) * * *

(3) Initiate and complete a check of the applicant's driving record to ensure that the person is not subject to any disqualification under § 383.51, or any license disqualification under State law, and does not have a driver's license from more than one State or jurisdiction. The record check must include, but is not limited to, the following:

* * * * *

(ii) A check with the CDLIS to determine whether the driver applicant already has been issued a CDL, whether the applicant's license has been disqualified, or if the applicant has been disqualified from operating a commercial motor vehicle;

* * * * *

(e) * * *

(9) Beginning on February 7, 2022, not conduct a skills test of an applicant for an upgrade to a Class A or Class B CDL, or a passenger (P), school bus (S) endorsement, or administer the knowledge test to an applicant for the hazardous materials (H) endorsement, unless the applicant has completed the training required by subpart F of part 380 of this subchapter.

* * * * *

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 7. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–59, 113 Stat. 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5401 and 7208 of Pub. L. 114–94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

§ 384.230 [Amended]

■ 8. Amend § 384.230 by removing the year ''2020'' and adding in its place the year ''2022'' wherever it appears.

§ 384.301 [Amended]

■ 9. In § 384.301, amend paragraph (k) by removing the year ''2020'' and adding in its place the year ''2022''.

Issued under the authority of delegation in 49 CFR 1.87.

Dated: January 23, 2020.

Jim Mullen,

Acting Administrator.

[FR Doc. 2020–01548 Filed 2–3–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 180716667–9383–02; RTID 0648–XW017]

International Fisheries; Pacific Fisheries; 2019 Commercial Pacific Bluefin Tuna Inseason Actions; Notice of Commercial Pacific Bluefin Tuna 2020 Catch Limit

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

ACTION: Announcements of 2019 trip limit modifications and 2020 catch limit.

SUMMARY: NMFS took two inseason actions in the commercial Pacific bluefin tuna fishery in 2019. On August 4, 2019, the commercial Pacific bluefin tuna trip limit was reduced to two metric tons (mt). On August 11, the commercial Pacific bluefin tuna trip limit was increased to 15 mt. Additionally, NMFS is using this notice to announce the Pacific bluefin tuna catch limit for U.S. commercial fishing vessels for 2020, which is 356 mt.

DATES: Inseason Action #1 was effective at 6 a.m. Pacific Daylight Time (PDT) on August 4, 2019. Inseason Action #2 was effective at 12 a.m. PDT on August 11, 2019. The 2020 catch limit is effective January 1, 2020, through December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Celia Barroso, NMFS, West Coast Region, 562–432–1850.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2019, NMFS published a final rule establishing trip and catch limits for the commercial Pacific bluefin tuna fishery (84 FR 18409). The rule established a 630 mt biennial limit for 2019 and 2020, combined, not to exceed 425 mt in a single year. NMFS estimates that 274 mt was caught in 2019; consequently, the commercial Pacific bluefin tuna catch limit for 2020 is 356 mt. The rule also established a 15-mt trip limit until catch was within or expected to be within 50 mt of the annual limit, at which time the trip limit would be reduced, through inseason action, to two mt. In other words, the trip limit is reduced to two mt when NMFS anticipates that the Pacific bluefin tuna harvest level reaches 375 mt (based on rules and assumptions set forth in the final rulemaking, including pre-trip notifications and catch information). Any inseason action would be in effect on the date and time posted on the NMFS website, immediately followed up by a notice to mariners by the U.S. Coast Guard, and when practicable, publication in the **Federal Register**. If inseason action was taken prematurely, NMFS could reverse the action using the same inseason action process described above. This **Federal Register** notice announces two inseason actions taken in 2019 and the 2020 catch limit.

Inseason Actions

Inseason Action #1: At 6 a.m. PDT on August 4, 2019, in anticipation of the Pacific bluefin tuna harvest level reaching 375 mt, the commercial Pacific bluefin tuna trip limit was reduced to two mt.

Inseason Action #2: At 12 a.m. PDT on August 11, 2019, NMFS increased the commercial Pacific bluefin tuna trip limit to 15 mt. NMFS evaluated all available information on catches and estimated that 236 mt of commercially-caught Pacific bluefin tuna had been caught to date; consequently, NMFS determined Inseason Action #1 to reduce the trip limit was premature. In accordance with the 2019–2020 regulations, NMFS increased the trip limit again.

2020 Catch Limit

The commercial Pacific bluefin tuna catch limit for 2020 is 356 mt based on the factors described under Background.

Classification

NOAA's Assistant Administrator (AA) for NMFS finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory action was provided to fishermen through posting on the website, and followed up with radio notification. This action complies with the requirements of the annual management measures for the commercial Pacific bluefin tuna fishery (84 FR 18409, May 1, 2019) and implementing regulations under 50 CFR 300.25. Prior notice and opportunity for public comment was impracticable because NMFS had insufficient time to provide for prior notice and the opportunity for public comment between the time catch was estimated and the time the fishery modifications had to be implemented in order to ensure that the catch limits were not exceeded. The AA also finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3), as a delay in effectiveness of this action would allow fishing at levels inconsistent with the goals of the current management measures.

This action is authorized by 50 CFR 300.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 951 *et seq.*

Dated: January 22, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–01329 Filed 2–3–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 23
Tuesday, February 4, 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 Part 930

[Doc. No. AMS–SC–19–0111; SC20–930–2 CR]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers and processors of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin to determine whether they favor continuance of the marketing order regulating the handling of tart cherries produced in the production area.

DATES: The referendum will be conducted from March 9 through March 30, 2020. Only current growers and processors of tart cherries within the production area that produced or processed tart cherries during the period July 1, 2018, through June 30, 2019, are eligible to vote in this referendum.

ADDRESSES: Copies of the marketing order may be obtained from the Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1124 First Street South, Winter Haven, FL 33880; Telephone: (863) 324–3375; from the Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; or on the internet: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1124 First Street South, Winter Haven, FL 33880; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Jennie.Varela@usda.gov* or *Christian.Nissen@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Agreement and Order No. 930, as amended (7 CFR part 930), hereinafter referred to as the ''Order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order is favored by growers and processors. The referendum will be conducted from March 9 through March 30, 2020, among tart cherry growers and processors in the production area. Only current tart cherry growers and processors who were also engaged in the production or processing of tart cherries during the period of July 1, 2018, through June 30, 2019, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers and processors favor the continuation of marketing order programs. The Order will continue in effect if at least 50 percent of the growers and processors voting, by number or volume, vote in favor of continuance. In evaluating the merits of continuance versus termination, USDA will not exclusively consider the results of the continuance referendum. USDA will also consider all other relevant information regarding operation of the Order and relative benefits and disadvantages to growers, processors, and consumers in determining whether continued operation of the Order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballots used in the referendum have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0177, Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. It has been estimated it will take an average of 20 minutes for each of the approximately 400 tart cherry growers and 40 processors to cast a ballot. Participation is voluntary. Ballots postmarked after March 30, 2020, will not be included in the vote tabulation.

Jennie M. Varela and Christian D. Nissen of the Southeast Marketing Field Office, Specialty Crops Program, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR 900.400).

Ballots will be mailed to all growers and processors of record and may also be obtained from the referendum agents or from their appointees.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

Authority: 7 U.S.C. 601–674.

Dated: January 29, 2020.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–01983 Filed 2–3–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2019–BT–TP–0012]

RIN 1904–AD86

Energy Conservation Program: Test Procedure for External Power Supplies

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: On December 6, 2019, the U.S. Department of Energy published a proposal to amend the test procedures for external power supplies. The proposal provided an opportunity for submitting written comments, data, and information by February 4, 2020. On January 21, 2020, DOE received a request from the USB Implementers Forum, Inc. to extend the public comment period by 14 days. DOE has reviewed this request and is granting the 14-day extension.

DATES: The comment period for the NOPR published on December 6, 2019 (84 FR 67106) is extended. DOE will accept comments, data, and information regarding this request for information received no later than February 18, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2019–BT–TP–2012, by any of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Email: EPS2019TP0012@ee.doe.gov.* Include the docket number EERE–2019–BT–TP–2012 or regulatory information number (RIN) 1904–AD86 in the subject line of the message.

(3) *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

(4) *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting written comments and additional information on the rulemaking process, see section V of the proposal published on December 6, 2019.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available. The docket web page can be found at *http://www.regulations.gov/docket?D=EERE-2019-BT-TP-0012.* The docket web page will contain simple instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: On December 6, 2019, DOE published a notice of proposed rulemaking (''NOPR'') to revise its test procedure for testing the energy efficiency of a regulated external power supply (''EPS''). 84 FR 67106. The NOPR raised a variety of definitional issues, including the possibility of adding a definition for ''commercial and industrial power supply'' to DOE's regulations to differentiate between EPSs and other non-consumer power supplies that are not subject to the test procedure. The proposal also sought feedback on how to address an adaptive EPS that conforms to the Universal Serial Bus Power Delivery (''USB–PD EPS'') specifications in a manner more representative of its actual use. Further, the NOPR sought feedback regarding proposed instructions for testing single-voltage EPSs that have multiple output busses. Lastly, DOE proposed to reorganize the test procedure to centralize definitions, consolidate generally applicable requirements, and better delineate requirements for single-voltage, multiple-voltage, and adaptive EPSs.

The USB Implementers Forum, Inc. (''USB–IF''), an organization supporting the advancement and adoption of USB technology, requested a two-week extension of the public comment period for the NOPR (USB–IF, No. 6, at p. 1) on January 21, 2020.

DOE believes that extending the comment period to allow additional time for interested parties to submit comments is appropriate. Therefore, DOE is extending the comment period until February 18, 2020, to provide interested parties additional time to prepare and submit comments. Comments received between the original February 4, 2020, closing date and the new February 18, 2020, closing date are considered timely filed. Therefore, individuals who submitted late comments during the original comment period do not need to re-submit comments.

Signed in Washington, DC, on January 27, 2020.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2020–02122 Filed 2–3–20; 8:45 am]

BILLING CODE 6450–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2017–0214]

Retrospective Review of Administrative Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is conducting a retrospective review of administrative requirements to identify outdated or duplicative administrative requirements that may be eliminated without an adverse effect on public health or safety, common defense and security, protection of the environment, or regulatory efficiency and effectiveness. The NRC is requesting input from its licensees and members of the public on any administrative requirements that may be outdated or duplicative in nature. The NRC will use five criteria to evaluate any public input under this retrospective review of administrative requirements initiative for possible revision or elimination to reduce burden on regulated entities and the NRC.

DATES: Submit comments by April 6, 2020. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. The NRC will not prepare written responses to each individual comment but will consider the comments in completing the retrospective review.

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–2017–0214. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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: Andrew Carrera, telephone: 301–415–1078; email: *Andrew.Carrera@nrc.gov* or Pamela Noto, telephone: 301–415–6795; email: *Pamela.Noto@nrc.gov.* Both are staff of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0214 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–2017–0214.
- *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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0214 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* and will enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

On August 11, 2017, the NRC issued a press release, ''NRC To Review Its Administrative Regulations,'' to announce that in the fall of 2017, the agency would be initiating a retrospective review of its administrative regulations to identify those rules that are outdated or duplicative. The goal of the review is to optimize the management and administration of regulatory activities and to ensure that the agency's regulations remain current and effective. The review is intended to identify regulatory changes that are administrative in nature that will make information submission, recordkeeping, and reporting processes more efficient for the NRC, applicants, and regulated entities. The strategy takes into consideration the agency's overall statutory responsibilities, including mandates to issue new regulations, the number of regulations in chapter I of title 10 of the *Code of Federal Regulations* (10 CFR), and available resources. Once identified, the regulations will be evaluated to determine whether they may be revised or eliminated without impacting the agency's mission.

On May 3, 2018 (83 FR 19464), the NRC published a **Federal Register** notice (FRN) seeking public comment on draft criteria the NRC would use to evaluate potential changes to regulations under the retrospective review. The FRN also discussed the process the NRC would use to conduct the review of administrative requirements. On May 31, 2018, during the public comment period for the draft criteria, the NRC conducted a public meeting to discuss the effort and the draft criteria. Participants included industry representatives, members of the public, and NRC staff. Additional information on this meeting can be found in the meeting summary listed in the Availability of Documents section of this document.

The NRC received six public comments and considered them in the final evaluation criteria provided to the Commission for review and approval in COMSECY–18–0027, ''Evaluation Criteria for Retrospective Review of Administrative Regulations,'' dated November 16, 2018. Enclosure 1 of COMSECY–18–0027 described changes to the evaluation criteria that resulted from the public comments. In the October 8, 2019, staff requirements memorandum to COMSECY–18–0027, the Commission approved the staff's recommended criteria, which are provided in the Discussion section of this document.

III. Discussion

This document requests input from the public on administrative regulations that the NRC should consider revising or eliminating and announces the final evaluation criteria that the NRC will use as a guideline to evaluate potential changes.

Potential Changes to Administrative Requirements

The NRC is reviewing existing administrative regulations to identify those requirements that may be obsolete or unnecessarily burdensome. In the context of this initiative, the term ''burden'' refers to labor or monetary costs that regulated entities, the NRC, or both, incur to implement NRC regulations. To guide the scope of this review, the NRC will use the evaluation criteria outlined in the section ''Finalized Criteria for Evaluating Potential Changes to Administrative Regulations'' in this document. The NRC is requesting public input to identify potential changes to administrative requirements that would be consistent with the evaluation criteria.

To help facilitate a thorough and informed consideration of input, commenters are encouraged to identify the specific requirement that should be considered for revision or elimination, the associated rationale, and an estimate of the burden that would be eliminated or reduced. The NRC is particularly interested in identifying changes to administrative regulations that could have a broad impact and potentially significant reduction in burden. For example, a change to an administrative requirement that impacts multiple regulated entities over a long timeframe will generally be more likely to achieve a significant reduction in burden compared to an administrative requirement that affects a single regulated entity one time.

All comments received that are within the scope of this review will be considered and used, as appropriate, to inform the staff's actions and applicable recommendations to the Commission. This review will only consider existing NRC regulations, so the public should not use this process to submit comments on a proposed rule or recommend new requirements.

Finalized Criteria for Evaluating Potential Changes to Administrative Regulations

The NRC has developed final criteria with which to evaluate potential regulatory changes to be included in the retrospective review. Although the criteria will serve as a useful guideline in identifying administrative requirements that should be considered for modification or elimination, the NRC will also consider programmatic experience, intent of the requirement, impact to the NRC's mission, and overall impact to resources when determining whether to pursue a change to the regulations. The final criteria are:

1. Submittals resulting from routine and periodic recordkeeping and reporting requirements, such as directives to submit recurring reports, which the NRC has not consulted or referenced in programmatic operations or policy development in the last 3 years.

2. Requirements for reports or records that contain information reasonably accessible to the agency from alternative resources, which as a result may be candidates for elimination.

3. Requirements for reports or records that could be modified to result in reduced burden without impacting programmatic needs, regulatory efficiency, or transparency, through: (a) Less frequent reporting, (b) shortened record retention periods, (c) requiring entities to maintain a record rather than submit a report, or (d) implementing another mechanism that reduces burden for collecting or retaining information.

4. Recordkeeping and reporting requirements that result in significant burden.

5. Reports or records that contain information used by other Federal agencies, State and local governments, or Federally recognized Tribes will be dropped from the review provided the information collected is necessary to support the NRC's mission or to fulfill a binding NRC obligation.

IV. Specific Questions

The NRC is providing an opportunity for the public to submit input to help identify administrative regulations for potential modification or elimination that would result in potentially reducing burden on regulated entities, the NRC, or both. The NRC is particularly interested in gathering input on the following questions:

1. Which administrative regulations should the NRC consider changing? Include the 10 CFR part, section, and paragraph(s).

2. How should the NRC change the regulations? Can the regulation be made less burdensome, or should it be eliminated entirely? If possible, provide specific language showing how the regulatory text might be changed to reduce burden. Describe how the evaluation criteria would apply to the proposed change(s).

3. What is the basis for the proposed change? Provide a rationale for why the requirement might be obsolete or overly burdensome and any relevant supporting data.

4. What burden is associated with the administrative requirements? Provide a quantitative basis for the burden in terms of costs or labor hours, if available.

5. How would the suggested change reduce burden? Would it result in a one-time reduction in burden, a reduction in burden for multiple years, or an ongoing reduction in burden? Provide supporting justification.

V. Public Meetings

The NRC plans to hold two public meetings during this public comment period to discuss the request for input. The NRC will publish a notice providing the location, time, and agenda of the future public meetings on *https://www.Regulations.gov* and on the NRC's public meeting website at least 10 calendar days before each meeting. Stakeholders should monitor the NRC's public meeting website (*https://www.nrc.gov/public-involve/public-meetings/index.cfm)* for information about the public meetings.

VI. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./FR Citation
Press Release No. 17–036, ''NRC to Review Its Administrative Regulations,'' dated August 11, 2017	ML17243A126
Federal Register notice, ''Review of Administrative Rules,'' dated May 3, 2018	83 FR 19464
Meeting summary, ''Public Meeting to Discuss the NRC's Retrospective Review of Administrative Requirements,'' dated May 31, 2018	ML18170A135
COMSECY–18–0027, ''Evaluation Criteria for Retrospective Review of Administrative Regulations,'' dated November 16, 2018	ML18227A120
Enclosure 1 of COMSECY–18–0027, ''Changes to the Evaluation Criteria for the Retrospective Review of Administrative Regulations as a Result of Public Comments,'' dated November 16, 2018	ML18261A173
Staff Requirements Memorandum to COMSECY–18–0027, ''Evaluation Criteria for Retrospective Review of Administrative Regulations,'' dated October 8, 2019	ML19281C697

The NRC may post documents related to this initiative, including public comments, on the Federal Rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2017–0214. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2017–0214); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how

frequently you would like to receive emails (daily, weekly, or monthly).

Dated at Rockville, Maryland, this 22nd day of January, 2020.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2020–02025 Filed 2–3–20; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

RIN 3245–AH14

Regulatory Reform Initiative: Government Contracting Programs

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) is proposing to remove from the Code of Federal Regulations (CFR) four regulations in the Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC) Program that are no longer necessary because they are unnecessary or redundant. The removal of these regulations will assist the public by simplifying SBA's regulations in the CFR.

DATES: Comments must be received on or before April 6, 2020.

ADDRESSES: You may submit comments, identified by RIN: 3245–AH14, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Brenda Fernandez, Office of Policy, Planning and Liaison, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI), as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Brenda Fernandez, Office of Policy, Planning and Liaison, Office of Government Contracting and Business Development, 409 Third Street SW, Washington, DC 20416, or send an email to *Brenda.fernandez@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Khem Sharma, Chief, Office of Size Standards, (202) 205–7189 or *khem.sharma@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Service-Disabled Veteran-Owned Small Business Concern Program

This program allows agencies to set aside contracts for SDVO SBCs. Under this program, Federal agencies may also award sole source contracts to SDVO SBCs so long as the award can be made at a fair and reasonable price and the anticipated total value of the contract, including any options, is below $4 million ($6.5 million for manufacturing contracts). For purposes of this program, veterans and service-related disabilities are defined as they are under the statutes governing veterans' affairs. In FY2017, the Federal Government awarded $18.2 billion to SDVO SBCs:

- $6.8 billion was awarded through SDVO SBC set-aside awards;
- $4.3 billion was awarded to SDVO SBCs in full-and-open competitions; and
- $7.1 billion was awarded through awards with another small business preference (set-asides or sole source awards for small businesses generally or awards reserved for HUBZone firms, 8(a) firms, and WOSBs).

There are currently 21,750 active certified SDVO SBCs.

SBA is proposing to remove from the Code of Federal Regulations (CFR) four regulations that are no longer necessary because they are unnecessary or are covered elsewhere in SBA's regulations. These four regulations govern SBA's SDVO SBC Program.

B. Executive Order 13771

On January 30, 2017, the President signed Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, which, among other objectives, is intended to ensure that an agency's regulatory costs are prudently managed and controlled so as to minimize the compliance burden imposed on the public. For every new regulation an agency proposes to implement, unless prohibited by law, this Executive Order requires the agency to (i) identify at least two existing regulations that the agency can cancel; and (ii) use the cost savings from the cancelled regulations to offset the cost of the new regulation.

C. Executive Order 13777

On February 24, 2017, the President issued Executive Order 13777, Enforcing the Regulatory Reform Agenda, which further emphasized the goal of the Administration to alleviate the regulatory burdens placed on the public. Under Executive Order 13777, agencies must evaluate their existing regulations to determine which ones should be repealed, replaced, or modified. In doing so, agencies should focus on identifying regulations that, among other things: eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or are associated with Executive Orders or other Presidential directives that have been rescinded or substantially modified. SBA has engaged in this process and has identified the regulations in this rulemaking as appropriate for removal in accordance with Executive Order 13777.

II. Section-by-Section Analysis

Section 125.15 May an SDVO SBC have affiliates?

Section 125.15 provides that an SDVO SBC may have affiliates. This rule is redundant because whether an SDVO SBC can have an affiliate is addressed in 13 CFR 121.103, the general rules of affiliation.

Section 125.16 May 8(a) program participants, HUBZone SBCs, small and disadvantaged businesses, or women-owned small businesses qualify as SDVO SBCs?

Section 125.16 states that an SDVO SBC may qualify for other SBA contracting programs. This regulation is unnecessary because the requirements for an SDVO SBC to qualify for other programs are addressed in the rules on eligibility for those specific programs.

Section 125.19 Does SDVO SBC status guarantee receipt of a contract?

Section 125.19 states that an SDVO SBC is not guaranteed receipt of a contract. This provision is unnecessary because nothing in SBA's regulations indicates that qualification as an SDVO SBC entitles a firm to a contract.

Section 125.20 Who decides if a contract opportunity for SDVO competition exists?

Section 125.20 is redundant because 13 CFR 125.22 and 125.23 already provide that contracting officers make SDVO SBC competition decisions.

III. Compliance With Executive Orders 12866, 13771, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

A. Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action for purposes of Executive Order 12866 and is not a major rule under the Congressional Review Act, 5 U.S.C. 801, *et seq.*

B. Executive Order 13771

This proposed rule is expected to be an Executive Order 13771 deregulatory action with an annualized net savings of $29,731 and a net present value of $424,722, both in 2016 dollars.

The four regulations in the SDVO program are either unnecessary or redundant. Their removal will assist the public by simplifying the SBA's regulations in the CFR and reduce the time spent reviewing them. The cost saving calculation assumes 2 percent of the 21,750 SDVO small businesses per year (or about 435) will save 30 minutes from not reading this removed information. This time is valued at a rate of $75.57 per hour—the wage of an attorney according to 2018 Bureau of Labor Statistics (BLS) data adding 30 percent more for benefits. This produces savings to SDVO small businesses per year of $16,436 in current dollars.

The cost savings also includes a savings to the government, assuming that 2 percent of the 38,000 Federal contracting officers per year (or about 760) will save 30 minutes from not reading this removed information. This time is valued at a rate of $54.21—assuming the average Federal contracting officer is a GS–12 step 1 (DC locality) and adding 30 percent more for benefits, for savings of $20,600. This produces total savings per year of $37,036 in current dollars.

In the first year, it is assumed that 5 percent of SDVO small businesses (about 1,088) and 5 percent of Federal contracting officers (about 1,900) would read this **Federal Register** proposed rule which is estimated to take 30 minutes per SDVO small business at $75.57 per hour and $54.21 per hour per Federal contracting officer, producing cost in the first year of $92,591 ($41,091 for SDVO small businesses and $51,500 for the Federal Government). This cost is not expected to continue in subsequent years.

Table 1 displays the costs and savings of this rule over the first 2 years it is published, with the savings and costs in the second year expected to continue into perpetuity. Table 2 presents the annualized net savings in 2016 dollars.

TABLE 1—SCHEDULE OF COSTS/(SAVINGS) OVER 2 YEAR HORIZON, CURRENT DOLLARS

	Savings	Costs
Year 1 ..	598 hours	1,494 hours.
	($37,036)	$92,591.
Year 2 ..	598 hours	0 hours.
	($37,036)	$0.

TABLE 2—ANNUALIZED SAVINGS IN PERPETUITY WITH 7% DISCOUNT RATE, 2016 DOLLARS

	Estimate
Annualized Savings	($35,544)
Annualized Costs	5,813
Annualized Net Savings	(29,731)

C. Executive Order 12988

This action meets applicable standards set forth in Sec. 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

D. Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such, it does not warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act, (5 U.S.C. 601–612)

SBA has determined that this final rule does not affect any existing collection of information.

F. Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' which will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

There are approximately 21,750 SDVO small businesses and all can be affected by this rule. However, this rule would remove regulations that are unnecessary or redundant, saving these entities time in reading the regulations. The annualized net savings to SDVO small businesses is $13,748 in current dollars, or less than a dollar per SDVO small business, as detailed in the Executive Order 13771 discussion above.

Accordingly, the Administrator of SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. SBA invites comment from the public on this certification.

List of Subjects in 13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance, Veterans.

Accordingly, for the reasons stated in the preamble, SBA proposes to amend 13 CFR part 125 as follows:

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 1. The authority citation for part 125 is revised to read as follows:

Authority: 15 U.S.C. 632(p), (q), 634(b)(6), 637, 644, 657(f), 657q, and 657s; 38 U.S.C. 501 and 8127.

§§ 125.15, 125.16, 125.19, and 125.20 [Removed and Reserved]

■ 2. Remove and reserve §§ 125.15, 125.16, 125.19, and 125.20.

Dated: January 17, 2020.

Jovita Carranza,

Administrator.

[FR Doc. 2020–01990 Filed 2–3–20; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0089; Product Identifier 2019–NM–159–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for

certain The Boeing Company Model 737–700, -800, and -900ER series airplanes. This proposed AD was prompted by a report of unshimmed gaps at a certain inner chord. This proposed AD would require a general visual inspection for repairs of a certain inner chord, a detailed inspection for unshimmed gaps of the frame inner chord, and applicable on-condition actions. 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 20, 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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0089.

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–2020–0089; 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: Greg Rutar, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3529; email: *Greg.Rutar@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–2020–0089; Product Identifier 2019–NM–159–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The FAA has received a report of unshimmed gaps found during production at the station (STA) 727 frame inner chord common to the stringer (S) 18A web on multiple airplanes, on both the left and right sides of the fuselage. Airplanes that were found to have gaps in production were corrected prior to delivery; however, a quality investigation determined that certain airplanes previously delivered might have gaps. These gaps could initiate early cracking in fatigue critical baseline structure (FCBS). Such cracking, if not addressed, may result in the inability of a principal structural element (PSE) to sustain limit load and adversely affect the structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–53A1385 RB, dated August 16, 2019. This service information describes procedures for a general visual inspection for repairs of the STA 727 frame inner chord at S–18A, a detailed inspection for unshimmed gaps of the frame inner chord at S–18A, and applicable on-condition actions including an initial high frequency eddy current inspection for cracking of the frame inner chord at S–18A, repair, shim installation between the frame inner chord and S–18A, and repetitive high frequency eddy current inspections for cracking of the frame inner chord at S–18A.

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

The FAA is proposing this AD because we 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 accomplishment of the actions identified in Boeing Alert Requirements Bulletin 737–53A1385 RB, dated August 16, 2019, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0089.

Explanation of Requirements Bulletin

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are ''required for compliance'' (RC) with an AD. Boeing has implemented this RC concept into Boeing service bulletins.

In an effort to further improve the quality of ADs and AD-related Boeing service information, a joint process improvement initiative was worked between the FAA and Boeing. The initiative resulted in the development of a new process in which the service information more clearly identifies the actions needed to address the unsafe condition in the ''Accomplishment Instructions.'' The new process results in a Boeing Requirements Bulletin, which contains only the actions needed to address the unsafe condition (*i.e.,* only the RC actions).

Costs of Compliance

The FAA estimates that this proposed AD affects 56 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for repairs	3 work-hours × $85 per hour = $255	$0	$255	$14,280.
Detailed inspection	1 work-hour × $85 per hour = $85	0	85	Up to $4,760.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
HFEC inspection	Up to 3 work-hours × $85 per hour = $255	$0	$255
Shim installation	2 work-hours × $85 per hour = $170	0	170

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

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2020–0089; Product Identifier 2019–NM–159–AD.

(a) Comments Due Date

The FAA must receive comments by March 20, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–700, –800, and –900ER series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–53A1385 RB, dated August 16, 2019.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of unshimmed gaps at the station (STA) 727 frame inner chord common to the stringer (S) 18A web. The FAA is issuing this AD to address such gaps, which may initiate early cracking in fatigue critical baseline structure (FCBS) and result in the inability of a principal structural element (PSE) to sustain limit load and adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1385 RB, dated August 16, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–53A1385 RB, dated August 16, 2019.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–53A1385, dated August 16, 2019, which is referred to in Boeing Alert Requirements Bulletin 737–53A1385 RB, dated August 16, 2019.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin 737–53A1385 RB, dated August 16, 2019, uses the phrase ''the original issue date of the Requirements Bulletin 737–53A1385 RB'' or ''the original issue date of Requirements Bulletin 737–53A1385 RB,'' this AD requires

using ''the effective date of this AD,'' except where Boeing Alert Requirements Bulletin 737–53A1385 RB, dated August 16, 2019, uses the phrase ''the original issue date of Requirements Bulletin 737–53A1385 RB'' in a note or flag note.

(2) Where Boeing Alert Requirements Bulletin 737–53A1385 RB, dated August 16, 2019, specifies contacting Boeing for repair instructions, alternative inspections, and applicable on-condition actions: This AD requires accomplishing those actions using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

(1) For more information about this AD, contact Greg Rutar, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3529; email: *Greg.Rutar@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on January 28, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–02016 Filed 2–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0967; Product Identifier 2017–NE–35–AD]

RIN 2120–AA64

Airworthiness Directives; GE Aviation Czech s.r.o. Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposal for all GE Aviation Czech s.r.o. M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, M601F, H80, H80–100, H80–200, H75–100, H75–200, H85–100, and H85–200 turboprop engines. This action revises the notice of proposed rulemaking (NPRM) by revising the compliance time requirements for replacement of affected engine outlet system hardware. The FAA is proposing this airworthiness directive (AD) to address the unsafe condition on these products. At the request of some commenters, the FAA is reopening the comment period to allow the public the chance to comment on these changes.

DATES: The comment period for the NPRM published in the **Federal Register** on January 24, 2018 (83 FR 3287), is reopened.

The FAA must receive comments on this SNPRM by March 20, 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 SNPRM, contact GE Aviation Czech s.r.o., Beranových 65, 199 02 Praha 9—Letňany, Czech Republic; phone: +420 222 538 111; fax: +420 222 538 222. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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–2017–0967; 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 SNPRM, the mandatory continuing airworthiness information (MCAI), 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: Barbara Caufield, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7146; fax: 781–238–7199; email: *barbara.caufield@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–2017–0967; Product Identifier 2017–NE–35–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this SNPRM. The FAA will consider all comments received by the closing date and may amend this SNPRM because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this SNPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or

responsive to this SNPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this SNPRM. Submissions containing CBI should be sent to Barbara Caufield, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to all GE Aviation Czech s.r.o. M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, M601F, H75–100, H75–200, H80, H80–100, H80–200, H85–100, and H85–200 turboprop engines. The NPRM published in the **Federal Register** on January 24, 2018 (83 FR 3287). The NPRM was prompted by a review by the manufacturer that identified the possibility of a power turbine (PT) rotor overspeed and the uncontained release of PT blades. The NPRM proposed to require installing a modified engine outlet system.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2017–0151R1, dated December 5, 2018 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> A recent design review identified the possibility of failure of the power turbine (PT) or quill shaft splines.
>
> This condition, if not corrected, could lead to a PT rotor overspeed, with consequent release of PT blade(s), possibly resulting in high energy debris and damage to, and/or reduced control of, the aeroplane.
>
> To address this potential unsafe condition, GE Aviation Czech (GEAC) designed a modification (mod) of the engine outlet system and issued the ASB, later revised, providing instructions for modification of engines in service, and EASA issued AD 2017–0151, requiring modification of the affected engines, and prohibiting installation of pre-mod parts.
>
> Since that [EASA] AD was issued, GEAC completed a TBO extension program, and revised the ASB (now at Revision 03) and the applicable EMM accordingly.
>
> For the reasons stated above, this [EASA] AD is revised to include reference to the revised EMM.

You may obtain further information by examining the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0967.

Actions Since the NPRM Was Issued

Since the FAA issued the NPRM, GE Aviation Czech s.r.o. has revised its service information. GE Aviation Czech s.r.o. published GE Aviation Alert Service Bulletin (ASB) ASB–M601E–72–00–00–0070[03], ASB–M601D–72–00–00–0053[03], ASB–M601F–72–00–00–0036[03], ASB–M601T–72–00–00–0029[03], ASB–M601Z–72–00–00–0039[03], ASB–H75–72–00–00–0011[03], ASB–H80–72–00–00–0025[03], and ASB–H85–72–00–00–0007[03] (single document), dated July 24, 2018. In addition, EASA has revised its AD to incorporate changes from the revised ASB in EASA AD 2017–0151R1, dated December 5, 2018.

Comments

The FAA gave the public the opportunity to comment on the NPRM. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Exempt Part 137 Operators

Thrush Aircraft, Inc., Swing Wing, Inc., and an individual commenter requested that the proposed rule exempt from its applicability section 14 CFR part 137 restricted category agricultural operators. The commenters stated that the proposed rule would have no significant effect on improving safety. They further commented that documented single engine uncontained events caused minor damage or penetrations to the engine nacelle and did not affect any primary structure of the aircraft or any aircraft systems.

The FAA partially agrees. The FAA agrees with the commenter that there may be events in which an engine uncontainment does not have a hazardous effect on the aircraft or its occupant. There is still a risk of total loss of engine power and damage to the aircraft. The FAA disagrees with removing 14 CFR part 137 operators of restricted agricultural category aircraft from the applicability section of the proposed AD. The FAA considers an uncontained engine failure an unsafe condition regardless of the aircraft type on which the engine is installed.

Request To Consider Rule Significant

Swing Wing, Inc., Thrush Aircraft, Inc., and an individual commenter requested that the FAA consider the proposed rule a significant regulatory action under Executive Order 12866 and a significant rule under the DOT Regulatory Policies and Procedures. The commenters stated that the cost to comply with the required actions of this AD will be much higher than what is shown in the economic costs section of the proposed AD since it did not consider lost revenue.

The FAA disagrees. The estimated costs set forth in the NPRM and in this supplemental NPRM do not rise to the level of a ''Significant regulatory action'' as defined in Executive Order 12866 or under DOT Regulatory Policies and Procedures.

Request To Consider Rule Significant Effect on Small Businesses

Swing Wing, Inc., Thrush Aircraft, Inc., and an individual commenter noted that the proposed rule would have a significant effect on small businesses. The commenters asked that the FAA therefore consider the economic impact of the proposed rule.

In accordance with the Regulatory Flexibility Act, the FAA must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. Within this preamble, the FAA is publishing its initial Regulatory Flexibility Analysis.

Request To Delay Rule Implementation

Swing Wing, Inc. and Thrush Aircraft, Inc. requested that the FAA delay implementation of this proposed rule by 24 to 36 months. The commenters requested that the FAA analyze the effective date of the AD to determine how it would affect 14 CFR part 137 operators. The commenters indicated that a delay of 24 to 36 months in the effective date would be commensurate with the compliance times in Table 1 of paragraph (g) as originally proposed by the engine manufacturer. The commenters further state that a delay of 24 to 36 months would allow operators to plan, schedule, and budget for accomplishing the required actions of the AD.

The FAA disagrees. Delaying the implementation of the AD by 24 to 36 months would not be consistent with the safety objectives of the rule.

Request To Revise Compliance Time

GE Aviation Czech s.r.o. requested the FAA revise the compliance time to remove the 6,600 engine equivalent cycles since new or since last overhaul requirement. GE Aviation Czech s.r.o. indicated it had held discussions with Thrush Aircraft, Inc. and EASA to remove the 6,600 engine equivalent cycle removal requirement and EASA has revised their AD to do the same.

The FAA agrees to remove the 6,600 engine equivalent cycles removal

requirement. GE Aviation Czech s.r.o. has revised its Service Bulletin to remove the 6,600 engine equivalent cycles removal requirement. EASA also published a revised AD 2017–0151R1, dated December 5, 2018, that removes the 6,600 engine equivalent cycles requirement. The FAA revised the compliance requirements in this proposed rule by removing the 6,600 engine equivalent cycles removal requirement.

Revision To Compliance Requirement

In addition, GE Aviation Czech s.r.o. and EASA revised the compliance time requirements in their ASB and AD, respectively, by adding a reference to removing affected parts within the compliance times identified in the Airworthiness Limitations Section (ALS) of the applicable engine manual. The FAA revised the compliance requirements in this proposed rule by adding a similar reference.

Revision to Cost Estimate

The FAA reduced the number of estimated engines affected from 167 in the NPRM to 42 in this SNPRM. The FAA is basing this estimate on the number of affected airplanes listed in the FAA's Aircraft Registry Database.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GE Aviation ASB ASB–M601E–72–00–00–0070[03], ASB–M601D–72–00–00–0053[03], ASB–M601F–72–00–00–0036[03], ASB–M601T–72–00–00–0029[03], ASB–M601Z–72–00–00–0039[03], ASB–H75–72–00–00–0011[03], ASB–H80–72–00–00–0025[03], and ASB–H85–72–00–00–0007[03] (single document), dated July 24, 2018. The ASB describes procedures for removal and replacement of the engine outlet system hardware. 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 the Czech Republic and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the agency evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed Requirements of This SNPRM

This SNPRM would require replacement of the affected engine outlet system hardware.

Costs of Compliance

The FAA estimates that this proposed AD affects 42 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace exhaust system parts	64 work-hours × $85 per hour = $5,440	$63,000	$68,440	$2,874,480

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, codified as amended at 5 U.S.C. 601–612) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' Public Law 96–354, 2(b), Sept. 19, 1980. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

Compliance cost of this proposed AD comes from the removal and replacement of the exhaust system parts. Estimated compliance cost per engine is identified below.

Labor cost = 64 repair hours per engine * $85 Mean Hourly Wage = $5,440.

Cost of Parts = $63,000 per engine (Source: GE Aviation Czech).

$5,440 labor per engine + $63,000 parts per engine = $68,440 compliance cost per engine.

To estimate the revenue impacts of the proposed AD on these 38 small operators, the FAA used the total estimated one-time costs of compliance per each engine ($68,440) and divided it by the estimated annual revenue of each entity ($700,000). The FAA determined all 38 small businesses that would be affected by this proposed AD would experience impacts of approximately 9 percent of their annual revenue during the implementation of this AD ($68,440 ÷ $700,000).

Initial Regulatory Flexibility Analysis

Under Section 603(b) and (c) of the RFA, the initial analysis must address the following six areas:

(1) Description of reasons the agency is considering the action;

(2) Statement of the legal basis and objectives for the proposed rule;

(3) Description of the record keeping and other compliance requirements of the proposed rule;

(4) All federal rules that may duplicate, overlap, or conflict with the proposed rule;

(5) Description and an estimated number of small entities to which the proposed rule will apply; and

(6) Describe alternatives considered.

Reasons the Agency Is Considering the Action

This proposed AD was prompted by a review by the manufacturer that identified the possibility of a PT overspeed and the uncontained release of PT blades. The FAA is proposing this AD to prevent uncontained release of the PT blades. This proposed AD would require installing a modified engine outlet system. The unsafe condition, if not addressed, could result in failure of the PT blades, uncontained release of the blades, damage to the engine, and damage to the airplane.

Legal Basis and Objectives for the Proposed Rule

The FAA's legal basis for this proposed AD is discussed in detail under the ''Authority for this Rulemaking'' section.

Description and an Estimated Number of Small Entities to Which the Proposed Rule Would Apply

This proposed AD would apply to all GE Aviation Czech s.r.o. M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, M601F, H75–100, H75–200, H80, H80–100, H80–200, H85–100, and H85–200 turboprop engines. These engines are typically installed on airplanes that are owned and operated by aerial application businesses, which is a small segment of the aviation industry. These airplanes, also known as ''crop-dusters,'' spread fertilizer, insecticides, fungicides, and weed killers.[1]

The FAA searched the 2018 Aircraft Registration database that contains the records of all U.S. Civil Aircraft maintained by the FAA's Aircraft Registration Branch and identified 42 airplanes with GE H80 series engines or equivalent turboprop engines installed. The Aircraft Registration database shows that 38 companies own these 42 airplanes—4 companies own 2 airplanes, while the remaining 34 companies own 1 airplane each. Based on these registration records, the FAA assumes that approximately each entity or business owned one airplane.

By using the Small Business Administration (SBA)'s size standards and the North American Industry Classification System (NAICS) code classifications, the FAA is able to determine whether a business is small or not. These entities would operate under NAICS code 115112, Soil Preparation, Planting, and Cultivating. The size standards for this NAICS code as provided by SBA's Size Standards Table[2] is $7.5 million in annual revenues. Therefore, entities generating less than $7.5 million in annual revenues would be treated as small businesses for the purposes of this analysis.

The FAA assumes that all 38 operators above that would be affected by this proposed AD are small businesses because $700,000 annual revenue for a first-class, used turbine agricultural aviation plane[3] is a reasonable industry estimate. On average, entities operating in the aerial application industry would generate approximately $700,000 each year ($700,000 × 1 crop-duster airplane), which is below $7.5 million revenue size standards for NAICS code 115112. Therefore, the FAA assumes all 38 registered company owners or operators to be small entities.

Record-Keeping and Other Compliance Requirements of the Proposed Rule

There are no record-keeping costs associated with this proposed rule.

Duplicative, Overlapping, or Conflicting Federal Rules

There are no relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

Alternatives to the Proposed AD

There is no direct safety alternative to the modification of the engine outlet system. The modification addresses a safety issue aimed at preventing an uncontained release of the PT blades.

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, and

(2) Will not affect intrastate aviation in Alaska.

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):

GE Aviation Czech s.r.o. (Type Certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.): Docket No. FAA–2017–0967; Product Identifier 2017–NE–35–AD.

(a) Comments Due Date

The FAA must receive comments by March 20, 2020.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all GE Aviation Czech s.r.o. M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, M601F, H75–100, H75–200, H80, H80–100, H80–200, H85–100, and H85–200 turboprop engines.

(2) These engines are known to be installed on, but not limited to, Thrush Aircraft, Inc. (formerly Quality, Ayres, Rockwell) S–2R, PZL ''Warszawa-Okęcie'' PZL–106 (Kruk), Air Tractor AT–300, AT–400 and AT–500 series, Allied Ag Cat Productions, Inc. (formerly Schweizer, Grumman American) G–164 series, RUAG (formerly Dornier) Do 28 and Aircraft Industries (formerly LET) L–410 airplanes.

[1] ''Flying Low Is Flying High As Demand for Crop-Dusters Soars'', by Jonathan Welsh, updated Aug. 14, 2009: *https://www.wsj.com/articles/SB125020758399330769.* Accessed on July 26, 2019.

[2] *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf* Accessed on July 26, 2019.

[3] ''How much does it cost?'' by Bill Lavender, April 3, 2017. *https://agairupdate.com/how-much-does-it-cost/* Accessed on July 26, 2019.

(d) Subject

Joint Aircraft System Component (JASC) Code 7810, Engine Collector/Tailpipe/Nozzle.

(e) Unsafe Condition

This AD was prompted by a review by the manufacturer that identified the possibility of a power turbine (PT) overspeed and the uncontained release of PT blades. The FAA is issuing this AD to prevent uncontained release of the PT blades. The unsafe condition, if not addressed, could result in failure of the PT blades, uncontained release of the blades, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) After the effective date of this AD, replace the parts listed in Tables 2 through 5 to paragraph (g) of this AD with the parts identified in Planning Information, Paragraph 1.5, Sections I through IV, respectively in GE Aviation Alert Service Bulletin (ASB) ASB–M601E–72–00–00–0070 [03], ASB–M601D–72–00–00–0053 [03], ASB–M601F–72–00–00–0036 [03], ASB–M601T–72–00–00–0029 [03], ASB–M601Z–72–00–00–0039 [03], ASB–H75–72–00–00–0011 [03], ASB–H80–72–00–00–0025 [03], and ASB–H85–72–00–00–0007 [03] (single document), dated July 24, 2018, using the criteria below, whichever occurs first:

(i) During the next engine shop visit,

(ii) within the compliance time identified in the applicable Airworthiness Limitations Section of the existing maintenance manual for the affected engine model, or

(iii) within the compliance time, in years after the effective date of this AD, shown in Table 1 of this AD.

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Table 1 to Paragraph (g) – Compliance Times

Date of Engine Manufacture	Date of Release to Service after last Shop Visit	Compliance Time
December 31, 2008 or before	Never subjected to engine shop visit	5 years
January 1, 2009 or later		10 years
any	February 9, 2014 or before	5 years
any	February 10, 2014 or later	10 years

Table 2 to Paragraph (g) – Exhaust Systems M601-4.2, M601-4.5, M601-4.51, M601-4.52, M601-4.61, and M601-4.62

Engine models	Part Name	Part Number (P/N)
M601E-11, M601E-11A, M601E-11AS, M601E-11S, M601F, H75-100, H75-200, H80, H80-100, H80-200, H85-100, and H85-200	Containment Ring	M601-426.5
	Insulation Cover	M601-422.3, M601-422.2
	Supporting Cone	M601-457.7, M601-457.3
	Support	M601-4512.5

Table 3 to Paragraph (g) – Exhaust System M601-4.1, M601-4.6, and M601-4.7

Engine models	Part Name	P/N
M601D-11, M601E-11, M601E-11A, M601E-11AS, M601E-11S	Containment Ring	M601-426.5
	Insulation Cover	M601-422.3, M601-422.2
	Support	M601-4512.5
	Supporting Cone	M601-457.7, M601-457.3
	Outlet Duct	M601-416.6

Table 4 to Paragraph (g) – Countershaft Case Complete (Reduction Gearbox Subassembly) M601-62.2, M601-62.7, M601-60.3

Engine models	Part Name	P/N
All	Bolt	M601-6170.9
	Ring	M601-6014.9

Table 5 to Paragraph (g)– Torquemeter (Reduction Gearbox Subassembly) M601-673.6, M601-667.7, M601-605.3

Engine models	Part Name	P/N
All	Torquemeter Holder	M601-643.9

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(2) [Reserved]

(h) Installation Prohibition

(1) Do not install any part with a P/N listed in Tables 2through 5 to paragraph (g) of this AD on any engine after that engine has been modified as required by paragraph (g)(1) of this AD.

(2) After the effective date of this AD, do not install a part with a P/N listed in Tables 2 through 5 of this AD on any engine manufactured on or after September 1, 2017.

(i) Definition

For the purpose of this AD, an engine shop visit is when the engine is overhauled or rebuilt, or the PT is disassembled.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO 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 ECO Branch, send it to the attention of the person identified in paragraph (k)(1) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

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

(k) Related Information

(1) For more information about this AD, contact Barbara Caufield, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7146; fax: 781–238–7199; email: *barbara.caufield@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2017–0151R1, dated December 5, 2018, for more information. You may examine the EASA AD in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2017–0967.

(3) For service information identified in this AD, contact GE Aviation Czech s.r.o., Beranových 65, 199 02 Praha 9—Letňany, Czech Republic; phone: +420 222 538 111; fax: +420 222 538 222. You may view this referenced service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, Massachusetts, on January 29, 2020.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2020–02005 Filed 2–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0049; Airspace Docket No. 19–AEA–11]

RIN 2120–AA66

Proposed Revocation and Amendment of Multiple Air Traffic Service (ATS) Routes in the Vicinity of Bradford, PA, and Wellsville, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend nine VHF Omnidirectional Range (VOR) Federal airways, V–33, V–116, V–119, V–126, V–164, V–170, V–265, V–270, and V–501, in the vicinity of Bradford, PA, and Wellsville, NY. The VOR Federal airway modifications are necessary due to the planned decommissioning of the VOR portions of the Bradford, PA, VOR/Distance Measuring Equipment (VOR/DME) and the Wellsville, NY, VOR/Tactical Air Navigation (VORTAC) navigation aids (NAVAIDs). The NAVAIDs provide navigation guidance for portions of the affected airways. These VORs are being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before March 20, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0049; Airspace Docket No. 19–AEA–11 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is

promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2020–0049; Airspace Docket No. 19–AEA–11) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0049; Airspace Docket No. 19–AEA–11.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Blvd., Fort Worth, TX, 76177.

Availability and Summary of Documents for Incorporation by Reference

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

Background

The FAA is planning decommissioning activities for the VOR portion of the Bradford, PA, VOR/DME and the Wellsville, NY, VORTAC in September, 2020. The VOR portion of the Bradford, PA, and Wellsville, NY, NAVAIDs are candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Bradford, PA, and Wellsville, NY, NAVAIDs are planned for decommissioning, the co-located DME portions of the NAVAIDs are being retained.

The ATS route dependencies to the Bradford VOR/DME are VOR Federal airways V–33, V–116, V–119, V–126, V–170, and V–265. Similarly, the ATS route dependencies to the Wellsville VORTAC are VOR Federal airways V–119, V–164, V–270, and V–501.

With the planned decommissioning of the VOR portion of the Bradford, PA, and Wellsville, NY, NAVAIDs, the remaining ground-based NAVAID coverage in the areas is insufficient to enable the continuity of the affected VOR Federal airways. As such, proposed modifications to the affected VOR Federal airways would result in gaps in the airways. To overcome the airway gaps, instrument flight rules (IFR) traffic could use adjacent ATS routes, including V–6/30, V–31, V–34, V–35, V–36, V–147, V–226, and V–252, to circumnavigate the affected area. IFR traffic could also file point to point through the affected area using the existing airway fixes that will remain in place, as well as adjacent NAVAIDs, or receive air traffic control (ATC) radar vectors through the area. Visual flight rules pilots who elect to navigate via the airways through the affected area could also take advantage of the adjacent VOR Federal airways or ATC services listed previously.

Additionally, the Keating VORTAC NAVAID listed in the V–265 description is located in Keating, Pennsylvania. As such, the state abbreviation for the NAVAID listed in the description should reflect ''PA'' instead of ''NY''. This editorial correction to the V–265 description is also included in this proposed action.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal airways V–33, V–116, V–119, V–126, V–164, V–170, V–265, V–270, and V–501. The planned decommissioning of the VOR portion of the Bradford, PA, VOR/DME and Wellsville, NY, VORTAC NAVAIDs has made this action necessary. The proposed VOR Federal airway changes are outlined below.

V–33: V–33 currently extends between the Harcum, VA, VORTAC and the Nottingham, MD, VORTAC; and between the Baltimore, MD, VORTAC and the Buffalo, NY, VOR/DME. The airspace within R–4007A and R–4007B is excluded. The FAA proposes to remove the airway segment overlying the Bradford, PA, VOR/DME between the Keating, PA, VORTAC and the Buffalo, NY, VOR/DME. Additional changes to other portions of the airway have been proposed in a separate NPRM. The unaffected portions of the existing airway would remain as charted.

V–116: V–116 currently extends between the Erie, PA, VORTAC and the Sparta, NJ, VOR/DME. The FAA proposes to remove the airway segment overlying the Bradford, PA, VOR/DME between the Erie, PA, VORTAC and the Stonyfork, PA, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–119: V–119 currently extends between the Newcombe, KY, VORTAC and the Rochester, NY, VOR/DME. The FAA proposes to remove the airway segment overlying the Bradford, PA, VOR/DME and the Wellsville, NY, VORTAC between the Clarion, PA, VORTAC and the Rochester, NY, VORTAC. The airway segment between the Clarion, PA, VORTAC and the Geneseo, NY, VOR/DME would be removed due to the VOR portion of the Bradford VOR/DME and the Wellsville VORTAC being decommissioned. The airway segment between the Geneseo, NY, VOR/DME and the Rochester, NY, VORTAC would be removed since it would leave a 17 nautical mile airway fragment to V–119 if retained and it overlaps V–147 which will continue to provide enroute structure between the Geneseo VOR/DME and Rochester VORTAC. Additional changes to other portions of the airway are being proposed in a separate NPRM. The unaffected portions of the existing airway would remain as charted.

V–126: V–126 currently extends between the intersection of the Peotone, IL, VORTAC 053° and Knox, IN, VOR/DME 297° radials and the intersection of the Goshen, IN, VORTAC 092° and Fort Wayne, IN, VORTAC 016° radials; and between the Erie, PA, VORTAC and the Stonyfork, PA, VOR/DME. The FAA proposes to remove the airway segment overlying the Wellsville, NY, VORTAC between the Erie, PA, VORTAC and the Stonyfork, PA, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–164: V–164 currently extends between the Buffalo, NY, VOR/DME and the East Texas, PA, VOR/DME. The FAA proposes to remove the airway segment overlying the Wellsville, NY, VORTAC between the Buffalo, NY, VOR/DME and the Stonyfork, PA, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–170: V–170 currently extends between the Devils Lake, ND, VOR/DME and the Worthington, MN, VOR/DME; between the Rochester, MN, VOR/DME and the Salem, MI, VORTAC; and between the Bradford, PA, VOR/DME and the intersection of the Andrews, MD, VORTAC 060° and Baltimore, MD, VORTAC 165° radials. The airspace within restricted area R–5802 is excluded when the restricted area is active. The FAA proposes to remove the airway segment overlying the Bradford, PA, VOR/DME between the Bradford, PA, VOR/DME and the Slate Run, PA, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–265: V–265 currently extends between the intersection of the Washington, DC, VOR/DME 043° and Westminster, MD, VORTAC 179° radials and the Jamestown, NY, VOR/DME. The FAA proposes to remove the airway segment overlying the Bradford, PA, VORTAC between the Keating, PA, VORTAC and the Jamestown, NY, VOR/DME. Additionally, an editorial correction is included to change the state abbreviation for the Keating VORTAC listed in the description from ''NY'' to ''PA''. The unaffected portions of the existing airway would remain as charted.

V–270: V–270 currently extends between the Erie, PA, VORTAC and the Boston, MA, VOR/DME. The FAA proposes to remove the airway segment overlying the Wellsville, NY, VORTAC between the Jamestown, NY, VOR/DME and the Elmira, NY, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–501: V–501 currently extends between the Martinsburg, WV, VORTAC and the Philipsburg, PA, VORTAC; and between the Wellsville, NY, VORTAC and the intersection of the Wellsville, NY, VORTAC 045° and Geneseo, NY, VOR/DME 091° radials. The FAA proposes to remove the airway segment overlying the Wellsville, NY, VORTAC between the Wellsville, NY, VORTAC and the intersection of the Wellsville, NY, VORTAC 045° and Geneseo, NY, VOR/DME 091° radials. The unaffected portions of the existing airway would remain as charted.

All radials listed in the VOR Federal airway descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The ATS routes listed in this document would be subsequently published in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–33 [Amended]

From Harcum, VA; INT Harcum 003° and Nottingham, MD, 174° radials; to Nottingham. From Baltimore, MD; INT Baltimore 004° and Harrisburg, PA, 147° radials; Harrisburg; Philipsburg, PA; to Keating, PA. The airspace within R–4007A and R–4007B is excluded.

* * * * *

V–116 [Amended]

From Stonyfork, PA; INT Stonyfork 098° and Wilkes-Barre, PA, 310° radials; Wilkes-Barre; INT Wilkes-Barre 084° and Sparta, NJ, 300° radials; to Sparta.

* * * * *

V–119 [Amended]

From Newcombe, KY; Henderson, WV; Parkersburg, WV; INT Parkersburg 067° and Indian Head, PA, 254° radials; Indian Head; to Clarion, PA.

* * * * *

V–126 [Amended]

From INT Peotone, IL, 053° and Knox, IN, 297° radials; INT Knox 297° and Goshen, IN, 270° radials; Goshen; to INT Goshen 092° and Fort Wayne, IN, 016° radials.

* * * * *

V–164 [Amended]

From Stonyfork, PA; Williamsport, PA; INT Williamsport 129° and East Texas, PA, 315° radials; to East Texas.

* * * * *

V–170 [Amended]

From Devils Lake, ND; INT Devils Lake 187° and Jamestown, ND, 337° radials; Jamestown; Aberdeen, SD; Sioux Falls, SD; to Worthington, MN. From Rochester, MN; Nodine, MN; Dells, WI; INT Dells 097° and Badger, WI, 304° radials; Badger; INT Badger 121° and Pullman, MI, 282° radials; Pullman; to Salem, MI. From Slate Run, PA; Selinsgrove, PA; Ravine, PA; INT Ravine 125° and Modena, PA, 318° radials; Modena; Dupont, DE; INT Dupont 223° and Andrews, MD, 060° radials; to INT Andrews 060° and Baltimore, MD, 165° radials. The airspace within R–5802 is excluded when active.

* * * * *

V–265 [Amended]

From INT Washington, DC, 043° and Westminster, MD, 179° radials; Westminster; Harrisburg, PA; Philipsburg, PA; to Keating, PA.

* * * * *

V–270 [Amended]

From Erie, PA; to Jamestown, NY. From Elmira, NY; Binghamton, NY; DeLancey, NY; Chester, MA; INT Chester 091° and Boston, MA, 262° radials; to Boston.

* * * * *

V–501 [Amended]

From Martinsburg, WV; Hagerstown, MD; St Thomas, PA; to Philipsburg, PA.

* * * * *

Issued in Washington, DC, on January 29, 2020.

Scott M Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–02015 Filed 2–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0039; Airspace Docket No. 19–ASO–18]

RIN 2120–AA66

Proposed Amendment and Removal of Air Traffic Service (ATS) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend 10 jet routes, and remove 8 jet routes, in the eastern United States. This action is in support of the Northeast Corridor Atlantic Route Project to improve the efficiency of the National Airspace System (NAS) and reduce the dependency on ground-based navigational systems.

DATES: Comments must be received on or before March 20, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0039; Airspace Docket No. 19–ASO–18 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA Docket No. FAA–2020–0039; Airspace Docket No. 19–ASO–18) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0039; Airspace Docket No. 19–ASO–18.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned

with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to amend 10 jet routes, and remove 8 jet routes in the eastern United States. This action would support the Northeast Corridor Atlantic Route Project by removing or amending certain jet routes as a result of the continuing development of new high altitude RNAV routes (Q-routes) in the NAS. Additionally, the proposed jet route changes would reduce aeronautical chart clutter by removing unneeded route segments.

Some jet routes discussed in this preamble include points that are identified by the intersection of radials from two VOR or VORTAC navigation facilities. In some cases, those intersections are assigned a specific fix name that is depicted on aeronautical charts (*e.g.,* TYDOE, GA). While these fix names are not stated in the regulatory descriptions of jet routes, they are noted in the preamble text below to assist readers in locating that point on aeronautical charts.

The proposed route changes are as follows:

J–14: J–14 currently extends between the Panhandle, TX, VORTAC; and the Patuxent, MD, VORTAC. The FAA proposes to remove the route segments between the Vulcan, AL, VORTAC and the Greensboro, NC, VORTAC. This would split the route into two separate parts. As amended, J–14 would extend between Panhandle, TX, and Vulcan, AL; followed by a gap in the route, with a second part extending between Greensboro, NC, and Patuxent, MD.

J–20: J–20 currently extends between the Seattle, WA, VORTAC, and the Seminole, FL, VORTAC. This action proposes to remove the segments between the Montgomery, AL, VORTAC and Seminole, FL. The amended route would extend between Seattle, WA, and Montgomery, AL.

J–40: J–40 currently extends between the Montgomery, AL, VORTAC, and the Richmond, VA, VOR/DME. The FAA proposes to remove this entire route.

J–41: J–41 currently extends between the Seminole, FL, VORTAC, and the Omaha, IA, VORTAC. This action would remove the portion of the route between the Seminole, FL, VORTAC, and Montgomery, AL. The amended route would extend between the Montgomery, AL, VORTAC, and Omaha, IA.

J–43: J–43 currently extends between the intersection of the Cross City, FL VORTAC 322° and the Seminole, FL, VORTAC, 359° radials, and the Carleton, MI, VOR/DME. This action would remove the segments between the intersection of the Cross City and the Seminole radials and the Volunteer, TN, VORTAC. The amended route would extend between Volunteer, TN, and Carleton, MI.

J–45: J–45 currently extends between the Alma, GA, VORTAC and the Aberdeen, SD, VOR/DME. The action would remove the segments between the Alma, GA, VORTAC and the Atlanta, GA, VORTAC. The amended route would extend between Atlanta, GA and Aberdeen, SD.

J–51: J–51 currently extends between the intersection of the Columbia, SC, VORTAC, 042° and the Flat Rock, VA, VORTAC, 212° radials, and the Yardley, NJ, VOR/DME. This action proposes to remove the entire route.

J–52: J–52 currently extends, in two segments, between the Vancouver, BC, Canada, VOR/DME and the Columbia, SC, VORTAC; and between the intersection of the Columbia 042° and the Flat Rock, VA, VORTAC, 212° radials, and the Richmond, VA, VOR/DME. The FAA proposes to remove the segments between the Vulcan, AL, VORTAC and the intersection of the Columbia, SC, VORTAC, 042° and the Flat Rock, VA, VORTAC, 212° radials. As amended J–52 would extend, in two parts: between Vancouver, BC, Canada, and Vulcan, AL; followed by a gap in the route, and resuming between the intersection of the Columbia, SC 042° and the Flat Rock, VA, 212° radials, and Richmond, VA. The portion within Canada is excluded.

J–53: J–53 currently extends between the intersection of the Craig, FL 347° and the Colliers, SC 174° radials, and the Pulaski, VA, VORTAC. This action would remove the entire route.

J–73: J–73 currently extends between the intersection of the Seminole, FL, VORTAC, 344° and the Cross City, FL, VORTAC, 322° radials, and Northbrook, IL, VOR/DME. This action proposes to remove the segment between the intersection of the Seminole, FL, 344° and the Cross City, FL, 322° radials, and the La Grange, GA, VORTAC. As amended, the route would extend between La Grange, GA, and Northbrook, IL.

J–75: J–75 currently extends between the Greensboro, NC, VORTAC and the Boston, MA, VOR/DME. This action proposes to remove the entire route.

J–81: J–81 currently extends between the intersection of the Craig, AL, VORTAC, 347° and the Colliers, SC, VORTAC, 174° radials, and Colliers, SC. This action proposes to remove the entire route.

J–85: J–85 currently extends between the Alma, GA, VORTAC, and the Dryer, OH, VOR/DME. This action would remove the segments between Alma, GA, and the Spartanburg, SC, VORTAC. As amended, J–85 would extend between Spartanburg, SC, and Dryer, OH.

J–89: J–89 currently extends between the intersection of the Atlanta, GA, VORTAC, 161° and the Alma, GA, VORTAC, 252° radials, and the Winnipeg, MB, Canada, VORTAC. This action would remove the segments between the intersection of the Atlanta and the Alma radials, and the Atlanta VORTAC. The amended route would extend between the Atlanta, GA, VORTAC and Winnipeg, MB, Canada. The portion within Canada is excluded.

J–91: J–91 currently extends between the intersection of the Cross City, FL, VORTAC, 338° and the Atlanta, GA, VORTAC, 169° radials, and the Henderson, WV, VORTAC. This action would remove the segments between the intersection of the Cross City VORTAC and the Atlanta, GA, VORTAC radials, and the Volunteer, TN, VORTAC. The

amended route would extend between the Volunteer, TN, VORTAC and the Henderson VORTAC.

J–97: J–97 currently extends between lat. 39°07′00″ N, long. 67°00′00″ W (the SLATN Fix) and the Boston, MA, VOR/DME. This action proposes to remove the entire route.

J–210: J–210 currently extends between the Vance, SC, VORTAC and the Wilmington, NC, VORTAC. This action proposes to remove the entire route.

J–575: J–575 currently extends between the Boston, MA, VOR/DME and the Yarmouth, NS, Canada, VOR/DME. This action proposes to remove the entire route.

Jet routes are published in paragraph 2004 FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The jet routes amended in, or removed, respectively, from the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004 Jet Routes.

J–14 [Amended]

From Panhandle, TX; via Will Rogers, OK; Little Rock, AR; to Vulcan, AL. From Greensboro, NC; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; to Patuxent.

J–20 [Amended]

From Seattle, WA, via Yakima, WA; Pendleton, OR; Donnelly, ID; Pocatello, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Will Rogers, OK, 284° radials; Will Rogers; Belcher, LA; Magnolia, MS; Meridian, MS; to Montgomery, AL.

J–40 [Remove]

J–41 [Amended]

From Montgomery, AL; Vulcan, AL; Memphis, TN; Springfield, MO, Kansas City, MO, to Omaha, IA.

J–43 [Amended]

From Volunteer, TN; Falmouth, KY; Rosewood, OH; to Carleton, MI.

J–45 [Amended]

From Atlanta, GA; Nashville, TN; St Louis, MO; Kirksville, MO; Des Moines, IA; Sioux Falls, SD; to Aberdeen, SD.

J–51 [Remove]

J–52 [Amended]

From Vancouver, BC, Canada; via Spokane, WA; Salmon, ID; Dubois, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Ardmore, OK, 309° radials; Ardmore; Texarkana, AR; Sidon, MS; Bigbee, MS; to Vulcan, AL. From INT Columbia 042° and Flat Rock, VA 212° radials; Raleigh-Durham, NC; to Richmond, VA. The portion within Canada is excluded.

J–53 [Remove]

J–73 [Amended]

From La Grange, GA; Nashville, TN; Pocket City, IN; to Northbrook, IL.

J–75 [Remove]

J–81 [Remove]

J–85 [Amended]

From Spartanburg, SC; Charleston, WV; INT Charleston 357° and Dryer, OH, 172° radials; Dryer.

J–89 [Amended]

From Atlanta, GA; Louisville, KY; Boiler, IN; Northbrook, IL; Badger, WI; Duluth, MN; to Winnipeg, MB, Canada. The portion within Canada is excluded.

J–91 [Amended]

From Volunteer, TN; to Henderson, WV.

J–97 [Remove]

J–210 [Remove]

J–575 [Remove]

Issued in Washington, DC, on January 29, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–02020 Filed 2–3–20; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

RIN 3142–AA15

Jurisdiction—Nonemployee Status of University and College Students Working in Connection With Their Studies; Reopening of Responsive Comment Period

AGENCY: National Labor Relations Board.

ACTION: Notice; reopening of period for submission of comments replying to comments submitted during the initial comment period.

SUMMARY: The National Labor Relations Board (the Board) published a Notice of Proposed Rulemaking in the **Federal Register** on September 23, 2019, seeking comments from the public regarding its proposed rule concerning the Nonemployee Status of University and College Students Working in Connection with their Studies. The due date to submit initial comments to the Notice of Proposed Rulemaking was January 15, 2020, and the due date for responses to the initial comments was January 29, 2020. The due date for responsive comments has now been extended for a period of 30-days.

DATES: Responsive comments to initial comments to the Notice of Proposed Rulemaking published on September 23, 2019 (84 FR 49691) must be received by

the Board on or before February 28, 2020.

ADDRESSES: Internet—Federal eRulemaking Portal. Electronic comments may be submitted through *http://www.regulations.gov.*

Delivery—Comments should be sent by mail or hand delivery to: Roxanne Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001. Because of security precautions, the Board continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments. The Board encourages electronic filing. It is not necessary to send comments if they have been filed electronically with *regulations.gov.* If you send comments, the Board recommends that you confirm receipt of your delivered comments by contacting (202) 273–1940 (this is not a toll-free number). Individuals with hearing impairments may call 1–866–315–6572 (TTY/TDD).

Only comments submitted through *http://www.regulations.gov,* hand delivered, or mailed will be accepted; ex parte communications received by the Board will be made part of the rulemaking record and will be treated as comments only insofar as appropriate. Comments will be available for public inspection at *http://www.regulations.gov* and during normal business hours (8:30 a.m. to 5 p.m. EST) at the above address.

The Board will post, as soon as practicable, all comments received on *http://www.regulations.gov* without making any changes to the comments, including any personal information provided. The website *http://www.regulations.gov* is the Federal eRulemaking portal, and all comments posted there are available and accessible to the public. The Board requests that comments include full citations or internet links to any authority relied upon. The Board cautions commenters not to include personal information such as Social Security numbers, personal addresses, telephone numbers, and email addresses in their comments, as such submitted information will become viewable by the public via the *http://www.regulations.gov* website. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment.

FOR FURTHER INFORMATION CONTACT: Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, (202) 273–1940 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

Dated: January 29, 2020.

Roxanne L. Rothschild,

Executive Secretary.

[FR Doc. 2020–01939 Filed 2–3–20; 8:45 am]

BILLING CODE 7545–01–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Chapter III

[Docket No. 19–CRB–0014–RM]

Notice of Inquiry Regarding Categorization of Claims for Cable or Satellite Royalty Funds and Treatment of Ineligible Claims; Extension of Comment Period

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of inquiry; extension of comment period; correction.

SUMMARY: The Copyright Royalty Judges published a document in the **Federal Register** of January 29, 2020, concerning extension of a comment period for comments regarding categorization of claims for cable or satellite royalty funds and treatment of royalties associated with invalid claims. The document contained an incorrect date in the summary.

Correction

In the **Federal Register** of January 29, 2020, in FR Doc. 2020–01544, on page 5182, in the first column, correct the **SUMMARY** to read:

The Copyright Royalty Judges extend the comment period regarding the notice of inquiry regarding categorization of claims for cable or satellite royalty funds and treatment of royalties associated with invalid claims from January 29, 2020, to March 16, 2020.

Dated: January 29, 2020.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2020–02071 Filed 2–3–20; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2020–0024; FRL–10004–73–Region 7]

Air Plan Approval; Missouri; Control of Emissions From Aerospace Manufacture and Rework Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by Missouri on March 7, 2019. Missouri requests that EPA revise two rules related to emissions from aerospace manufacture and rework facilities. These revisions include adding incorporations by reference, revising unnecessarily restrictive language, and making other administrative wording changes. The EPA's proposed approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before March 5, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2020–0024 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Will Stone, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7714; email address *stone.william@epa.gov.*

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

Table of Contents

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2020–0024, at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. What is being addressed in this document?

The EPA is proposing to approve revisions to 10 Code of State Regulation (CSR) 10–2.205, *Control of Emissions from Aerospace Manufacture and Rework Facilities* and 10 CSR 10–5.295, *Control of Emissions from Aerospace Manufacture and Rework Facilities* in the Missouri SIP. Missouri made several revisions to the rules. These revisions are described in detail in the technical support document (TSD) included in the docket for this action.

Missouri received eight comments from six sources during the comment period on 10 CSR 10–2.205 and six comments from five sources during the comment period on 10 CSR 10–5.295. The EPA provided two comments on each rule. Missouri responded to all comments on both rules, as noted in the State submission included in the docket for this action.

Therefore, the EPA is proposing to approve the revisions to this rule because it will not have a negative impact on air quality.

III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from August 1, 2018 to September 30, 2018 and received fourteen comments on the two rules. As stated above, Missouri responded to all comments. In addition, as explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What action is the EPA taking?

The EPA is proposing to approve Missouri's request to revise 10 CSR 10–2.205 and 10 CSR 10–5.295. We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Missouri Regulations described in the proposed amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 28, 2020.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart—AA Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entries ''10–2.205'' and ''10–5.295'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area				
*	*	*	*	*
10–2.205	Control of Emissions from Aerospace Manufacturing and Rework Facilities.	3/30/2019	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
*	*	*	*	*
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
*	*	*	*	*
10–5.295	Control of Emissions from Aerospace Manufacturing and Rework Facilities.	3/30/2019	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
*	*	*	*	*

* * * * *

[FR Doc. 2020–01997 Filed 2–3–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2020–0014; FRL–10004–77–Region 7]

Air Plan Approval; Missouri; Control of Emissions From Production of Pesticides and Herbicides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by Missouri on January 14, 2019. Missouri requests that EPA revise its rule related to control of emissions from production of pesticides and herbicides. These revisions include removing certain provisions from the rule, consolidating requirements, including incorporations by reference and revising unnecessarily restrictive language. The EPA's proposed approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before March 5, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2020–0014 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Will Stone, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7714; email address *stone.william@epa.gov.*

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

Table of Contents

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2020–0014, at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. What is being addressed in this document?

The EPA is proposing to approve revisions to 10 Code of State Regulation (CSR) 10–2.320, *Control of Emissions from Production of Pesticides and Herbicides,* in the Missouri SIP. Missouri made several revisions to the rule. These revisions are described in detail in the technical support document (TSD) included in the docket for this action.

Missouri received ten comments from EPA during the comment period. Missouri responded to all ten comments, as noted in the State submission included in the docket for this action. Missouri responded to EPA's comments and, as described in the TSD for this action, amended the rule, in response to some of EPA's comments.

Therefore, the EPA is proposing to approve the revisions to this rule because it will not have a negative impact on air quality.

III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from June 25, 2018 to August 1, 2018 and received ten comments on this rulemaking. As explained in the TSD for this rule, MDNR adequately responded to the comments. As explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What action is the EPA taking?

The EPA is proposing to approve Missouri's request to revise 10 CSR 10–2.320. We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Missouri Regulation described in the proposed amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: January 28, 2020.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart—AA Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry for ''10–2.320'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area				
*	*	*	*	*
10–2.320	Control of Emissions from Production of Pesticides and Herbicides.	1/30/19	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
*	*	*	*	*

* * * * *

[FR Doc. 2020–02004 Filed 2–3–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0037; FRL–10004–62–Region 5]

Air Plan Approval; Minnesota; Revision to Taconite Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing revisions to a Federal implementation plan (FIP) addressing the requirement for best available retrofit technology (BART) for the United States Steel Corporation's (U.S. Steel) taconite plant located in Mt. Iron, Minnesota (Minntac or Minntac facility). We are proposing to revise the nitrogen oxides (NO_X) limits for U.S. Steel's taconite furnaces at its Minntac facility because new information has come to light that was not available when we originally promulgated the FIP on February 6, 2013. The EPA is proposing this action pursuant to sections 110 and 169A of the Clean Air Act (CAA).

DATES: Comments must be received on or before March 5, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0037 at *http://www.regulations.gov* or via email to *aburano.douglas@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Scientist, Attainment Planning & Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. What action is EPA taking?

On February 6, 2013, EPA promulgated a FIP that included BART limits for certain taconite furnaces in Minnesota and Michigan (2013 Taconite FIP; 78 FR 8706). EPA is proposing to revise the 2013 Taconite FIP with respect to the NO_X BART emission limitations and compliance schedules for U.S. Steel's Minntac facility in Minnesota.

II. Background

A. Requirements of the Clean Air Act and EPA's Regional Haze Rule

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [1] which impairment results from manmade air pollution.'' Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P (herein after referred to as the ''Regional Haze Rule''). The Regional Haze Rule codified and clarified the BART provisions in the CAA and revised the existing visibility regulations to add provisions addressing regional haze impairment and to

[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

establish a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR part 51, subpart P.

Section 169A of the CAA directs states, or EPA if developing a FIP, to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires that implementation plans contain such measures as may be necessary to make reasonable progress toward the natural visibility goal, including a requirement that certain categories of existing major stationary sources [2] built between 1962 and 1977 procure, install, and operate BART as determined by EPA.

Under the Regional Haze Rule, states (or in the case of a FIP, EPA) are directed to conduct BART determinations for such ''BART-eligible'' sources that may reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states and EPA in determining which sources should be subject to the BART requirements and in determining appropriate emission limits for each source subject to BART. 70 FR 39104.

The process of establishing BART emission limitations follows three steps. First, states, or EPA if developing a FIP, must identify and list ''BART-eligible sources.'' [3] Once the state or EPA has identified the BART-eligible sources, the second step is to identify those sources that may ''emit any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I area (Under the Regional Haze Rule, a source which fits this description is ''subject to BART.''). Third, for each source subject to BART, the state or EPA must identify the level of control representing BART after considering the five factors set forth in CAA section 169A(g). The BART Guidelines provide a process for making BART determinations that states can use in implementing the BART requirements on a source-by-source basis. *See* 40 CFR part 51, appendix Y, at IV.D.

States, or EPA if developing a FIP, must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and particulate matter (PM).

A state implementation plan (SIP) or FIP addressing regional haze must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state or EPA has made a BART determination, the BART controls must be installed and operated as expeditiously as practicable, but no later than five years after the date of the final SIP or FIP. *See* CAA section 169A(g)(4) and 40 CFR 51.308(e)(1)(iv). In addition to what is required by the Regional Haze Rule, general SIP requirements mandate that the SIP or FIP include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. *See* CAA section 110(a).

B. BART for U.S. Steel's Minntac Facility

On February 6, 2013, EPA promulgated a FIP (78 FR 8706) that included NO_X BART limits for taconite furnaces subject to BART in Minnesota and Michigan. EPA took this action because Minnesota and Michigan had failed to meet a statutory deadline to submit their Regional Haze SIPs and subsequently failed to require BART at the taconite facilities. The FIP established BART NO_X limits of 1.2 lbs NO_X per million British Thermal Unit (MMBTU) when burning natural gas and 1.5 lbs NO_X/MMBTU when co-firing coal and natural gas. These limits were based upon the performance of high stoichiometric (high-stoich) low-NO_X burners (LNBs) [4] at two of the taconite furnaces at U.S. Steel's Minntac facility.

III. Basis for Revised NO_X BART Limits for Minntac

The NO_X BART limits for taconite furnaces in the 2013 FIP were based upon U.S. Steel's experience to date with LNBs on Minntac Lines 6 and 7, as well as an expectation that NO_X emissions would be higher when burning coal because of the nitrogen content of coal. Since that time, U.S. Steel has collected additional continuous emissions monitoring system (CEMS) data and has experience operating LNBs on four of its five lines, Minntac Lines 4–7.

While U.S. Steel's experience has confirmed that LNBs are a technically feasible control technology for reducing NO_X emissions at taconite furnaces, and thus are the appropriate control technology for establishing BART limits, the emissions data generated through subsequent use of LNBs at Minntac indicate that LNB technology cannot consistently achieve the same results on all taconite furnaces while operating under various production scenarios and maintaining pellet quality.[5]

The CEMS data also showed that NO_X emissions are actually lower when burning coal or a mixture of coal and natural gas than when burning only natural gas. Further, the CEMS data showed that U.S. Steel has been moving toward using natural gas rather than burning coal or co-firing. Lines 6 and 7 at Minntac are the only lines that can burn coal or a mixture of coal and natural gas. Over the six years of CEMS data evaluated, the use of natural gas has increased dramatically, from 15% to 97% of total operating hours on the two lines.[6] Given the trajectory of fuel markets, EPA has no reason to believe that U.S. Steel will not continue to use natural gas at Minntac.

Given the new CEMS data and trend toward primarily burning natural gas, U.S. Steel found that a revised NO_X BART limit at Minntac of 1.6 lbs/MMBTU averaged over 30 days and across all five of its lines is the most stringent limit that can be met while maintaining pellet quality, based upon its experience operating LNBs under various production scenarios.[7] To justify this limit, U.S. Steel provided EPA with hourly NO_X emissions data in lbs/MMBTU documenting actual emissions levels after installation of LNB technology on Minntac Lines 4–7.[8] U.S. Steel also provided hourly NO_X emissions data in lbs/MMBTU for Line 3, which has not yet installed LNB technology. Because the NO_X limits in the 2013 FIP were based on a rolling 30-day average, EPA evaluated the 720-hour average[9] NO_X emissions levels

[2] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7) and includes ''taconite ore processing facilities.''

[3] ''BART-eligible sources'' are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were not in operation prior to August 7, 1962, but were in existence on August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. 40 CFR 51.301.

[4] Stoichiometry refers to the relationship between the actual quantity of combustion air to the theoretical minimum quantity of air needed for 100 percent combustion of the fuel.

[5] *See* Minntac CEMS Data and Analysis, available in the docket for this action.

[6] *See id.*

[7] U.S. Steel Confidential Settlement Communication, May 1, 2018.

[8] *See* Minntac CEMS Data and Analysis, available in the docket for this action.

[9] Hourly NO_X emissions data was available, which allowed for the separation of hours when burning natural gas from hours when burning coal or co-firing. Since there are 720 hours in a 30-day period, a 720-hour average was used to calculate NO_X emissions when burning only natural gas.

achieved by each line when burning natural gas. Averaging these NO_X emissions levels across Lines 4–7 resulted in an emission rate of 1.6 lbs NO_X/MMBTU based on a 720-hour rolling average. Because of Line 3's similarity to Line 4, Line 3's performance (after an LNB is installed) is expected to be consistent with and have the same emission rate as Line 4. Averaging the NO_X emission levels across Lines 3–7 while assuming this level of LNB performance on Line 3 also resulted in an emission rate of 1.6 lbs NO_X/MMBTU based on a 720-hour rolling average.

Based on this new information, EPA is proposing to replace the NO_X BART emission limits that currently apply to Minntac Lines 3–7 with a single facility-wide NO_X BART limit of 1.6 lbs MMBTU that will apply on a rolling 30-day basis. Under the BART Guidelines, a source may be permitted to ''average'' emissions across a set of BART-eligible emission units within a fenceline, so long as the emission reductions from each pollutant being controlled for BART would be equal to those reductions that would be obtained by simply controlling each of the BART-eligible units that constitute BART-eligible sources. *See* 40 CFR part 51, appendix Y, at V. In this case, given the unique issues U.S. Steel faced in trying to comply with the individual limits in the 2013 FIP, EPA has determined that it is appropriate to provide U.S. Steel with this additional flexibility. EPA is confident that allowing U.S. Steel to average NO_X emissions levels across Minntac Lines 3–7 will achieve NO_X emission reductions equal to the reductions that would have been obtained had EPA revised the individual limits for Minntac Lines 3–7 separately.

In conclusion, a review of U.S. Steel's recent CEMS data when using primarily natural gas indicates that a limit of 1.6 lbs/MMBTU, averaged across all lines, is needed to operate under varying production scenarios while maintaining adequate pellet quality. Therefore, EPA is proposing that a limit of 1.6 lbs NO_X/MMBTU, averaged across all lines and over 30 days, represents NO_X BART for U.S. Steel's Minntac facility.

IV. CAA Section 110(l)

Under CAA section 110(l), the EPA cannot approve a plan revision ''if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.'' [10] We propose to find that these revisions satisfy section 110(l). The previous sections of the notice explain how the proposed FIP revision will comply with applicable regional haze requirements and general implementation plan requirements. With respect to requirements concerning attainment of the National Ambient Air Quality Standards (NAAQS) and reasonable further progress, the 2013 Taconite FIP, as revised by this action, will allow for greater NO_X emissions at the five subject-to-BART units as compared to the 2013 Taconite FIP. All areas in Minnesota are designated as attainment for all NAAQS with the exception of the Dakota County lead nonattainment area in Eagan, MN. The nearest ozone, particulate matter or nitrogen dioxide nonattainment areas are the ozone nonattainment areas along the western shore of Lake Michigan.[11] At the time these areas were designated as nonattainment, EPA evaluated HYSPLIT (HYbrid Single-Particle Lagrangian Integrated Trajectory) trajectories to identify areas potentially contributing to monitored violations of the NAAQS. None of these trajectories indicated that the area near Mt. Iron, Minnesota had the potential to contribute any of the monitored violations of the ozone NAAQS. EPA concludes that all areas impacted by emissions from Minntac are in attainment with the NAAQS. These areas have been able to attain and maintain the standards with emissions levels above the emissions limits that we are proposing to approve. Thus, the revision to the FIP proposed in this action will not interfere with attainment or maintenance of the NAAQS.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). As discussed in detail in section VI. C below, the proposed FIP is not a rule of general applicability. The proposed FIP only applies to one taconite facility.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to . . . identical reporting or recordkeeping requirements imposed on ten or more persons . . . .'' 44 U.S.C. 3502(3)(A). Because the proposed FIP applies to just one facility, the Paperwork Reduction Act does not apply. *See* 5 CFR 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA)

[10] Note that ''reasonable further progress'' as used in CAA section 110(l) is a reference to that term as defined in section 301(a) (*i.e.,* 42 U.S.C. 7501(a)), and as such means reductions required to attain the National Ambient Air Quality Standards (NAAQS) set for criteria pollutants under section 109. This term as used in section 110(l) (and defined in section 301(a)) is not synonymous with ''reasonable progress'' as that term is used in the regional haze program. Instead, section 110(l) provides that EPA cannot approve plan revisions that interfere with regional haze requirements (including reasonable progress requirements) insofar as they are ''other applicable requirement[s]'' of the Clean Air Act.

[11] The nearest area, Door County, WI, is over 300 miles from Mt. Iron, MN.

regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. EPA's proposal revises control requirements at one source. The Regional Haze FIP that EPA is proposing for purposes of the regional haze program consists of imposing Federal control requirements to meet the BART requirement for NO_X emissions on specific units at one source in Minnesota. The net result of the FIP action is that EPA is proposing emission controls on the indurating furnaces at one taconite facilities and this sources is not owned by small entities, and therefore is not a small entity.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any one year. In addition, this proposed rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely addresses the State not fully meeting its obligation to prohibit emissions from interfering with other states measures to protect visibility established in the CAA. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. However, EPA did discuss this action in conference calls with the Minnesota Tribes.

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

Executive Order 13045: *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets E.O. 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This proposed action addresses regional haze and visibility protection. Further, because this proposed amendment to the current regulation will require controls that will cost an amount equal to or less than the cost of controls required under the current

regulation, it is not an economically significant regulatory action. However, to the extent this proposed rule will limit emissions of NO_X, SO_2, and PM, the rule will have a beneficial effect on children's health by reducing air pollution.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

VCS are inapplicable to this action because application of those requirements would be inconsistent with the CAA.

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

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

We have determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

List of Subjects in 40 CFR Part 52

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

Dated: January 9, 2020.

Cheryl L. Newton,

Acting Regional Administrator, Region 5.

40 CFR part 52 is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 3. In § 52.1235, revise paragraph (b)(1)(iii*)* to read as follows:

§ 52.1235 Regional haze.

* * * * *

(b)(1) * * *

(iii) United States Steel Corporation, Minntac: An aggregate emission limit of 1.6 lbs NO_X/MMBtu, based on a 30-day rolling average, shall apply to the combined NO_X emissions from the five indurating furnaces: Line 3(EU225), Line 4(EU261), Line 5(EU282), Line 6(EU315), and Line 7(EU334). To determine the aggregate emission rate, the combined NO_X emissions from lines 3, 4, 5, 6 and 7 shall be divided by the total heat input to the five lines (in MMBTU) during every rolling 30-day period commencing either upon notification of a starting date by United States Steel Corporation, Minntac, or with the 30-day period from September 1, 2019 to September 30, 2019, whichever occurs first. The aggregate emission rate shall subsequently be determined on each day, 30 days after the starting date contained in such notification or September 30, 2019, whichever occurs first.

* * * * *

[FR Doc. 2020–01321 Filed 2–3–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2019–0041; FRL–10003–17]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities (November 2019)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before March 5, 2020.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov;* or Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 and/or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

A. Amended Tolerance Exemptions for PIPS

PP 9G8791. (EPA–HQ–OPP–2017–0113). BASF Corporation, 26 Davis Dr., P.O. Box 13528, Research Triangle Park, NC 27709–3528, requests to amend a temporary exemption from the requirement of a tolerance in 40 CFR 174.538 for residues of the plant-incorporated protectant (PIP) *Bacillus thuringiensis* Cry14Ab-1 protein in or on soybean by extending the expiration date. The petitioner believes no analytical method is needed because the petition is requesting to amend a temporary exemption from the requirement of a tolerance without numerical limitation. *Contact:* BPPD.

B. New Tolerance Exemptions for Inerts (Except PIPS)

1. *PP IN–11282.* (EPA–HQ–OPP–2019–0572). BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709, requests to establish an exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* strain EX 297512 whole broth, when used as an inert ingredient in pesticide formulations under 40 CFR 180.920 for use as a seed treatment only. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

2. *PP IN–11323.* (EPA–HQ–OPP–2019–0510). SciReg, Inc. (12733 Director's Loop, Woodbridge, VA 22192) on behalf of Solvay USA Inc. (504 Carnegie Center, Princeton, NJ 08540) requests to establish an exemption from the requirement of a tolerance for residues of dimethyl-2-methylglutarate (CAS Reg. No. 14035–94–0) when used as inert ingredients (solvent) in pesticide formulations applied to growing crops pre- and post-harvest under 40 CFR 180.910. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

3. *PP IN–11325.* (EPA–HQ–OPP–2019–0571) Ecolab Inc., 1 Ecolab Place, St. Paul, MN 55102, requests to establish an exemption from the requirement of a tolerance for residues of magnesium sulfate (including magnesium sulfate anhydrous (CAS Reg. No. 7487–88–9), magnesium sulfate monohydrate (CAS Reg. No. 14168–73–1), magnesium sulfate trihydrate (CAS Reg. No. 15320–30–6), magnesium sulfate tetrahydrate (CAS Reg. No. 24378–31–2), magnesium sulfate pentahydrate (CAS Reg. No. 15553–21–6), magnesium sulfate hexahydrate (CAS Reg. No. 17830–18–1), and magnesium sulfate heptahydrate (CAS Reg. No. 10034–998)), when used as inert ingredients in pesticide formulations under 40 CFR 180.940(a) at an upper limit of 4400 parts per million (ppm). The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance *Contact:* RD.

C. New Tolerance Exemptions for Non-Inerts (Except PIPS)

1. *PP 9F8749.* (EPA–HQ–OPP–2019–0474). FMC Corporation, 2929 Walnut St., Philadelphia, PA 19104, requests to establish an exemption from the requirement of a tolerance in 40 CFR

part 180 for residues of the fungicide *Bacillus subtilis* strain RTI477 in or on all food commodities. The petitioner believes no analytical method is needed because, if *Bacillus subtilis* strain RTI477 is used as proposed, no residues of toxicological concern would result. *Contact:* BPPD.

2. *PP 9F8750.* (EPA–HQ–OPP–2019–0475). FMC Corporation, 2929 Walnut St., Philadelphia, PA 19104, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide *Bacillus velezensis* strain RTI301 in or on all food commodities. The petitioner believes no analytical method is needed because, if *Bacillus velezensis* strain RTI301 is used as proposed, no residues of toxicological concern would result. *Contact:* BPPD.

D. Notice of Filing—New Tolerances for Inerts

PP IN–11323. (EPA–HQ–OPP–2019–0510). SciReg, Inc. (12733 Director's Loop, Woodbridge, VA 22192) on behalf of Solvay USA Inc. (504 Carnegie Center, Princeton, NJ 08540) requests to establish an exemption from the requirement of a tolerance for residues of dimethyl-2-methylglutarate (CAS Reg. No. 14035–94–0) when used as inert ingredients (solvent) in pesticide formulations applied to growing crops pre- and post-harvest under 40 CFR 180.910. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

E. New Tolerances for Non-Inerts

1. *PP 9F8772.* EPA–HQ–OPP–2019–0586. Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC, 27419, requests to establish tolerance in 40 CFR part 180 for residues of the fungicide Benzovindiflupyr [chemical name 1 H-pyrazole-4-carboxamide, N-[9-(dichloromethylene)-1,2,3,4- tetrahydro-1,4-methanonaphthalen-5-yl]-3-(difluoromethyl)-1- methyl-] in or on the raw agricultural commodities beet, sugar, dried pulp at 0.15 ppm; beet, sugar, roots at 0.08 ppm; and beet, sugar, tops at 0.06 ppm. The analytical methods GRM042.08A, GRM042.06A (also known as Charles River Method No. 1887 Version 2.0), and GRM023.03A was used to measure and evaluate the chemical Benzovindiflupyr. *Contact:* RD.

2. *PP* 9F8789. (EPA–HQ–OPP–2019–0664, Mitsui Chemicals Agro, Inc., Nihonbashi Dia Building, 1–19–1 Nihonbashi Chuo-ku Tokyo 103–0027, Japan c/o Landis International, Inc, P.O. Box 5126, Valdosta, GA 31603–5126 requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide, Dinotefuran, in or on soybean seed at 0.3 ppm, soybean forage at 3 ppm, soybean hay at 6 ppm, and grain aspirated fractions at 40 ppm. High-Performance Liquid Chromatograph-Mass Spectrometer (LC–MS/MS) is used to measure and evaluate the chemical residues of the parent dinotefuran and residue of the metabolites, 1-methyl-3-(tetrahydro-3-furymethyl)guanidine (DN) and 1-methyl-3-(tetrahydro-3-furymethyl)-urea (UF). *Contact:* RD

Authority: 21 U.S.C. 346a.

Dated: December 18, 2019.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–02039 Filed 2–3–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 200129–0036]

RIN 0648–BJ27

Pacific Island Fisheries; Sea Turtle Limits in the Hawaii Shallow-Set Longline Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to revise measures that govern interactions between the Hawaii shallow-set pelagic longline fishery and sea turtles. Based on recommendations from the Western Pacific Fishery Management Council (Council), we would lower the annual fleet interaction limit (''hard cap'') for leatherback sea turtles from 26 to 16, and remove the annual fleet hard cap for North Pacific loggerhead turtles (currently 17). NMFS would also create individual trip interaction limits of two leatherback and five North Pacific loggerhead turtle interactions, with accountability measures for reaching a limit. The proposed rule would provide managers and fishermen with the necessary tools to respond to and mitigate changes in North Pacific loggerhead and leatherback turtle interactions, to ensure a continued supply of fresh domestic swordfish to U.S. markets, consistent with the conservation needs of these sea turtles. The action also ensures that the Hawaii shallow-set longline fishery operates in compliance with the Reasonable and Prudent Measures (RPMs) and associated Terms and Conditions (T&Cs) of a biological opinion (BiOp) issued by NMFS on June 26, 2019.

DATES: NMFS must receive comments by March 20, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0098, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0098,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N A'' in the required fields if you wish to remain anonymous).

The Council prepared Amendment 10 to the Fishery Ecosystem Plan for the Pelagic Fisheries of the Western Pacific (FEP), including an environmental assessment (EA) and Regulatory Impact Review, which describes the potential impacts on the human environment that would result from the proposed rule. Copies of Amendment 10 and supporting documents are available at *www.regulations.gov,* or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, *www.fxsp0;wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Joshua Lee, NMFS PIR Sustainable Fisheries, 808–725–5177.

SUPPLEMENTARY INFORMATION: The Hawaii shallow-set pelagic longline fishery primarily targets swordfish (*Xiphias gladius*) on the high seas in the

North Pacific Ocean. The Council and NMFS manage the fishery under the FEP and implementing regulations, as authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). During fishing operations, vessels in the fishery occasionally hook or entangle protected species, including sea turtles. To address these interactions, the Council recommended, and NMFS implemented, several conservation and management measures (69 FR 17329, April 2, 2004). Shallow-set longline vessels are required to use circle hooks and mackerel-type bait to minimize interactions with sea turtles, and to carry and use specialized tools to improve the turtles' post-interaction survival.

NMFS also implemented annual limits (referred to as hard caps) on the number of interactions allowed between the fishery and two turtle species, the leatherback and North Pacific loggerhead. Historically, hard caps were based on the expected annual level of interaction with these sea turtles, and the T&C of the most recent BiOp. If the fishery reaches either hard cap, NMFS closes the fishery for the remainder of the calendar year. NMFS has modified the annual hard caps several times in response to new information or by court order (74 FR 65460, December 10, 2009; 76 FR 13297, March 11, 2011; 77 FR 60637, October 4, 2012; 83 FR 49495, October 2, 2018).

The current annual fleet hard cap for leatherback turtles is 26, equal to the incidental take statement (ITS) in a NMFS 2012 BiOp. The current annual hard cap for loggerhead sea turtles is 17, based on a stipulated settlement agreement of May 4, 2018, that set the limit equal to the ITS in a NMFS 2004 BiOp. These annual fleet hard caps prevent turtle takes above a specified limit, but do not provide rapid response to unforeseen higher interaction rates, which may indicate a potential for increased effects on sea turtle populations or a fishery closure early in the year.

On June 26, 2019, NMFS issued a BiOp on the effects of the shallow-set fishery on marine species listed under the Endangered Species Act (ESA). Based on the information in the 2019 BiOp, NMFS concluded that the continued authorization of the fishery is not likely to jeopardize the continued existence of ESA-listed species, including leatherback and North Pacific loggerhead turtles. The BiOp includes an ITS and RPMs necessary to minimize the effects of incidental take. NMFS must implement the RPMs for the fishery's take exemption in ESA section 7(o)(2) to apply. Of the six RPMs in the 2019 BiOp, RPM 1 (and associated T&C 1a and 1b) must be implemented by regulation to reduce the incidental capture and mortality of leatherback and loggerhead sea turtles.

Fleet Limits

T&C 1a requires setting an annual fleet hard cap of 16 leatherback turtles. Accordingly, this proposed rule would revise the annual fleet hard cap from 26 to 16. The Council recommended the revision, consistent with the anticipated level of annual interactions (21), as reduced by the applicable RPM in the 2019 BiOp. If the shallow-set fleet reaches this limit, NMFS would close the fishery for the remainder of the calendar year.

The proposed rule would remove the annual fleet hard cap on North Pacific loggerhead turtle interactions. The Council determined that a fleet hard cap for this species is not necessary at this time for the conservation of the North Pacific loggerhead turtle in light of the abundance and increasing trend of the population, the proposed individual vessel trip limit, and the accountability measure pursuant to the 2019 BiOp RPM for vessels that might reach a trip limit twice in a calendar year. If the fishery exceeds the ITS in the current valid BiOp, NMFS would reinitiate Section 7 consultation, as required by the ESA.

Trip Limits

T&C 1b requires NMFS to establish limits of two leatherback and five loggerhead turtles per vessel per individual fishing trip, with additional restrictions on vessels that might reach a trip limit twice in a calendar year. If a vessel reaches either trip limit, NMFS would require the vessel to stop fishing, return to port, and refrain from shallow-set longline fishing for five days after returning to port.

If a vessel reaches a trip limit a second time during a calendar year, for the same turtle species as the first instance, it would be prohibited from engaging in shallow-set fishing for the remainder of the calendar year. As an additional accountability measure, in the subsequent calendar year, that vessel would be limited to an annual interaction limit for that species (two leatherbacks or five loggerheads). If the vessel then reaches that subsequent year's interaction limit, it would be prohibited from shallow-set fishing for the remainder of that calendar year.

In addition to the proposed rule described above, the Council and NMFS would continue to manage the fishery under existing gear and handling requirements designed to minimize effects on sea turtles. These include the required use of 18/0 or larger circle hooks with no more than 10° offset and mackerel-type bait, adherence to regulations for safe handling and release of sea turtles, and required turtle handling and dehooking gear. NMFS would continue to monitor the Hawaii shallow-set longline fishery under statistically-reliable observer coverage. Observers report sea turtle interactions via satellite phone immediately after each observation so that NMFS can monitor the compliance with interaction limits in near real-time.

NMFS must receive any comments by the date provided in the **DATES** heading. In addition, NMFS is soliciting comments on proposed Amendment 10 to the Pelagics FEP, as stated in the Notice of Availability published on January 23, 2020 (85 FR 3889). NMFS must receive comments on the Notice of Availability by March 23, 2020. The Secretary of Commerce will consider public comments received in response to the requests for comments in the Notice of Availability and in this proposed rule in the decision to approve, partially approve, or disapprove Amendment 10.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule would revise the annual number of incidental interactions that may occur between the Hawaii-based shallow-set pelagic longline fishery (shallow-set fishery) and leatherback and loggerhead sea turtles. It would also implement new individual trip limits on the number of turtle interactions with additional restrictions.

The Hawaii shallow-set longline fishery, under Amendment 3 to the Pelagics Fishery Management Plan (currently Fishery Ecosystem Plan (FEP)) implemented in 2004, had reduced loggerhead and leatherback sea

turtle interactions by approximately 90 percent through the establishment of annual fleet-wide interaction limits (''hard caps'') among other measures. These hard caps, if reached, would trigger the closure of the fishery for the remainder of the calendar year. But the hard caps, as currently implemented, do not provide a mechanism to respond earlier in the year when higher interaction rates indicate both higher impacts to sea turtle populations as well as higher potential for shallow-set longline fishermen reaching hard caps before the end of the fishing season.

On April 20, 2018, NMFS reinitiated ESA Section 7 consultation on the fishery due to (1) the fishery's first documented interaction with a Guadalupe fur seal, which is listed as threatened under the ESA, (2) issuance of a final rule listing 11 new green sea turtle distinct population segments, (3) listings of oceanic whitetip shark and giant manta ray as threatened under the ESA, (4) the fishery's exceedance of the incidental take statement (ITS) for olive ridley sea turtles, and (5) a Ninth Circuit Court of Appeals opinion finding that NMFS 2012 BiOp no-jeopardy determination and associated ITS for the loggerhead turtle was arbitrary and capricious. The final biological opinion (BiOp) was issued on June 26, 2019. The ITS in the 2019 BiOp sets forth reasonable and prudent measures (RPMs) and associated terms and conditions (T&Cs) necessary to minimize the impacts of incidental take. RPM 1 and associated T&C 1a and 1b requires implementation of regulatory measures to reduce the incidental capture and mortality of loggerhead and leatherback sea turtles in the shallow-set fishery.

The purpose of this action is to implement Amendment 10 to the Pelagics FEP in order to modify sea turtle mitigation measures for effectively managing impacts to leatherback and loggerhead sea turtles from the shallow-set fishery. This action is needed to provide managers and fishery participants with the necessary tools to respond to and mitigate fluctuations in loggerhead and leatherback turtle interactions and to ensure a continued supply of fresh swordfish to U.S. markets, consistent with the conservation needs of these sea turtles. This action is also needed to ensure that the shallow-set fishery operates in compliance with the RPMs and T&Cs of the 2019 BiOp.

Under the proposed rule, the annual limit on the number of leatherback turtle interactions would be set to 16, while loggerhead turtles would no longer be subject to an annual fleet-wide hard cap limit—currently set at 17. Once the leatherback hard cap limit is reached, the fishery would close for the remainder of the calendar year. The proposed rule would also establish individual trip limits of five loggerhead and two leatherback turtle interactions for the Hawaii limited entry permit vessels that declare their trips as a shallow-set trip.

The individual trip limits would provide a mechanism for early response during times of higher interaction rates and are expected to help ensure year-round operations of the shallow-set fishery. Once a vessel has reached the trip limit for either the loggerhead or the leatherback turtle, that vessel cannot make additional sets and is required to return to port. The vessel would also be prohibited from engaging in shallow-set longline fishing for five days after returning to port. If a vessel reaches a trip limit a second time during a calendar year, for the same turtle species as the first instance, it would be prohibited from engaging in shallow-set fishing for the remainder of the calendar year. These vessels would also have an annual vessel limit equivalent to a single trip limit for that sea turtle species for the following calendar year.

The likelihood of a vessel reaching a trip limit is very low based on past observer data. From 2004 to 2019 period, 0.2 percent of all trips (3 trips out of 1,107 trips) had 5 or more loggerhead turtle interactions in a trip. In the same period, 0.9 percent of all trips (10 trips out of 1,107 trips) had 2 or more leatherback turtle interactions in a trip. Therefore, the fleet-wide economic cost of vessels reaching a trip limit is likely to be negligible. The individual trip limits are expected to prevent a large number of loggerheads or leatherbacks from being taken in a single trip or by a single vessel, as vessels are likely to take actions to try to avoid sea turtle interactions when nearing the trip limit. This would in turn allow the remaining vessels to continue fishing for swordfish throughout the peak season and continue to fish throughout the year, resulting in a minor to moderate positive benefits for most vessels and minimizing the fleet-wide impacts to catch and revenue from fleet-wide hard cap closures compared to taking no action.

In terms of potential loss in individual trip revenue, an individual vessel that reaches a trip limit is expected to experience some loss in revenue, especially if a trip limit is reached early in the trip. Based on trip cost and revenue data in the 2018 SAFE Report (WPFMC 2019), the average trip cost excluding labor costs for the recent five year period (2014–2018) is $44,764, and the average trip revenue for the same period is $103,074, resulting in an average net revenue of $58,310 per trip (all averages calculated with values adjusted for 2018). The average trip length is 32 days, and the average number of sets per trip is 16. The total number of fishing days can be estimated by adding one day to the number of sets per trip, resulting in an average transit time of 15 days to and from port. Of the trip cost, fuel cost accounted for 49 percent, bait was 19 percent, fishing gear 9 percent, provisions 8 percent, light sticks 10 percent, engine oil 2 percent, ice 1 percent, and communications 2 percent (WPFMC 2018). Trip cost, revenue, and percentage reduction in revenue resulting under different scenarios of reaching trip limits were estimated by adjusting the average trip cost and revenue for the number of days fished (Table 1). These estimates allow for a rough comparison among scenarios. Based on these estimates, in a worst-case scenario in which a vessel reaches a trip limit on the first set, the vessel is estimated to have a 116 percent reduction in net revenue, resulting in a net loss of $9,575 (excluding labor costs) for that trip. If a vessel reaches a trip limit after 5 sets, the vessel is estimated to have an 85 percent reduction in net revenue, at a net revenue of $8,528 for that trip. A vessel that reaches a trip limit after 10 sets is estimated to have a 45 percent reduction in net revenue, at a net revenue of $32,009 for that trip.

TABLE 1—COMPARISON OF TRIP COST, TRIP REVENUE, NET REVENUE, AND PERCENT REDUCTION IN NET REVENUE FOR FULL TRIPS AND THREE SCENARIOS OF REACHING A TRIP LIMIT (AT 1ST, 5TH AND 10TH SET OF THE TRIP). TRIP COST EXCLUDES LABOR COSTS).

Scenarios	Trip cost	Trip revenue	Net revenue	Percent reduction in net revenue (%)
Full Trip [1]	$44,764	$103,074	$ 58,310	.....
Trip limit reached in first set	16,017	6,442	(9,575)	116
Trip limit reached in fifth set	23,683	32,211	8,528	85
Trip limit reached in tenth set	32,412	64,421	32,009	45

[1] This scenario represents approximately 16 fishing sets and 32 sea days.

The shallow-set fishery has been subject to four early closures since 2004: Once in March 2006 from reaching the loggerhead limit of 17 turtles, another in November 201l from reaching the leatherback limit of 16 turtles, another in May 2018 in compliance with a court order (*TIRN* v. *NMFS (9th Cir. 2017)*), and lastly in 2019 when the fishery reached the loggerhead hard cap of 17 turtles. Compared to the status quo/no action scenario, under the proposed action the fishery is likely to have a much lower likelihood of closing early in the calendar year from reaching the hard cap due to the combination of individual trip limits and the lack of a loggerhead hard cap limit.

This would provide greater fishing opportunities for longline fishermen participating or potentially participating in the shallow-set fishery. Not only would there be increased likelihood of fishing with shallow-set gear throughout the year and, thereby, increasing swordfish and other landings for those fishermen who solely fish using shallow-set gear, it also would allow fishermen who primarily fish using deep-set gear greater flexibility to opt into the shallow-set fishery for a greater part of the year. In addition, the proposed action would reduce the uncertainty regarding the potential for early closure of the shallow-set fishing, and allow more operational certainty regarding where, when, and how to fish, especially in the presence of other unforeseen operational issues such as fluctuating fuel costs.

NMFS believes that all potential shallow-set fishery participants are considered small entities. The shallow-set and deep-set longline fisheries are managed under a single limited access fishery with a maximum of 164 vessel permits with active vessel participation increasing in recent years. As of October 2019, 148 vessels are actively fishing and each of the 164 vessel permit holders is considered a potential participant in the shallow-set fishery. The number of vessels participating in the shallow-set fishery each year from 2014–2018 varied from 20 to 11; these vessels may participate in the deep-set fishery each year, too. In 2017, 18 fishermen made about 61 shallow-set trips; in 2018, 11 fishermen made 30 shallow-set trips, before the fishery closed in May 2018 in compliance with court order (*TIRN* v. *NMFS (9th Cir. 2017)*).

The proposed action is not expected to have a significant economic impact on a substantial number of small entities, either through a significant loss in landings or expenses incurred, as it potentially expands the opportunity for longline fishermen to participate in the shallow-set fishery through a greater part of the year. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Executive Order 12866

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

Executive Order 13771

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

List of Subjects in 50 CFR Part 665

Hawaii, Leatherback sea turtle, Pelagic longline fishing, North Pacific loggerhead sea turtle.

Dated: January 29, 2020.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 2. In § 665.802 revise paragraphs (ss) and (tt) to read as follows:

§ 665.802 Prohibitions.

* * * * *

(ss) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set longline fishery has been closed, or upon notice that that the vessel is restricted from fishing, in violation of §§ 665.813(b) and 665.813(i).

* * * * *

(tt) Fail to immediately retrieve longline fishing gear upon notice that the shallow-set longline fishery has been closed, or upon notice that that the vessel is restricted from fishing, in violation of § 665.813(b).

* * * * *

■ 3. In § 665.813 revise paragraphs (b) and (i) to read as follows:

§ 665.813 Western Pacific longline fishing restrictions.

* * * * *

(b) *Limits on sea turtle interactions in the shallow-set longline fishery.* (1) *Fleet Limits.* There are limits on the maximum number of allowable physical interactions that occur each year between leatherback sea turtles and vessels registered for use under Hawaii longline limited access permits while engaged in shallow-set fishing.

(i) The annual fleet limit for leatherback sea turtles (*Dermochelys coriacea*) is 16.

(ii) Upon determination by the Regional Administrator that the shallow-set fleet has reached the limit during a given calendar year, the Regional Administrator will, as soon as practicable, file for publication at the Office of the Federal Register a notification that the fleet reached the limit, and that shallow-set fishing north of the Equator will be prohibited beginning at a specified date until the end of the calendar year in which the limit was reached.

(2) *Trip limits.* There are limits on the maximum number of allowable physical interactions that occur during a single fishing trip between leatherback and North Pacific loggerhead sea turtles and individual vessels registered for use under Hawaii longline limited access permits while engaged in shallow-set fishing. For purposes of this section, a shallow-set fishing trip commences when a vessel departs port, and ends when the vessel returns to port, regardless of whether fish are landed. For purposes of this section, a calendar year is the year in which a vessel reaches a trip limit.

(i) The trip limit for leatherback sea turtles is 2, and the trip limit for North Pacific loggerhead sea turtles (*Caretta caretta*) is 5.

(ii) Upon determination by the Regional Administrator that a vessel has reached either sea turtle limit during a single fishing trip, the Regional Administrator will notify the permit holder and the vessel operator that the vessel has reached a trip limit, and that the vessel is required to immediately retrieve all fishing gear and stop fishing.

(iii) Upon notification, the vessel operator shall immediately retrieve all fishing gear, stop fishing, and return to port.

(iv) A vessel that reaches a trip limit for either turtle species during a calendar year shall be prohibited from engaging in shallow-set fishing during the 5 days immediately following the vessel's return to port.

(v) A vessel that reaches a trip limit a second time during a calendar year, for the same turtle species as the first instance, shall be prohibited from engaging in shallow-set fishing for the remainder of that calendar year. Additionally, in the subsequent calendar year, that vessel shall be limited to an annual interaction limit for that species, either 2 leatherback or 5 North Pacific loggerhead sea turtles. If that subsequent annual interaction limit is reached, that vessel shall be prohibited from engaging in shallow-set fishing for the remainder of that calendar year.

(vi) Upon determination by the Regional Administrator that a vessel has reached an annual interaction limit, the Regional Administrator will notify the permit holder and the vessel operator that the vessel has reached the limit, and that the vessel is required to immediately stop fishing and return to port.

(vii) Upon notification, the vessel operator shall immediately retrieve all fishing gear, stop fishing, and return to port.

* * * * *

(i) A vessel registered for use under a Hawaii longline limited access permit may not be used to engage in shallow-setting north of the Equator any time during which shallow-set fishing is prohibited pursuant to paragraphs (b)(1) or (b)(2) of this section.

* * * * *

[FR Doc. 2020–02095 Filed 2–3–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 200127–0031]

RIN 0648–BI04

Fisheries Off West Coast States; West Coast Salmon Fisheries; Rebuilding Chinook Salmon Stocks

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve and implement rebuilding plans recommended by the Pacific Fishery Management Council (Council) for two overfished stocks: Klamath River fall-run Chinook salmon (KRFC) and Sacramento River fall-run Chinook salmon (SRFC). NMFS determined in June 2018 that these stocks were overfished. This document also announces the availability for public review and comment of a draft environmental assessment (EA) analyzing the environmental impacts of implementing these rebuilding plans.

DATES: Public comments must be received by March 5, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0080, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0080,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments
- *Mail:* Peggy Mundy, NMFS West Coast Region, Sustainable Fisheries Division 7600 Sand Point Way NE, Seattle, WA 98115.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments considered are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The Council and NMFS prepared a draft environmental assessment (EA) which includes a regulatory flexibility analysis (RFA). Electronic copies of these documents may be obtained from the West Coast Regional Office website at *https://www.fisheries.noaa.gov/west-coast/laws-and-policies/west-coast-region-national-environmental-policy-act-documents.*

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) established a national program for the conservation and management of the fishery resources of the United States to prevent overfishing and to rebuild overfished stocks. To that end, the MSA requires fishery management plans to specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (MSA section 303(a)(10)). The MSA includes national standards which must be followed in any FMP. NMFS has developed guidelines, based on the national standards, to assist in the development and review of FMPs, amendments, and regulations prepared by the Councils and the Secretary (50 CFR 600.305(a)(1)). National Standard 1 (NS1) addresses the need under the MSA for FMPs to specify conservation and management measures that shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery for the U.S. fishing industry (50 CFR 600.310). The NS1 guidelines include status determination criteria (SDC) and other reference points that are used to determine if overfishing has occurred, or if the stock or stock complex is overfished (50 CFR 600.310(e)(2)) and specifies Council actions required to address overfishing and rebuilding for stocks and stock complexes (50 CFR 600.310(j)).

Ocean salmon fisheries in the exclusive economic zone (EEZ) (3 to 200

nautical miles offshore) off Washington, Oregon, and California are managed under the Pacific Fishery Management Council's (Council) Pacific Coast Salmon Fishery Management Plan (FMP). The FMP identifies stocks that are in the fishery and the SDC and reference points that are used to determine when a stock is overfished and when it is rebuilt. For salmon, these metrics are based on the stock's spawning escapement (*i.e.,* fish that escape the ocean and in-river fisheries to spawn) and the abundance of adult spawners that is expected, on average, to produce maximum sustained yield (MSY), which is expressed as S_{MSY}.

The SDC for overfished is defined in the FMP to be when the three-year geometric mean of a salmon stock's annual spawning escapements falls below the reference point known as the minimum stock size threshold (MSST), where MSST is generally defined as $0.5*S_{MSY}$ or $0.75*S_{MSY}$—depending on the stock. The default SDC in the FMP for determining that an overfished stock is rebuilt is when the three-year geometric mean spawning escapement exceeds S_{MSY}. Stock-specific values for the S_{MSY} and MSST reference points are listed in Table 3–1 of the FMP, which is available on the Council's website (*www.pcouncil.org*). The status of salmon stocks is assessed annually. When NMFS determines that a stock is overfished, by virtue of meeting the overfished criteria in the FMP, described above, NMFS notifies the Council. The MSA requires Councils to develop and implement a rebuilding plan within two years of being notified by NMFS that a stock is overfished.

Overfished Determination for KRFC and SRFC

The annual stock assessments for KRFC and SRFC in 2018 used escapement data for 2015 through 2017 to determine if the stocks were overfished. The three-year geometric mean spawning escapement for KRFC for the period 2015–2017 was 19,358, which is less than the stock's MSST of 30,525 (Table 1). The three-year geometric mean spawning escapement for SRFC for the period 2015–2017 was 76,714, which is less than the stock's MSST of 91,500 (Table 1). NMFS notified the Council that these stocks were overfished on June 18, 2018, and the overfished determination was announced in the **Federal Register** on August 6, 2018 (83 FR 38292). To be determined to be rebuilt, these stocks must achieve a three-year geometric mean escapement of S_{MSY} or greater. S_{MSY} for KRFC is 40,700. S_{MSY} for SRFC is 122,000.

TABLE 1—REFERENCE POINTS AND 2015–2017 GEOMETRIC MEAN SPAWNING ESCAPEMENT FOR KRFC AND SRFC

Stock	Spawning escapement		
	2015–2017 Geometric mean	MSST (overfished threshold)	S_{MSY} (target for rebuilt)
KRFC	19,358	30,525	40,700
SRFC	76,714	91,500	122,000

Fishery Management for KRFC and SRFC

Ocean salmon fisheries impact both KRFC and SRFC stocks in the EEZ off Oregon and California. The Council uses the same harvest control rule for KRFC and SRFC, to manage impacts from ocean salmon fisheries on both stocks. This control rule was implemented under FMP Amendment 16 (76 FR 81851, December 29, 2011). The control rule provides a multi-step, exploitation rate-based model (exploitation rate is the proportion of a stock's abundance—fishery mortality plus escapement—that occurs as mortality across all fisheries throughout the range of the stock) that allows some harvest impact at all abundance levels, providing opportunity to access more abundant salmon stocks that are typically available in the Council management area when the status of one stock may otherwise preclude all ocean salmon fishing in a large region. This type of control rule is referred to in the FMP as providing *de minimis* fishing provisions; *i.e.,* allowing fisheries that will have minimal impact on a stock that is forecast at low abundance. Under this control rule, as stock size declines, the allowable exploitation rate declines, stepwise, as both stock size and exploitation rate approach zero. Details of the control rule are found in the FMP which is available on the Council's website (*www.pcouncil.org*).

KRFC. The FMP describes KRFC as a major contributor to ocean salmon fisheries from Humbug Mountain, OR, to Horse Mountain, CA, as well as to in-river tribal and recreational fisheries in the Klamath River Basin. For the period 1986–2017, harvest of KRFC was distributed as follows: Ocean fisheries—56 percent, tribal in-river fisheries—36 percent, and recreational in-river fisheries—8 percent.

SRFC. The FMP describes SRFC as the single largest contributor to ocean salmon fisheries off California and a significant contributor to ocean salmon fisheries off southern and Central Oregon. The primary impact of ocean salmon fisheries on SRFC is south of Point Arena, CA, with a considerable overlap with KRFC between Point Arena, CA, and Horse Mountain, CA. The SRFC stock is also targeted in in-river recreational fisheries in the Sacramento River Basin. For the period 1986–2017, harvest of SRFC was distributed as follows: Ocean fisheries—92 percent, and recreational in-river fisheries—8 percent.

Rebuilding Plans

The Council transmitted their recommended rebuilding plans to NMFS on August 14, 2019. The plans were developed over the course of several Council meetings in 2018 and 2019 and were informed by the analyses of the Council's Salmon Technical Team (STT). The STT held public meetings and work sessions with state and Federal agencies, tribal governments, and the general public to assess available information on various factors that could impact the productivity of these stocks and lead to the overfished determination. These factors included: Freshwater survival, marine survival, harvest impacts, and assessment and fishery management errors.

Overfishing on KRFC and SRFC, defined as the exploitation rate on a stock exceeding the maximum fishing mortality threshold (MFMT), did not occur during the years that lead to the overfished determination. The STT's report concluded that the overfished situation for these stocks was caused by: (1) Low flows and high water temperatures in the freshwater environment which resulted in low smolt survival for both stocks, disease issues in the Klamath River, and pre-

spawn mortality of migrating adults in the Sacramento River; (2) warm, unproductive ocean conditions that compromised survival in the marine environment for both stocks; (3) hatchery practices in the Sacramento River that resulted in straying of migrating salmon which lead to higher than expected in-river fishing mortality for SRFC; and (4) stock assessment errors that resulted in over-forecasting of SRFC and underpredictions of both ocean and in-river fishery mortality rates. Because SRFC would not have met the criteria for overfished status in the absence of assessment and management error, aspects of the fishery assessment and management process contributed to the stock's overfished status. The STT's report is contained within the draft EA (see **ADDRESSES**).

The Council considered three alternatives for the rebuilding plan for each stock: (1) Existing control rule, (2) buffered exploitation rate and escapement goal, and (3) no fishing that affects the overfished stocks (including in state waters). The Council's recommendation for both KRFC and SRFC, which NMFS proposes to approve, is continuation of the existing control rule, as it meets the MSA requirement to rebuild the stock as quickly as possible, taking into account the status and biology of any overfished stock and the needs of fishing communities (50 CFR 600.310(j)(3)(i)). This alternative would continue to use the existing control rule to manage fishery impacts to KRFC and SRFC when setting annual management measures (76 FR 81851, December 29, 2011).

When a stock or stock complex is overfished, a Council must specify a time period for rebuilding the stock or stock complex based on factors specified in MSA section 304(e)(4). This target time for rebuilding (T_{target}) shall be as short as possible, taking into account: The status and biology of any overfished stock, the needs of fishing communities, recommendations by international organizations in which the U.S. participates, and interaction of the stock within the marine ecosystem. In addition, the time period shall not exceed 10 years, except where biology of the stock, other environmental conditions, or management measures under an international agreement to which the U.S. participates, dictate otherwise (50 CFR 600.310(j)(3)(i)). The NS1 guidelines also describe the following rebuilding benchmarks: the minimum time to rebuild (T_{min}) and the maximum time to rebuild (T_{max}) (50 CFR 600.310(j)(3)(i)). These benchmarks serve to establish the range of target times to rebuild that the Council may consider. Under the NS1 guidelines, T_{min} is calculated by assuming no fishery mortality, regardless of the source of the mortality. It is not possible, however, for the Council and NMFS to implement a T_{min} scenario, because the MSA only provides regulatory authority over fisheries in the EEZ. Therefore, the Council and NMFS have no authority to suspend fisheries in state waters; however, the Council analyzed a no fishing alternative to identify T_{MIN} and to serve as a bookend in the analysis of rebuilding probabilities.

Council-area salmon fisheries are set annually each April. The Council's Stock Assessment and Fishery Evaluation Document for the Pacific Coast Salmon Fishery Management Plan (SAFE document) is released annually in February and provides escapement data for the previous year. Analyses to determine rebuilding times in the Council's recommended rebuilding plans used available escapement data in the SAFE document issued February 2019, which included escapement data for KRFC and SRFC through 2018. When the Council developed annual management measures for 2019, the same control rule was used to limit impacts to KRFC and SRFC as recommended in the Council's rebuilding plans; therefore, the plans set rebuilding year one as 2019.

KRFC

T_{min}. The Council's analysis determined that, with no fishing mortality, there was a 60 percent probability that KRFC would rebuild in one year. Therefore, T_{min} = one year or 2019.

T_{max}. NS1 guidelines state that if T_{min} for the stock or stock complex is 10 years or less, then T_{max} is 10 years (50 CFR 600.310(j)(3)(i)(B)(1)). Since T_{min} for KRFC is one year or 2019, T_{max} = 10 years or 2028.

$T_{target.}$ The Council has recommended the existing control rule to rebuild KRFC. The control rule sets the annual allowable exploitation rate based on the forecast of potential spawners (*i.e.,* the adult escapement expected in the absence of fisheries) to achieve a minimum spawning escapement of 40,700 (S_{MSY} for this stock). This control rule has been in place since the 2012 fishing year. In the seven years for which we have escapement data for KRFC under this control rule (2012 through 2018), four of those years had escapement above S_{MSY}. As described in the EA, the years in which KRFC failed to meet escapement goals are the years that led to the overfished determination, when cohorts were adversely affected by freshwater and marine environmental conditions (Table 2).

TABLE 2—KRFC SPAWNING ESCAPEMENT ACHIEVED UNDER THE EXISTING CONTROL RULE IN THE YEARS 2012 THROUGH 2018

Year	KRFC spawning escapement (S_{MSY} = 40,700 spawners)
2012	121,543
2013	59,156
2014	95,104
2015	28,112
2016	13,937
2017	19,904
2018	53,624

Source: Review of 2018 Ocean Salmon Fisheries, Council SAFE Document, February 2019.

The Council's analysis, contained in the draft EA (see **ADDRESSES**), used 2019 as year one in calculating T_{target}. Under the existing control rule, there is a 61 percent probability that KRFC will meet the rebuilt criteria by year two (T_{target} = 2020). This means that the three-year geometric mean of KRFC escapement for 2018–2020 is expected to meet or exceed S_{MSY}. The spawning escapement from 2020 will be included in the 2021 stock assessment.

MSA consistency. As mentioned above, the MSA requires overfished stocks to be rebuilt in as short a time as possible, while taking into account the needs of fishing communities. The Council considered an alternative that would buffer the existing control rule for KRFC by decreasing the maximum exploitation rate by 20 percent and increasing S_{MSY} escapement by 20 percent. The Council's analysis of this alternative demonstrated this would result in a reduction of up to 25 percent in ocean harvest-related economic activity each year during the rebuilding period over the existing control rule. However, this reduction in harvest would not rebuild KRFC sooner than the existing control rule; the Council's analysis indicates that T_{target} would be achieved in 2020 under either scenario. Under the no fishing alternative, which the Council could not implement in actuality, there would be a complete loss of ocean harvest-related economic activity in California and in Oregon, south of Cape Falcon, OR, during the rebuilding period, and rebuilding would only be achieved one year sooner than under the existing control rule. Therefore, due the negative economic impacts of the no fishing and buffered

control rule alternatives and negligible difference in rebuilding time, the existing control rule meets the MSA requirement to have a rebuilding period that is as short as possible while considering the needs of fishing communities.

SRFC

T_{min}. The Council's analysis determined that, with no fishing mortality, there was a 90 percent probability that SRFC would rebuild in two years. Therefore, T_{min} = two years or 2020.

T_{max}. NS1 guidelines state that if T_{min} for the stock or stock complex is 10 years or less, then T_{max} is 10 years (50 CFR 600.310(j)(3)(i)(B)(1)). Since T_{min} for SRFC is two years or 2020, T_{max} = 10 years or 2028.

$T_{target.}$ The Council has recommended the existing control rule to rebuild SRFC. The control rule sets the annual allowable exploitation rate based on the forecast of potential spawners (*i.e.,* the adult escapement expected in the absence of fisheries) to achieve a minimum spawning escapement of 122,000 (S_{MSY} for this stock). This control rule has been in place since the 2012 fishing year. In the seven years for which we have escapement data for SRFC under this control rule (2012 through 2018), three of those years had escapement above S_{MSY}. As described in the EA, the years in which SRFC failed to meet the escapement goal are the years that led to the overfished determination, when cohorts were adversely affected by freshwater and marine environmental conditions, escapement greatly improved in 2018 compared with the previous two years, but still fell below S_{MSY} (Table 3).

TABLE 3—SRFC SPAWNING ESCAPEMENT ACHIEVED UNDER THE EXISTING CONTROL RULE IN THE YEARS 2012 THROUGH 2018

Year	SRFC spawning escapement (S_{MSY} = 122,000 spawners)
2012	285,429
2013	406,846
2014	212,468
2015	114,085
2016	89,699
2017	42,714
2018	105,739

Source: Council SAFE Documents, February 2018 and 2019

The Council's analysis, contained in the draft EA (see **ADDRESSES**), used 2019 as year one in calculating T_{target}. Under the existing control rule, there is a 58 percent probability that SRFC will meet the rebuilt criteria by year three (T_{target} = 2021). This means that the three-year geometric mean of KRFC escapement for 2019–2021 is expected to meet or exceed S_{MSY}. The spawning escapement from 2021 will be included in the 2022 stock assessment.

MSA consistency. As mentioned above, the MSA requires overfished stocks to be rebuilt in as short a time as possible, while taking into account the needs of fishing communities. The Council considered an alternative that would buffer the existing control rule for SRFC by decreasing the maximum exploitation rate by 30 percent and increasing S_{MSY} escapement by 30 percent. The Council's analysis of this alternative demonstrated this would result in a reduction of up to 32 percent in ocean harvest-related economic activity each year during the rebuilding period over the existing control rule. This reduction in harvest would rebuild SRFC only one year sooner than the existing control rule; the Council calculated T_{target} would be achieved in 2020 under the buffered control rule, compared to achieving T_{target} in 2021 under the existing control rule. Under the no fishing alternative, which the Council could not implement in actuality, there would be a complete loss of ocean harvest-related economic activity south of Cape Falcon, OR, during the rebuilding period, and rebuilding would only be achieved one year sooner than under the existing control rule. Therefore, due to the negative economic impacts of the no fishing and buffered control rule alternatives and negligible difference in rebuilding time, the existing control rule meets the MSA requirement to have a rebuilding period that is as short as possible while considering the needs of fishing communities.

National Environmental Policy Act (NEPA)

The draft EA for this action is an integrated document that includes the Council's analysis of the overfished stocks, analysis of environmental and socioeconomic effects under NEPA, the regulatory impact review, and regulatory flexibility analysis. The draft EA for this action is posted on the NMFS West Coast Region website (see **ADDRESSES**).

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Salmon Fishery Management Plan, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

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

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Using the catch area description in the Pacific States Marine Fisheries Commission Information Network (PacFIN), the most recent year of complete fishing data, 2018, had 653 distinct commercial vessels land fish caught south of Cape Falcon. These vessels had a combined ex-vessel revenue of $10 million; therefore, no vessel met NMFS' threshold for being a large entity, which is $11 million in annual gross receipts. The proposed rule would not change harvest policy; thus, by definition, there would be no direct or indirect economic impact from the rebuilding plan.

Because all directly regulated entities are small, these regulations are not expected to place small entities at a significant disadvantage to large entities. The Council recommended, and NMFS proposes approving, the status quo alternative rebuilding plans for KRFC and SRFC; therefore, this proposed rule is largely administrative, to establish the rebuilding plan parameters required under NS1. Because NMFS is proposing to approve the status quo alternative, these regulations do not change salmon harvest policy and economic activity is not expected to change from the baseline as a result of these regulations; thereore, this action is also not expected to significantly reduce profit for the substantial number of directly regulated entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule was developed after meaningful collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: January 28, 2020.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 773 *et seq.*

■ 2. Add § 660.413 to read as follows:

§ 660.413 Overfished species rebuilding plans.

For each overfished salmon stock with an approved rebuilding plan, annual management measures will be established using the standards in this section, specifically the target date for rebuilding the stock to its maximum sustainable yield (MSY) level and the harvest control rule to be used to rebuild the stock.

(a) *Klamath River Fall-run Chinook Salmon (KRFC).* KRFC was declared overfished in 2018. The target year for rebuilding the KRFC stock is 2020. The harvest control rule during the rebuilding period for the KRFC stock is the *de minimis* control rule specified in the FMP and at § 660.410(c), which allows for limited fishing impacts when abundance falls below S_{MSY}. The control rule describes maximum allowable exploitation rates at any given level of abundance. The control rule is presented in Figure 1 of subpart H of this part.

(1) The Klamath River fall-run Chinook salmon control rule uses reference points F_{ABC}, MSST, S_{MSY}, and two levels of *de minimis* exploitation rates, F = 0.10 and F = 0.25. The maximum allowable exploitation rate, F, in a given year, depends on the pre-fishery ocean abundance in spawner equivalent units, N. At high abundance the control rule caps the exploitation rate at F_{ABC}, at moderate abundance the control rule specifies an F that results in S_{MSY} spawners, and at low abundance (*i.e.,* when expected escapement is below S_{MSY}) the control rule allows for *de minimis* exploitation rates with the abundance breakpoints defined as: A = MSST/2; B = (MSST + S_{MSY})/2; C = S_{MSY}/(1 − 0.25); D = S_{MSY}/(1 − F_{ABC}); as shown in Figure 1 of subpart H of this part. For N between 0 and A, F increases linearly from 0 at N = 0, to 0.10 at N = A. For N between A and MSST, F is equal to 0.10. For N between MSST and B, F increases linearly from 0.10 at N = MSST, to 0.25 at N = B. For N between B and C, F is equal to 0.25. For N between C and D, F is the value that results in S_{MSY} spawners. For N greater than D, F is equal to F_{ABC}.

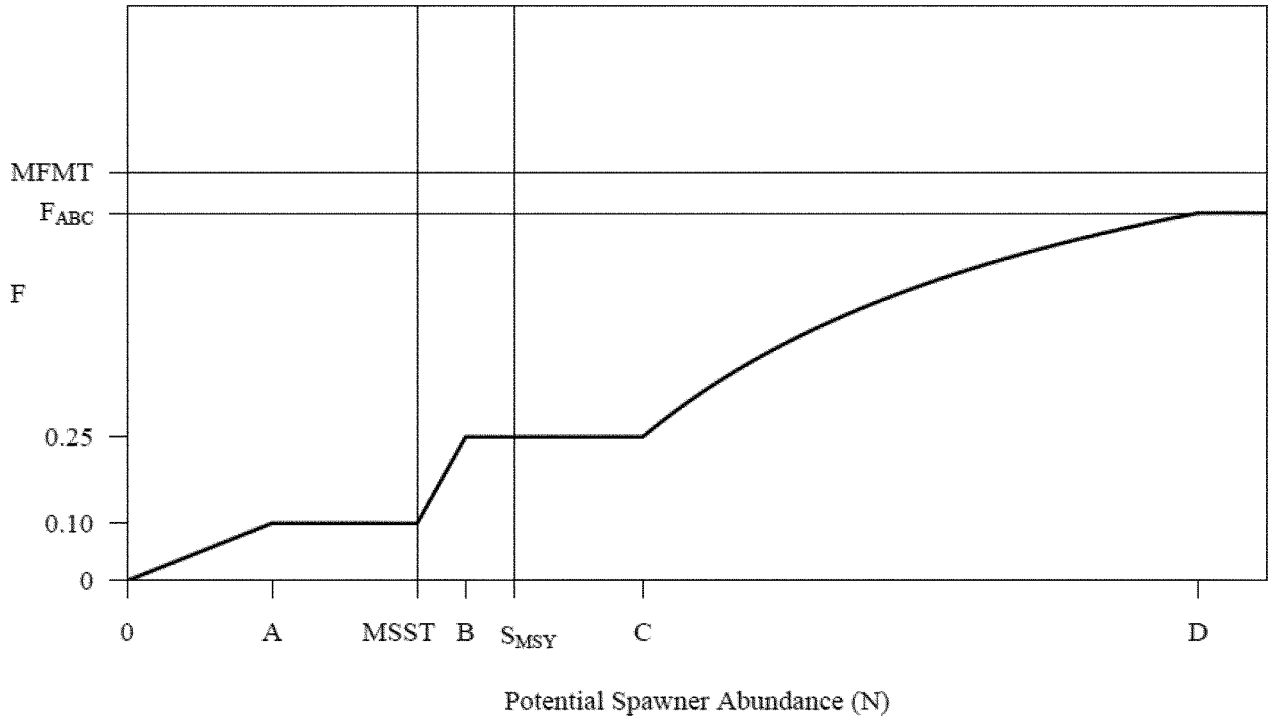
(2) [Reserved]

(b) *Sacramento River Fall-run Chinook Salmon (SRFC).* SRFC was declared overfished in 2018. The target year for rebuilding the SRFC stock is 2021. The harvest control rule during the rebuilding period for the SRFC stock is the *de minimis* control rule specified in the FMP and at 660.410(c), which allows for limited fishing impacts when abundance falls below S_{MSY}. The control rule describes maximum allowable exploitation rates at any given level of abundance.

(1) The Sacramento River fall-run Chinook salmon control rule uses the reference points F_{ABC}, MSST, S_{MSY}, and two levels of *de minimis* exploitation rates, F = 0.10 and F = 0.25. The maximum allowable exploitation rate, F, in a given year, depends on the pre-fishery ocean abundance in spawner equivalent units, N. At high abundance the control rule caps the exploitation rate at F_{ABC}, at moderate abundance the control rule specifies an F that results in S_{MSY} spawners, and at low abundance (*i.e.,* when expected escapement is below S_{MSY}) the control rule allows for *de minimis* exploitation rates with the abundance breakpoints defined as: A = MSST/2; B = (MSST + SMSY)/2; C = SMSY/(1 − 0.25); D = SMSY/(1 − FABC); as shown in Figure 1 of subpart H of this part. For N between 0 and A, F increases linearly from 0 at N = 0, to 0.10 at N = A. For N between A and MSST, F is equal to 0.10. For N between MSST and B, F increases linearly from 0.10 at N = MSST, to 0.25 at N = B. For N between B and C, F is equal to 0.25. For N between C and D, F is the value that results in S_{MSY} spawners. For N greater than D, F is equal to F_{ABC}.

(2) [Reserved]

Figure 1 to § 660.413 – Harvest Control Rule for Klamath River Fall-Run Chinook Salmon and Sacramento River Fall-Run Chinook Salmon



[FR Doc. 2020–01908 Filed 2–3–20; 8:45 am]
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Notices

Federal Register
Vol. 85, No. 23
Tuesday, February 4, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 30, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 5, 2020 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: National Animal Health Monitoring System; Health Management on U.S. Feedlots 2020.

OMB Control Number: 0579–0079.

Summary of Collection: Collection and dissemination of animal health and information is mandated by 7 U.S.C. 391, the Animal Industry Act of 1884, which established the precursor of the Animal and Plant Health Inspection Service (APHIS), Veterinary Services, the Bureau of Animal Industry. Collection, analysis, and dissemination of livestock and poultry health information on a national basis are consistent with the APHIS mission of protecting and improving American agriculture's productivity and competitiveness. The National Animal Health Monitoring System (NAHMS) will initiate the national data collection for beef feedlot operations through the Feedlot 2020 study.

Need and Use of the Information: APHIS plans to conduct the feedlot study as part of an ongoing series of NAHMS studies on the U.S. beef feedlot population. APHIS will use the data collected to: (1) Describe health management practices on U.S. feedlots with 50 or more head; (2) estimate the prevalence of important feedlot cattle diseases; (3) describe antimicrobial use and stewardship practices on U.S. feedlots; (4) describe producers' overall preparedness for changes to the Veterinary Feed Directive; and (5) describe trends in feedlot cattle health management practices and important feedlot cattle diseases.

Without this type of national data, the U.S.' ability to detect trends in management, production, and health status, either directly or indirectly, would be reduced or nonexistent.

Description of Respondents: Business or other for-profit.

Number of Respondents: 5,413.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,790.

Animal Plant and Health Inspection Service

Title: Irradiation Phytosanitary Treatment for Fresh Fruits and Vegetables.

OMB Control Number: 0579–0155.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772), the Animal and Plant Health Inspection Service (APHIS) is authorized, among other things, to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests into the United States. The regulations in 7 CFR 319 include specific requirements for the importation of fruits and vegetables. The regulations in 7 CFR 305 provide for the use of irradiation as a phytosanitary treatment for certain fruits and vegetables imported in the United States. The irradiation treatment provides protection against all inspect pest including fruit flies, the mango seed weevil, and others.

Need and Use of the Information: APHIS will collect information using a compliance agreement, 30-day notification, labeling packaging, dosimetry recordings, requests for dosimetry device approval, recordkeeping, requests for facility approval, work plan, trust fund agreement, phytosanitary certificate, denial and withdrawal certification and limited permit. Without the collection of this information, APHIS would have no practical way of determining that any given commodity had actually been irradiated. Irradiation leaves no residue and usually causes no discernible change to the commodity's color or texture.

Description of Respondents: Business or other for profit; Federal Government.

Number of Respondents: 43.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 803.

Animal and Plant Health Inspection Service

Title: Importation of Pork-Filled Pasta.

OMB Control Number: 0579–0214.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, and eradicate pests or diseases of livestock or poultry. The Animal and Plant Health

Inspection Service (APHIS) is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible. Swine Vesicular Disease (SVD) is a highly contagious disease that resists both environmental factors and common disinfectants. SVD rarely results I mortality in infected swine and does not cause severe production losses. However, the disease can have a major economic impact since eradication if costly and SVD-free regions often prohibit imports of swine, pork, and pork products from affected regions.

Need and Use of the Information: A certificate must be completed and signed by the issuing official, and contains such information as the origin of the meat used in the product, the name and location of the facility that processed the product, and the product's intended destination. APHIS regulations contain specific requirement for the processing, recordkeeping, and certification procedures for pork-filled pasta products exported to the United States from SVD-affect regions.

Without the information, it would significantly cripple APHIS' ability to ensure that pork-filled pasta from certain regions poses a minimal risk of introducing SVD into the United States.

Description of Respondents: Business or other for-profit; and Federal Government.

Number of Respondents: 2.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 5.

Animal & Plant Health Inspection Service

Title: Importation of Live Poultry, Poultry Meat, and Other Poultry Products from Specified Regions.

OMB Control Number: 0579–0228.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. Veterinary Services of the USDA's Animal and Plant Health Inspection Service (APHIS) is responsible for administering regulations intended to prevent the introduction of animal diseases into the United States. The regulations in 9 CFR part 93 and 94 allow the export of live poultry, poultry meat and other poultry products from Argentina and the Mexican States of Campeche, Quintana Roo, and Yucatan under certain conditions. APHIS will collect information using a health certification statement that must be completed by Mexican veterinary authorities prior to export, APHIS forms VS 17–129, VS 17–29, and VS 17–30 and other activities.

Need and Use of the Information: The information collected from the health certificate, forms and other activities and other activities and other activities will provide APHIS with critical information concerning the origin and history of the items destined for importation in the United States.

Without the information APHIS would be unable to establish an effective defense against the incursion of HPAI and END from import poultry and poultry products.

Description of Respondents: Federal Government; Business or other for-profit.

Number of Respondents: 24.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 57.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–02113 Filed 2–3–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–4–2020]

Foreign-Trade Zone 124—Gramercy, Louisiana; Application for Subzone; Seadrill Americas Inc.; New Iberia, Louisiana

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Port of South Louisiana, grantee of FTZ 124, requesting subzone status for the facility of Seadrill Americas Inc., located in New Iberia, Louisiana. The application was submitted pursuant to the provisions of 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 30, 2020.

The proposed subzone (51.2 acres) is located at 6005 Port Road in New Iberia (Iberia Parish), Louisiana. No authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make 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 16, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 30, 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 Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: January 30, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–02096 Filed 2–3–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–991]

Chlorinated Isocyanurates From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on chlorinated isocyanurates from the People's Republic of China (China) would be likely to lead to the continuation or recurrence of a countervailable subsidy at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable February 4, 2020.

FOR FURTHER INFORMATION CONTACT: Nathan James, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5305.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 2014, Commerce published in the **Federal Register** the CVD order on chlorinated isocyanurates from China.[1] On October 1, 2019, Commerce published the notice of initiation of the first sunset review of the CVD order on chlorinated isocyanurates from China, pursuant to section 751(c) of the Tariff Act of 1930,

[1] *See Chlorinated Isocyanurates from the People's Republic of China: Countervailing Duty Order,* 79 FR 67424 (November 13, 2014).

as amended (the Act).[2] On October 16, 2019, Commerce received a timely notice of intent to participate from Bio-Lab, Inc., Clearon Corp., and Occidental Chemical Corporation (domestic interested parties).[3] Each of the companies claimed interested party status under section 771(9)(C) of the Act, as domestic producers of chlorinated isocyanurates. On October 31, 2019, Commerce received a timely and adequate substantive response from the domestic interested parties.[4]

On November 22, 2019, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the CVD order on chlorinated isocyanurates from China.

Scope of the Order

The products covered by the order are chlorinated isocyanurates. For a full description of the scope, *see* the Issues and Decision Memorandum.[6]

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy rates likely to prevail if the *Order* were to be revoked, is provided in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the topics discussed in the Issues and Decision Memorandum is attached as an Appendix to this notice.

The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the CVD order on chlorinated isocyanurates from China would be likely to lead to the continuation or recurrence of a countervailable subsidy at the rates listed below:

Producer/exporter	Net subsidy rate (percent)
Hebei Jiheng Chemicals Co., Ltd	22.45
Juancheng Kangtai Chemical Co., Ltd	2.59
All Others	10.81

Notification Regarding Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: January 28, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

[FR Doc. 2020–02124 Filed 2–3–20; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 52067 (October 1, 2019).

[3] *See* Domestic Interested Parties' Letter, ''Chlorinated Isocyanurates from the People's Republic of China: Notice of Intent to Participate,'' dated October 16, 2019.

[4] *See* Domestic Interested Parties' Letter, ''Chlorinated Isocyanurates from the People's Republic of China: Substantive Response to Notice of Initiation of Five-Year (Sunset) Review of the Countervailing Duty Order,'' dated October 31, 2019.

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on October 1, 2019,'' dated November 22, 2019.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Chlorinated Isocyanurates from the People's Republic of China,'' dated concurrently with this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Fresh Tomatoes From Mexico: Notification of Implementation of Inspection Program

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

DATES: Applicable February 4, 2020.

SUMMARY: The Department of Commerce (Commerce) hereby notifies the public and members of the trade community of the implementation of the inspection program established by Section VII.C of the 2019 Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico (2019 Suspension Agreement). Implementation of the Section VII.C inspection program will begin 60 days from the date of publication of this notice. Beginning 60 days from the date of publication of this notice, certain fresh tomatoes from Mexico shall be subject to a United States Department of Agriculture (USDA) inspection for quality and condition defects.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell at (202) 482–0162 or (202) 482–0408, respectively; Bilateral Agreements Unit, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 2019, Commerce and signatory producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed the 2019 Suspension Agreement.[1] Section VII.C of the 2019 Suspension Agreement states: ''Beginning approximately (and no less than) six months from the Effective Date of the Agreement, all loads of subject merchandise, as specified in paragraph 2 of this section, shall be subject to a USDA inspection for quality and condition defects near the border after entering the United States. Commerce will consult with USDA on the development and implementation of the inspection program. The trade community will have at least 60 days'

[1] *See Fresh Tomatoes From Mexico: Suspension of Antidumping Duty Investigation,* 84 FR 49987 (September 24, 2019) (2019 Suspension Agreement).

advance notice prior to implementation of the inspection program.'' [2]

Scope of Agreement

See Section I, Product Coverage, of the 2019 Suspension Agreement.

Notification

Consistent with the 2019 Suspension Agreement, this **Federal Register** notice provides 60 days' advance notice prior to the implementation of the inspection program, which has been developed by USDA, in consultation with Commerce, as specified in the 2019 Suspension Agreement. The inspection program, as outlined in Section VII.C of the 2019 Suspension Agreement, will begin 60 days from the date of publication of this notice. Beginning 60 days from the date of publication of this notice, all Fresh Tomatoes from Mexico, with the exception of Tomatoes on the Vine, Specialty tomatoes, and grape tomatoes in retail packages of 2 pounds or less, shall be subject to a USDA inspection for quality and condition defects consistent with Section VII.C of the 2019 Suspension Agreement, and in accordance with USDA procedures as determined by USDA.[3] (*See* Section II of the 2019 Suspension Agreement for definitions of certain terms in the preceding sentence.)

As provided in the 2019 Suspension Agreement, importers of tomatoes subject to inspection must request the USDA inspection and pay the associated USDA fees.[4] USDA will perform inspections (an unrestricted certification) in accordance with its normal practice to determine quality, condition, and grade pursuant to the appropriate USDA standard covering fresh tomatoes and greenhouse tomatoes and using shipping point tolerances.[5] After the USDA inspection, the importer will receive an inspection certificate, which must be maintained by the importer and is subject to submission to, and verification by, Commerce, consistent with the importer's contractual obligation with the Signatory.[6] If a lot of Signatory tomatoes has more defects than the tolerances established in the USDA standards, then the importer may opt either to recondition and re-inspect the lot, or return it to Mexico, consistent with the requirements of the 2019 Suspension Agreement.[7]

Dated: January 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–02166 Filed 2–3–20; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See* Section VII.C.1 of the 2019 Suspension Agreement.

[3] For avoidance of doubt, all loads of Fresh Tomatoes from Mexico that are inspected pursuant to a USDA marketing order are not required to also be inspected pursuant to the inspection program under this section VII.C. *See id.*

[4] *See* Section VII.C.2 of the 2019 Suspension Agreement.

[5] *See* Section VII.C.3 of the 2019 Suspension Agreement.

[6] *See* Section VII.C.4 of the 2019 Suspension Agreement.

[7] *See id.*

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 200113–0015]

National Cybersecurity Center of Excellence (NCCoE) Data Confidentiality Building Block

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide products and technical expertise to support and demonstrate security platforms for two data confidentiality projects within the Data Confidentiality Building Block. The two projects are Data Confidentiality: Identifying and Protecting Assets and Data Against Data Breaches and Data Confidentiality: Detect, Respond to, and Recover from Data Breaches. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the Data Confidentiality Building Block. Participation in the building block is open to all interested organizations and organizations may participate in one or both data Confidentiality projects.

DATES: Interested parties must contact NIST to request a letter of interest template to be completed and submitted to NIST. Letters of interest will be accepted on a first come, first served basis. Parties interested in participating in both data confidentiality projects must submit a separate letter of interest for each data confidentiality project. Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than March 5, 2020. When the building block has been completed, NIST will post a notice announcing the completion of the building block and informing the public that it will no longer accept letters of interest for this building block on the NCCoE Data Confidentiality Building Block website at *https://www.nccoe.nist.gov/projects/building-blocks/data-security/dc-detect-identify-protect_forDataConfidentiality:* Identifying and Protecting Assets and Data Against Data Breaches, and at *https://www.nccoe.nist.gov/projects/building-blocks/data-security/dc-detect-respond-recoverfor_DataConfidentiality:* Detect, Respond to and Recover from Data Breaches.

ADDRESSES: The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *ds-nccoe@nist.gov* or via hardcopy to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign a separate consortium Cooperative Research and Development Agreement (CRADA) with NIST for each Data Confidentiality Building Block project. An NCCoE consortium CRADA template can be found at: *http://nccoe.nist.gov/node/138.*

FOR FURTHER INFORMATION CONTACT: Jennifer Cawthra via email to *Jennifer.Cawthra@nist.gov;* by telephone 240.328.4584; or by mail to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Additional details about the Data Confidentiality Building Block are available at *https://www.nccoe.nist.gov/projects/building-blocks/data-security.*

SUPPLEMENTARY INFORMATION:

Background: The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity products and services.

Process: NIST is soliciting responses from all sources of relevant security capabilities (see below) to enter into a Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate security platforms for the Data Confidentiality Building Block. The full building block can be viewed at: *https://www.nccoe.nist.gov/projects/building-blocks/data-security.*

Interested parties should contact NIST using the information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. NIST will then provide each interested party with a letter of interest template, which the party must complete, certify that it is accurate, and submit to NIST. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the building block objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed below up to the number of participants in each category necessary to carry out this building block. However, there may be continuing opportunity to participate even after initial activity commences. Selected participants will be required to enter into a consortium CRADA with NIST (for reference, see **ADDRESSES** section above). NIST published a notice in the **Federal Register** on October 19, 2012 (77 FR 64314) inviting U.S. companies to enter into National Cybersecurity Excellence Partnerships (NCEPs) in furtherance of the NCCoE. For this demonstration project, NCEP partners will not be given priority for participation.

Building Block Objective: Establish tools and procedures to defend, detect, and respond to data confidentiality events.

A detailed description of the Data Confidentiality Building Block is available at: *https://www.nccoe.nist.gov/projects/building-blocks/data-security.*

Requirements: Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Responding organizations must submit a separate letter of interest and sign a separate consortium CRADA for each project the responding organization is interested in joining. Letters of interest should not include company proprietary information, and all components and capabilities must be commercially available. Components are listed in section 3 of each of the data confidentiality projects (1) Data Confidentiality: Identifying and Protecting Assets and Data Against Data Breaches, and (2) Data Confidentiality: Detect, and Respond to, and Recover from Data Breaches. (for reference, please see the link in the PROCESS section above) and include, but are not limited to:

- For Data Confidentiality: Identifying and Protecting Assets and Data Against Data Breaches:
- Log collection, collation, and correlation
- Network protection solution
- Network mapping
- Network segmentation
- Network protection
- Browser isolation
- User access controls
- Data management
- Data discovery
- Data inventory
- Data protection
- Protection at rest
* Including file- and system-level encryption
- Protection in transit
- Protection in use
- Protection against the use of removable media
- Policy enforcement
- For Data Confidentiality: Detect, and Respond to and Recover from Data Breaches:
- Monitoring
- File
- Network
- Users
- Event detection
- Exfiltration activity
- Unauthorized activity
- Anomalous activity
- Log collection, collation, and correlation of all activities within the enterprise
- Reporting capability
- Capability to mitigate data loss

Each responding organization's letter of interest should identify how their products address one or more of the following desired solution characteristics in section 3 of each of the Data Confidentiality projects (1) Data Confidentiality: Identifying and Protecting Assets and Data Against Data Breaches, and (2) Data Confidentiality: Detect, Respond to, and Recover from Data Breaches (for reference, please see the link in the PROCESS section above):

1. For Data Confidentiality: Identifying and Protecting Assets and Data Against Data Breaches:

- Identify and inventory data and data flows.
- Protect against confidentiality attacks on hosts.
- Protect against confidentiality attacks that occur on the network.
- Protect against confidentiality attacks that occur on enterprise components.
- Protect enterprise data at rest, in transit, and in use.
- Protect the network and remote access capabilities.
- Provide logging and audit capabilities.
- Provide user access controls to data.
- Provide user authentication mechanisms.

2. For Data Confidentiality: Detect, Respond to, and Recover from Data Breaches:

- Monitor the enterprise's user and data activity.
- Detect unauthorized data flows, user behavior, and data access.
- Report unauthorized activity with respect to users and data in transit, at rest, or in use to centralized monitoring and reporting software.
- Analyze the impact of unauthorized behavior and malicious behavior on the network or end points. Determine if a loss of data confidentiality is occurring or has occurred.
- Mitigate the impact of such losses of data confidentiality by facilitating an effective response to a data breach scenario.
- Contain the effects of a data breach so that more data is not exposed.
- Facilitate the recovery effort from data breaches by providing detailed information as to the scope and severity of the breach.

Responding organizations need to understand and, in their letters of interest, commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security platform components

2. Support for development and demonstration of the Data Confidentiality Building Block in NCCoE facilities which will be conducted in a manner consistent with the following standards and guidance: FIPS 200, FIPS 201, SP 800–53, FIPS 140–2, SP 800–37, SP 800–57, SP 800–61, SP 800–83, SP 800–150, SP 800–160, and SP 800–184.

Additional details about the Data Confidentiality Building Block are available at: *https://nccoe.nist.gov/projects/building-blocks/data-security.*

NIST cannot guarantee that all of the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the consortium CRADA in the development of the Data Confidentiality Building Block. Prospective

participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy security platforms that meet the security objectives of the Data Confidentiality Building Block. These descriptions will be public information.

Under the terms of the consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of the Data Confidentiality Building Block capability will be announced on the NCCoE website at least two weeks in advance at *http://nccoe.nist.gov/.* The expected outcome of the demonstration is to improve data integrity within the enterprise. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit the NCCoE website *http://nccoe.nist.gov/.*

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–01993 Filed 2–3–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR094]

Marine Mammals; Issuance of Permits

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

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that individuals and institutions have been issued Letters of Confirmation for activities conducted under the General Authorization for Scientific Research on marine mammals. See **SUPPLEMENTARY INFORMATION** for a list of names and address of recipients.

ADDRESSES: The Letters of Confirmation and related documents are available for review upon written request or by appointment in the following office:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Office of Protected Resources, Permits and Conservation Division, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The requested Letters of Confirmation have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216). The General Authorization allows for *bona fide* scientific research that may result only in taking by Level B harassment of marine mammals. The following Letters of Confirmation (LOC) were issued in Fiscal Year 2019 (October 1, 2018–September 30, 2019).

File No. 21910: Issued to California Wildlife Center (Principal Investigator: Jennifer Brent), 26026 Pimma Road, Calabassas, CA 91302, on October 1, 2018, to obtain baseline data on marine mammal health and populations in remote areas of Malibu to better aid future studies on ocean stock health and to identify previously unreported cases of human interaction and previously tagged animal migration. This work specifically targets the U.S. stock of California sea lion (*Zalophus californianus*), the California breeding stock of northern elephant seal (*Mirounga angustirostris*), and the California stock of harbor seal (*Phoca vitulina*). The LOC expires on September 30, 2023.

File No. 19826–03: Issued to Deanna Rees, Naval Undersea Warfare Center, Division Newport, 1176 Howell Street, Newport, RI 02841, on November 1, 2018, to conduct surveys of gray (*Halichoerus grypus atlantica*) (Western North Atlantic stock), harbor (Western North Atlantic stock), and harp (*Pagophilus groenlandicus*) (Western North Atlantic stock) seals in the northeast. The amended LOC adds aerial surveys of pinnipeds via vertical take-off and landing unmanned aircraft systems (UAS). The LOC expires on January 31, 2021.

File No. 22198–01: Issued to Samuel Wasser, Ph.D., Center for Conservation Biology, University of Washington, Seattle, WA 98195, on November 21, 2018, extended the expiration date of the LOC for one year. Research activities include vessel surveys targeting killer whales (*Orcinus orca,* West Coast Transient stock) within the inland waters of Washington State. The objectives do not change from those previously authorized under LOC No. 22198. The amended LOC clarifies the expiration date relative to the effective date of new Permit No. 22141 (84 FR 22111, May 16, 2019); the LOC subsequently expired on April 30, 2019.

File No. 18218–03: Issued to Dolphin Research Center, (Principal Investigator: Armando Rodriguez), 58763 Overseas Highway, Grassy Key, FL 33050, on November 29, 2018, extended the expiration date of the LOC for one year. The research includes close approach, photo-identification, behavioral observations, passive acoustics, and focal follows of coastal and bottlenose dolphins (*Tursiops truncatus*) (Florida Bay Stock) in coastal waters of the middle Florida Keys. The objectives do not change from those previously authorized under LOC No.18218–02. The LOC was subsequently terminated on February 5, 2019, when a new LOC (No. 22587, see below) was issued to Dolphin Research Center.

File No. 22081: Issued to Institute for Marine Mammal Studies (Principal Investigator: Mobashir Solangi, Ph.D.), P.O. Box 207, Gulfport, MS 39502, on December 3, 2018, to study cetaceans during vessel and aerial surveys using photo-identification, behavioral observations, photography, filming, and passive acoustic recordings. Research may occur from Lake Borgne, Louisiana to the Alabama/Mississippi state line, including Mississippi, Chandeleur, and Breton Sounds and adjacent waters. The target species is bottlenose dolphins; however research would also occur if any of the following species were observed: Atlantic spotted dolphin (*Stenella frontalis*), pantropical spotted dolphin (*S. attenuata*), spinner dolphin (*S. longirostris*), and pygmy sperm whale (*Kogia breviceps*). The LOC expires on December 1, 2023.

File No. 22587: Issued to Dolphin Research Center (Principal Investigator: Armando Rodriguez), 58763 Overseas Highway, Grassy Key, FL 33050, on February 5, 2019 to continue vessel surveys for close approach, photo-identification, behavioral observations, passive acoustics, and focal follows of

bottlenose dolphins (Florida Bay Stock) in coastal waters of the middle Florida Keys. The objectives of the research are to estimate the distribution, residency, and movement patterns for bottlenose dolphins in the middle Florida Keys. The LOC expires on February 15, 2024.

File No. 18605–01: Issued to Tara Cox, Ph.D., Savannah State University, P.O. Box 20467, Savannah, GA 31404, on February 14, 2019, extended the expiration date of the LOC for one year. The research includes close approach, photo-identification, behavioral observations, passive acoustics, and focal follows of coastal and offshore bottlenose dolphins, Atlantic and pantropical spotted dolphins, short-finned pilot whales (*Globicephala macrorhynchus*), beaked whales (Family Ziphiidae), and Risso's dolphins (*Grampus griseus*) in estuarine and coastal waters of Georgia and South Carolina. The objectives do not change from those previously authorized under LOC No. 18605–01. The LOC was subsequently terminated on May 13, 2019, when a new LOC (File No. 22807) was issued to Dr. Cox.

File No. 22725: Issued to the Texas Marine Mammal Stranding Network (Responsible Party: Heidi Whitehead), 4700 Avenue U, Galveston, TX 77351, on April 15, 2019, to conduct vessel surveys, observations and photo-identification of bottlenose dolphins in Texas waters. The objectives of the research are to determine abundance estimates, examine habitat-use and site fidelity, document human-related injuries and interactions, and study the behavior ecology of dolphin stocks found in Texas bays, sounds, and estuaries. The LOC expires on April 30, 2024.

File No. 22807: Issued to Tara Cox, Ph.D., Savannah State University, P.O. Box 20467, Savannah, GA 31404, on May 13, 2019, to conduct vessel surveys, behavioral observations, and photo-identification of cetaceans in waters from the Georgia/South Carolina border south to Altamaha Sound. The objectives of the research are to continue a long-term study of the foraging ecology, social structure, and population ecology of bottlenose dolphins in the area. Atlantic spotted dolphins, short-finned pilot whales, beaked whales, and Risso's dolphins will be studied if encountered. The LOC expires on May 31, 2024.

File No. 22820: Issued to Danielle Brown, Rutgers University, 72 Locust Avenue, Neptune City, NJ 07753, on May 30, 2019, to conduct vessel-based surveys of the West Indies Distinct Population segment of humpback whales (*Megaptera novaeangliae*) for counts, photo-identification, photography, and observation in New Jersey waters. Bottlenose dolphins (Western North Atlantic Northern Migratory Coastal stock) and minke whales (*Balaenoptera acutorostrata)* may also be opportunistically encountered. The objectives of the research are to collect spatial and temporal data to understand species distribution, to identify distribution hotspots, and to establish a baseline for humpback whale behavior in the apex of the New York Bight. The LOC expires on May 31, 2024.

File Nos. 18101–04 and 18101–05: Issued to Pacific Whale Foundation (Principal Investigator: Jens Currie), 300 Ma'alaea Road, Suite 211, Wailuku, HI 96793, on June 21, 2019, extended the expiration date of the LOC until August 14, 2019. The LOC was extended for an additional 30 days on August 14, 2019, to expire on September 15, 2019. The objectives do not change from those authorized under LOC No. 18101–03. The research authorizes counts, photo-identification, behavioral observations, focal follows, underwater photography/videography, and photogrammetry of 15 species of cetaceans during vessel line transect surveys within the waters of Maui County, Hawaii. The objectives did not change from those previously authorized. LOC No. 18101–05 was subsequently terminated on August 27, 2019, when amended permit No. 21321–01 was issued to Pacific Whale Foundation (84 FR 48600, September 16, 2019).

File No. 22856: Issued to Patricia Fair, Ph.D., South Carolina Aquarium, 100 Aquarium Wharf, Charleston, SC 29401, on July 22, 2019, to conduct vessel surveys, photo-identification, photogrammetry, and behavioral observations of bottlenose dolphins (Charleston Estuarine System stock). Research will occur in estuarine waters near Charleston, South Carolina, including Charleston Harbor and the Ashley, Cooper, and Wando Rivers. The objective of the research is to assess whether the Charleston Harbor Deepening Project will affect the distribution, abundance and behavior of dolphins in this area. The LOC expires on August 31, 2024.

File No. 19826–04: Issued to Deanna Rees, Naval Undersea Warfare Center, Division Newport, 1176 Howell Street, Newport, RI 02841, on July 30, 2019, to conduct surveys of gray, harbor, and harp seals in the northeast U.S. The amended LOC adds additional UAS surveys, as well as the installation and use of remote cameras for monitoring. The LOC expires on January 31, 2021.

File No. 20377–02: Issued to Wendy Noke Durden, Hubbs-Sea World Research Institute, 3830 South Highway A1A #4–181, Melbourne Beach, FL 32951 on August 8, 2019, to conduct behavioral observations, passive acoustic recording, monitoring, photo-identification, photography, and video of bottlenose dolphins during vessel surveys. Research takes place in the inland waters of the Indian River Lagoon estuary to the Intracoastal Waters of the Halifax Rivers estuary. The amended LOC adds UAS as a tool to collect data. The objectives do not change from those previously authorized. The LOC expires on September 1, 2021.

File No. 22813: Issued to Alejandro Acevedo-Gutiérrez, Ph.D., Western Washington University, 516 High Street, Bellingham, WA 98225, on August 30, 2019, for observation/monitoring, videography, and scat collection during ground and UAS surveys of harbor seals (Washington Inland Waters stock) within inland waters of Washington State. The LOC expires on August 31, 2024.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: January 28, 2020.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–02110 Filed 2–3–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Notice Reopening the Application Period and Waiving the Electronic Submission Requirement for Certain Applicants Under the Fiscal Year (FY) 2020 Student Support Services (SSS) Program Competition

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary is reopening the FY 2020 SSS Program competition, Catalog of Federal Domestic Assistance (CFDA) number 84.042A, for eligible institutions of higher education (IHEs) or combinations of IHEs in the designated counties of the

Commonwealth of Puerto Rico affected by the recent earthquakes, for which the President has issued a disaster declaration. The Secretary takes this action to allow these eligible applicants additional time to submit their applications. This notice also waives the electronic application submission requirement for these eligible applicants.

DATES:

Deadline for Transmittal of Applications: February 18, 2020.

Deadline for Intergovernmental Review: April 10, 2020.

FOR FURTHER INFORMATION CONTACT: Lavelle Wright, U.S. Department of Education, 400 Maryland Avenue SW, Room 268–24, Washington, DC 20202–4260. Telephone: (202) 453–7739. Email: *Lavelle.wright@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: On December 17, 2019 we published in the **Federal Register** a notice inviting applications for new awards for the FY 2020 SSS Program competition (84 FR 68915). This notice reopens the period for transmittal of applications for all SSS Program applicants that are located in the designated counties of the Commonwealth of Puerto Rico, for which the President has issued a disaster declaration.

Eligibility: The extension of the application deadline date in this notice applies to eligible applicants under the SSS Program, CFDA number 84.042A, that are located in an area for which the President has issued a disaster declaration (see *www.fema.gov/disasters/*) in Puerto Rico (FEMA Disaster designation 4473).

In accordance with the NIA, eligible applicants for this grant competition are IHEs or combinations of IHEs. Note that because ''combinations of IHEs'' are eligible grant applicants for the SSS Program, the extension of the application deadline date applies if any member of the IHE partnership is located in the designated counties of the Commonwealth of Puerto Rico, for which the President has issued a disaster declaration.

All IHEs eligible for the deadline extension must submit an application electronically via *Grants.gov* or via paper to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** by 11:59:59 p.m., Eastern time on February 10, 2020.

Note: All information in the original notice inviting applications remains the same, except for the deadline for the transmittal of applications and the waiver of the electronic application submission requirement for eligible applicants, as well as the deadline for intergovernmental review.

Program Authority: 20 U.S.C. 1070a–11 and 20 U.S.C. 1070a–14.

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.

Robert L. King,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2020–02102 Filed 2–3–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) on Prediction of Solar Variability for Better Grid Integration

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) Solar Energy Technologies Office (SETO) is issuing this request for information (RFI) to solicit feedback from industry, academia, research laboratories, government agencies, and other stakeholders. This RFI will inform SETO's strategic planning on research related to the integration of solar energy resources. Specifically, this RFI will inform SETO's strategies relating to prediction of solar irradiance reaching the surface of the earth, and power output from solar generation plants, using either photovoltaic (PV) or concentrating solar power (CSP) technologies. Improving solar generation prediction will better inform grid operators as they consider the impacts of solar power variability on grid planning and operations technologies, as well as the owners and operators of utility-scale plants and aggregators of distributed PV systems.

DATES: SETO will accept response to the RFI for at least 30 days after February 4, 2020, the date this notice is published.

ADDRESSES: Interested parties are to submit comments electronically to: *SETO.RFI.SI@ee.doe.gov.* Include Prediction of Solar Variability for Better Grid Integration, in the subject of the title. Only electronic responses will be accepted. The complete RFI document DE–FOA–0002284 is located at *https://eere-exchange.energy.gov.*

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Mr. Tassos Golnas at telephone (202) 287–1793 or by email *SETO.RFI.SI@ee.doe.gov.* Further instructions can be found in the RFI document posted on EERE Exchange.

SUPPLEMENTARY INFORMATION: SETO's systems integration research focuses on enabling effective grid operations with increasing amounts of solar energy and improving system resilience. Topics include dynamic PV inverter models and adaptive distribution protection; grid services from integrating solar with energy storage and other technologies; advanced inverter controls and sensors; and standardized interconnection, interoperability, and cybersecurity for PV. The goal is to advance the understanding and technologies needed to integrate increasing amounts of solar generation into electric transmission and distribution systems in a cost-effective, secure, resilient, and reliable manner. SETO's recent R&D funding includes, but is not limited to, the SETO FY2019 Funding Opportunity,[1] and the Advanced Systems Integration for Solar Technologies (ASSIST),[2] Solar Forecasting 2,[3] and Enabling Extreme Real-Time Grid Integration of Solar

[1] *https://www.energy.gov/eere/solar/funding-opportunity-announcement-solar-energy-technologies-office-fiscal-year-2019.*

[2] *https://www.energy.gov/eere/solar/funding-opportunity-announcement-advanced-systems-integration-solar-technologies-assist.*

[3] *https://www.energy.gov/eere/solar/funding-opportunity-announcement-solar-forecasting-2.*

Energy (ENERGISE)[4] funding opportunities.

SETO has supported solar prediction technologies in its Solar Forecasting funding program, launched in 2013, which delivered WRF-Solar[5]—a version of the Weather Research and Forecasting (WRF) model[6] that is optimized for solar irradiance, and more recently in the Solar Forecasting 2 funding program, launched in 2018. This latter program prioritizes improvements in the prediction of solar irradiance for horizons between 3 and 48 hours ahead, the successful integration of probabilistic solar power forecasts with generation unit scheduling, and the creation of an open-source framework for the efficient and transparent evaluation of irradiance and power forecast models.

SETO hosted a workshop on October 7–8, 2019, in Washington, DC to review the progress of projects awarded under the Solar Forecasting 2 funding program and to better understand the remaining challenges associated with the variability and prediction uncertainty of solar generation. At the event, subject matter experts and SETO-funded researchers presented on the state-of-the-art of solar irradiance forecasting, opportunities for the integration of hybrid systems with solar plants in the bulk power system, and efforts associated with the DOE-funded projects. These efforts work to improve the WRF-Solar model, use machine learning and other artificial intelligence methods to better predict irradiance under variable cloud cover and during ramps, and calculate the optimal amount of generation reserves using probabilistic solar power forecasts. An extended session was dedicated to the demonstration of the current state of Solar Forecast Arbiter,[7] which is an open-source platform designed to facilitate objective, transparent, and auditable evaluation of irradiance and power forecasts. The participants openly discussed emerging challenges regarding the prediction of solar irradiance and power in a world with increasing solar and renewable penetration, and an increasing population of behind-the-meter variable loads. The detailed workshop agenda and presentations are available on the SETO website.[8]

In this RFI, SETO is seeking additional feedback on these topics from industry, electric utilities, balancing authorities, academia, research laboratories, government agencies, and other stakeholders. The main goal is to lower the integration cost of high penetrations of solar power to the bulk power and distribution systems by making the prediction of solar generation more accurate and effective. Such a development could be realized by leveraging advances in ground and remote sensing, numerical modeling of atmospheric processes, artificial intelligence techniques, and stochastic optimization. The questions are given as follows and responders are welcome to answer all or any subset of the questions.

Confidential Business Information

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signed in Washington, DC, on January 27, 2020.

Rebecca Jones-Albertus,

Director, Solar Energy Technologies Office.

[FR Doc. 2020–02123 Filed 2–3–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–29–000.

Applicants: Northeast Energy Associates, A Limited Partnership, North Jersey Energy Associates, A Limited Partnership, Vistra Energy Corp., NextEra Energy, Inc.

Description: Errata to January 7, 2020 Application for Authorization Under Section 203 of the Federal Power Act, et al. of Northeast Energy Associates, A Limited Partnership, et al.

Filed Date: 1/28/20.

Accession Number: 20200128–5202.

Comments Due: 5 p.m. ET 2/11/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–71–000.

Applicants: Blooming Grove Wind Energy Center LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Blooming Grove Wind Energy Center LLC.

Filed Date: 1/29/20.

Accession Number: 20200129–5053.

Comments Due: 5 p.m. ET 2/19/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1910–019; ER10–1911–019.

Applicants: Duquesne Light Company, Duquesne Power, LLC.

Description: Notice of Change in Status of the Duquesne MBR Sellers.

Filed Date: 1/28/20.

Accession Number: 20200128–5191.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER12–162–027; ER11–2044–032; ER11–3876–023.

ER13–1266–028; ER15–2211–025; ER18–1419–001.

Applicants: MidAmerican Energy Company, Bishop Hill Energy II LLC, CalEnergy, LLC, Cordova Energy Company LLC, MidAmerican Energy Services, LLC, Walnut Ridge Wind, LLC.

Description: Notice of Non-Material Change in Status of the Berkshire Hathaway Filing Parties.

Filed Date: 1/28/20.

Accession Number: 20200128–5198.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER16–902–005.

Applicants: Voyager Wind I, LLC.

Description: Notice of Non-Material Change in Status of Voyager Wind I, LLC.

Filed Date: 1/29/20.

Accession Number: 20200129–5097.

Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER19–1073–002; ER10–2460–015; ER10–2461–016; ER10–2463–015; ER10–2466–016; ER10–2917–019; ER10–2918–020; ER10–2920–019; ER10–2921–019; ER10–2922–019; ER10–2966–019; ER10–3167–011; ER11–2201–019; ER11–2383–014; ER11–3941–017; ER11–3942–020; ER11–4029–015; ER12–1311–015; ER12–161–019; ER12–2068–015; ER12–645–020; ER12–682–016; ER13–1139–019; ER13–1346–011; ER13–1613–012; ER13–17–013; ER13–203–011; ER13–2143–012; ER14–1964–010; ER14–25–015; ER14–2630–012; ER16–287–005; ER17–482–004; ER19–1074–002; ER19–1075–002; ER19–1076–002; ER19–2429–001; ER19–529–002.

[4] *https://www.energy.gov/eere/solar/funding-opportunity-announcement-enabling-extreme-real-time-grid-integration-solar-energy.*

[5] *https://ral.ucar.edu/projects/wrf-solar.*

[6] *https://www.mmm.ucar.edu/weather-research-and-forecasting-model.*

[7] *https://SolarForecastArbiter.org.*

[8] *https://www.energy.gov/eere/solar/downloads/solar-forecasting-2-workshop.*

Applicants: Alta Wind VIII, LLC, Bear Swamp Power Company LLC, BIF II Safe Harbor Holdings LLC, BIF III Holtwood LLC, Black Bear Development Holdings, LLC, Black Bear Hydro Partners, LLC, Black Bear SO, LLC, BREG Aggregator LLC, Brookfield Energy Marketing Inc., Brookfield Energy Marketing LP, Brookfield Energy Marketing US LLC, Brookfield Power Piney & Deep Creek LLC, Brookfield Renewable Energy Marketing US, Brookfield Renewable Trading and Marketi, Brookfield Smoky Mountain Hydropower LP, Brookfield White Pine Hydro LLC, Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Granite Reliable Power, LLC, Great Lakes Hydro America, LLC, Hawks Nest Hydro LLC, Mesa Wind Power Corporation, Rumford Falls Hydro LLC, Safe Harbor Water Power Corporation, Windstar Energy, LLC, Bishop Hill Energy LLC, Blue Sky East, LLC, California Ridge Wind Energy LLC, Canadaigua Power Partners, LLC, Canadaigua Power Partners II, LLC, Erie Wind, LLC, Evergreen Wind Power, LLC, Evergreen Wind Power III, LLC, Imperial Valley Solar 1, LLC, Niagara Wind Power, LLC, Prairie Breeze Wind Energy LLC, Regulus Solar, LLC, Stetson Wind II, LLC, Vermont Wind, LLC, Stetson Holdings, LLC.

Description: Amendment to October 30, 2019 Notice of Change in Status of the Brookfield Companies and TerraForm Companies.

Filed Date: 1/29/20.

Accession Number: 20200129–5103.

Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER19–1639–002.

Applicants: South Peak Wind LLC.

Description: Notice of Non-Material Change in Status of South Peak Wind LLC.

Filed Date: 1/28/20.

Accession Number: 20200128–5187.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER19–1778–001.

Applicants: Glen Ullin Energy Center, LLC.

Description: Notice of Non-Material Change in Status of Glen Ullin Energy Center, LLC.

Filed Date: 1/28/20.

Accession Number: 20200128–5189.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–276–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2020–01–29_Deficiency Response Prairie Power Attachment O to be effective 1/1/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5148.

Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–884–000.

Applicants: Hanwha Q CELLS USA Corp.

Description: Request for Waiver of Hanwha Q CELLS USA Corp.

Filed Date: 1/27/20.

Accession Number: 20200127–5208.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–287–001.

Applicants: CPV Fairview, LLC.

Description: Compliance filing: Compliance to 122 to be effective 12/9/2019.

Filed Date: 1/28/20.

Accession Number: 20200128–5161.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–888–000.

Applicants: Puget Sound Energy, Inc.

Description: § 205(d) Rate Filing: Revised Attachment K Northern Grid Filing to be effective 4/1/2020.

Filed Date: 1/28/20.

Accession Number: 20200128–5155.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–889–000.

Applicants: CPV Fairview, LLC.

Description: Compliance filing: Compliance to 122 to be effective 12/9/2019.

Filed Date: 1/28/20.

Accession Number: 20200128–5156.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–890–000.

Applicants: Idaho Power Company.

Description: § 205(d) Rate Filing: Attachment K—NorthernGrid Per FERC 12/27/19 Order to be effective 4/1/2020.

Filed Date: 1/28/20.

Accession Number: 20200128–5162.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–891–000.

Applicants: MATL LLP.

Description: § 205(d) Rate Filing: NorthernGrid Attachment K 28 Jan 2020 to be effective 4/1/2020.

Filed Date: 1/28/20.

Accession Number: 20200128–5163.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–892–000.

Applicants: Portland General Electric Company.

Description: § 205(d) Rate Filing: Att K Revision Filing to be effective 4/1/2020.

Filed Date: 1/28/20.

Accession Number: 20200128–5164.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–893–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3158R1 Basin Electric and MidAmerican Energy Attachment AO to be effective 1/1/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5001.

Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–894–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: 4th Quarterly 2019 Revisions to OA, Sch. 12 and RAA, Sch. 17 Members List to be effective 12/31/2019.

Filed Date: 1/29/20.

Accession Number: 20200129–5029.

Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–895–000.

Applicants: NC 102 Project LLC.

Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status to be effective 1/30/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5034.

Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–896–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3126R5 WAPA NITSA NOA to be effective 1/1/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5039.

Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–897–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3161R1 Basin Electric and MidAmerican Energy Attachment AO to be effective 1/1/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5040.

Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–898–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1630R10 The Empire District Electric Company NITSA NOA to be effective 1/1/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5050.

Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–899–000.

Applicants: Wheelabrator Frackville Energy Company Inc.

Description: Petition for Limited Waiver, et al. of Wheelabrator Frackville Energy Company Inc.

Filed Date: 1/28/20.

Accession Number: 20200128–5201.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–900–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: Tariff Cancellation: CHAK—West Crk SS Const Agrmt 283–NSP–NOC to be effective 3/29/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5065.

Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–901–000.

Applicants: West Penn Power Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: West Penn Power Company submits OIA Sa No. 5504 to be effective 3/29/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5071.

Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–902–000.

Applicants: sPower Energy Marketing.

Description: Baseline eTariff Filing: sPower Energy Marketing, LLC MBR Tariff to be effective 1/30/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5072.

Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–903–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Ministerial Clean Up of OATT and OA Sections Due to Overlapping Dates to be effective 12/3/2019.

Filed Date: 1/29/20.

Accession Number: 20200129–5078.

Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–904–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: SPP–MISO JOA Revisions to Enhance Pseudo-Tie Coordination to be effective 3/30/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5130.

Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–905–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–01–29_SPP and MISO JOA Pseudo-Tie Revisions to be effective 3/30/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5145.

Comments Due: 5 p.m. ET 2/19/20.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF18–452–002.

Applicants: North American Natural Resources, Inc.

Description: Pre-Arranged/Pre-Agreed (Settlement and Settlement Agreement) Filing, et al. of North American Natural Resources, Inc.

Filed Date: 1/28/20.

Accession Number: 20200128–5192.

Comments Due: 5 p.m. ET 2/3/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 29, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02109 Filed 2–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3011–017]

NATCO Products Corporation; Notice of Application for Surrender of License, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for surrender of minor license.

b. *Project No:* 3011–017.

c. *Date Filed:* December 31, 2019.

d. *Applicant:* NATCO Products Corporation.

e. *Name of Project:* Arctic Hydroelectric Project.

f. *Location:* The 478-kilowatt project is located on the South Branch of the Pawtuxet River, in West Warwick, Kent County, Rhode Island. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Steve Burke, NATCO Products Corporation, 155 Brookside Avenue, West Warwick, RI 02893; phone (401) 828–0300, email *sburke@natcohome.com.*

i. *FERC Contact:* Diana Shannon, (202) 502–6136, *diana.shannon@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* February 28, 2020.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–3011–017. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* In 2017, the applicant filed a Notice of Intent to file an application for a subsequent license. Upon evaluation of costs associated with study requirements, expected new license requirements, and repairs to the turbine, the applicant has decided to surrender the project. The applicant proposes to decommission the project by installing a steel/concrete bulkhead to prevent flow through the turbine, close and lock the two turbine gate control arms; and remove all fuses to isolate the generating equipment from the power grid. The dam and powerhouse would remain in place.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and

reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 29, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02108 Filed 2–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–886–000]

Orsted US Trading LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Orsted US Trading LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 18, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 29, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02105 Filed 2–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2883–009]

Aquenergy Systems, LLC; Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. Project No.: 2883–009.

c. *Date Filed:* May 30, 2018.

d. *Applicant:* Aquenergy Systems, LLC (Aquenergy).

e. *Name of Project:* Fries Hydroelectric Project (Fries Project).

f. *Location:* The existing project is located on the New River, in Grayson County, Virginia. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Kevin Webb, Hydro Licensing Manager, Enel Green Power North America, Inc., 100 Brickstone Square, Suite 300, Andover, MA 01810; (978) 935–6039; *kevin.webb@enel.com.*

i. *FERC Contact:* Jody Callihan, (202) 502–8278 or *jody.callihan@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* Sixty (60) days from the issuance date of this notice; reply comments are due one hundred five (105) days from the issuance date of this notice.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in

accordance with 18 CFR 4.34(b) and 385.2010.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The first page of any filing should include docket number P–2883–009.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The existing Fries Project consists of:* (1) A 41-foot-high, 610-foot-long rock masonry dam with a 500-foot-long spillway; (2) an 88-acre impoundment at the normal pool elevation (spillway crest elevation) of 2,188.27 feet National Geodetic Vertical Datum of 1929 (NGVD 1929); (3) an approximately 750-foot-long, 110-foot-wide intake canal with four 15.5-foot-high, 6.5-foot-wide headgates; (4) a canal spillway consisting of 10 stoplog bays totaling 47 feet in length; (5) two 12.5-foot-high, 5.0-foot-wide canal gates; (6) a steel powerhouse that contains a single vertical Kaplan turbine with a capacity of 2.1 megawatts (MW) that discharges into a 180-foot-long, 75-foot-wide, 12-foot-deep tailrace; (7) a masonry powerhouse that contains one vertical and two horizontal Francis turbines with a total capacity of 3.0 MW that discharges into a 180-foot-long, 120-foot-wide, 12-foot-deep tailrace; (8) a 500-foot-long, 450-foot-wide bypassed reach that extends from the toe of the dam to the confluence with the tailraces; (9) a 567-foot-long, 13.2-kilovolt (kV) transmission line that runs from the steel powerhouse to the interconnection point with the grid; (10) a 130-foot-long transmission line that connects the masonry powerhouse to a 5,000 kilovolt-amp step-up transformer and an additional 323-foot-long, 13.2-kV transmission line leading from the transformer to the interconnection point; and (11) appurtenant facilities.

Aquenergy proposes to continue operating the project in a run-of-river mode. In addition, Aquenergy proposes to: (1) Maintain the impoundment elevation within 0.2 foot of the spillway crest of 2,188.27 feet NGVD 1929 at all times, during normal project operation; (2) make enhancements to the impoundment access recreation site and canoe portage trail; (3) develop a project recreation management plan; and (4) develop a project operations plan. For the period 2003 through 2016, the average annual generation at the Fries Project was 26,150 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, terms and conditions, and prescriptions.	March 2020.
Commission issues Environmental Assessment (EA).	August 2020.
Comments on EA	September 2020.

o. Final amendments to the application must be filed with the Commission no later than thirty (30) days from the issuance date of this notice.

Dated: January 29, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02107 Filed 2–3–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–5–000]

Commission Information Collection Activities; Request for Emergency Extension of FERC–923

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of request for emergency extension.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) has submitted a request to the Office of Management and Budget (OMB) for a three-month emergency extension of the following information collection: FERC–923, Communication of Operational Information between Natural Gas Pipelines and Electric Transmission Operators. The requested extension would enable the collection to remain active while FERC completes the pending PRA renewal process. No changes are being made to the reporting and recordkeeping requirements.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION: The PRA renewal process for this information collection is ongoing. To ensure that OMB approval of the current information collection remains active during the PRA renewal process, FERC has submitted a request to the OMB for a short-term emergency extension, to April 30, 2020.

Title: FERC–923, Communication of Operational Information between Natural Gas Pipelines and Electric Transmission Operators.

On January 28, 2020 the Commission's General Counsel signed a letter to the Administrator of the Office of Information and Regulatory Affairs, OMB. The letter included a request for an emergency extension, explained the Commission's justification for an extension, and was electronically submitted to OMB on January 28, 2020.

Dated: January 29, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02106 Filed 2–3–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0720; FRL–10004–40]

Pesticide Registration Review; Draft Human Health and/or Ecological Risk Assessments for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft human health and/or ecological risk assessments for the registration review of carboxin, famoxadone (ecological assessment only), fenpropimorph, irgarol, naphthalene acetic acid (also known as NAA), propargite, telone (1,3-D), triallate, and triticonazole.

DATES: Comments must be received on or before April 6, 2020.

ADDRESSES: Submit your comments, to the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, are available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information: Contact the Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general questions on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in the Table in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed comprehensive draft human health and/or ecological risk assessments for all pesticides listed in the Table in Unit IV. After reviewing comments received during the public comment period, EPA may issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments and may request public input on risk mitigation before completing a proposed registration review decision for the pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV. pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's human health and/or ecological risk assessments for the pesticides shown in the following table and opens a 60-day public comment period on the risk assessments.

TABLE—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Carboxin/Oxycarboxin, Case 0012	EPA–HQ–OPP–2004–0124	Tiffany Green, *green.tiffany@epa.gov*, (703) 347–0314.
Famoxadone, Case 7038	EPA–HQ–OPP–2015–0094	Christina Scheltema, *scheltema.christina@epa.gov*, (703) 305–8401.
Fenpropimorph, Case 5112	EPA–HQ–OPP–2014–0404	Peter Bergquist, *bergquist.peter@epa.gov*, (703) 347–8563.
Irgarol, Case 5031	EPA–HQ–OPP–2010–0003	SanYvette Williams, *williams.sanyvette@epa.gov*, (703) 305–7702.
Naphthalene Acetic Acid and its Salts, Ester, and Acetamide (NAA), Case 0379.	EPA–HQ–OPP–2014–0773	Linsey Walsh, *walsh.linsey@epa.gov*, (703) 347–0588.
Propargite, Case 0243	EPA–HQ–OPP–2014–0131	Wilhelmena Livingston, *livingston.wilhelmena@epa.gov*, (703) 308–8025.
Telone (1,3-D), Case 0328	EPA–HQ–OPP–2013–0154	Michelle Nolan, *nolan.michelle@epa.gov*, (703) 347–0258.
Triallate, Case 2695	EPA–HQ–OPP–2014–0573	Katherine St. Clair, *stclair.Katherine@epa.gov*, (703) 347–8778.
Triticonazole, Case 7036	EPA–HQ–OPP–2015–0602	Christian Bongard, *bongard.christian@epa.gov*, (703) 347–0337.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and/or ecological risk assessments for the pesticides listed in the Table in Unit IV. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to a draft human health and/or ecological risk assessment. EPA may then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments.

Information submission requirements. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 27, 2020.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2020–02041 Filed 2–3–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0720; FRL–10004–43]

Pesticide Registration Review; Pesticide Dockets Opened for Review and Comment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the EPA's preliminary work plans for the following chemicals: Methoprene, pyridalyl, and spirotetramat. With this document, the EPA is opening the public comment period for registration review for these chemicals.

DATES: Comments must be received on or before April 6, 2020.

ADDRESSES: Submit your comments, to the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV, by one of the following methods:

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

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in Unit IV.

For general questions on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in the Table in Unit IV.

B. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the 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 the 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

Registration review is the EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the agency may consider during the course of registration reviews. As part of the registration review process, the Agency has completed preliminary workplans for all pesticides listed in the Table in Unit IV. Through this program, the EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

The EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. Registration Reviews

A. What action is the Agency taking?

A pesticide's registration review begins when the agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. Pursuant to 40 CFR 155.50, this notice announces the availability of the EPA's preliminary work plans for the pesticides shown in the following table and opens a 60-day public comment period on the work plans.

TABLE—REGISTRATION REVIEW CASES

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Methoprene, Kinoprene, and Hydroprene, Case No. 0030.	EPA–HQ–OPP–2013–0586	Cody Kendrick, *kendrick.cody@epa.gov,* (703) 347–0468.
Pyridalyl, Case No. 7451	EPA–HQ–OPP–2019–0378	Sergio Santiago, *santiago.sergio@epa.gov,* (703) 347–8606.
Spirotetramat, Case No. 7452	EPA–HQ–OPP–2019–0033	Darius Stanton, *stanton.darius@epa.gov,* (703) 347–0433.

B. Docket Content

The registration review docket contains information that the agency may consider in the course of the registration review. The agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the agency is asking that interested persons identify any additional information they believe the agency should consider during the registration reviews of these pesticides. The agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

The registration review final rule at 40 CFR 155.50(b) provides for a minimum 60-day public comment period on all preliminary registration review work plans. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary changes to a pesticide's workplan. All comments should be submitted using the methods in **ADDRESSES** and must be received by the EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the Table in Unit IV. Comments received after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments.

The agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The final registration review work plan will explain the effect that any comments had on the final work plan and provide the agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 27, 2020.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2020–02098 Filed 2–3–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2019–0511; FRL–10002–72]

Pesticide Maintenance Fee; Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit III., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: The cancellations are effective February 4, 2020.

FOR FURTHER INFORMATION CONTACT: Michael Yanchulis, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0237; email address: *yanchulis.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0511, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

This cancellation order follows a September 23, 2019 **Federal Register** (84 FR 49729) (FRL–9999–06). Notice of Receipt of Requests from the registrants listed in Table 2 of Unit III. to voluntarily cancel these product registrations. In the September 23, 2019 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received one comments on the September 23, 2019 notice. The comment was a request from FMC Corporation to withdraw two cancellation requests for registration numbers WA070015 WA070017 which now will be retained. The registration numbers below were listed in the September 23, 2019 notice, but were listed in another request to cancel the FR Notice, so are not listed in this notice. The FR Notice and EPA Reg. Numbers are: **Federal Register** of August 21, 2019 (84 FR 43593; FRL–9996–82): EPA Reg. Nos. 100–1083, 1258,161, 1258–162, 1258–974, 1258–1064, 1258–1171, 1258–1218, 1258–1240, 1258–1281, 1258–1333, 1258–1348, 1258–1356, 1258–1357, 1258–1360, 1258–1362, 5185–459, 47371–191, 70627–69, 70627–73, OR980006 and WY080001 and September 30, 2019 (84 FR 51561; FRL–9999–39): EPA Reg. No. 6836–177. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

Section 4(i)(5) of FIFRA (7 U.S.C. 136a–1(i)(5)) requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under FIFRA section 3 (7 U.S.C. 136a) as well as those granted under FIFRA section 24(c) (7 U.S.C. 136v(c)) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

Under FIFRA, the EPA Administrator may reduce or waive maintenance fees for minor agricultural use pesticides when it is determined that the fee would be likely to cause significant impact on the availability of the pesticide for the use.

In fiscal year 2019, maintenance fees were collected in one billing cycle. In December of 2018, all holders of either FIFRA section 3 registrations or FIFRA section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15, 2019. A notice of intent to cancel was sent in June of 2019 to companies who did not respond and to companies who responded but paid for less than all their registrations. Since mailing the notices of intent to cancel, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

In fiscal year 2019, the Agency has waived the fee for 330 minor agricultural use registrations at the request of the registrants. Maintenance fees have been paid for about 16,795 FIFRA section 3 registrations, or about 97% of the registrations on file in October 2018. Fees have been paid for about 1,826 FIFRA section 24(c) registrations, or about 85% of the total on file in October 2018. Cancellations for non-payment of the maintenance fee affect 177 FIFRA section 3 registrations and 2 FIFRA section 24(c) registrations. These cancellations can be found in Table 3 below. Cancellations for companies paying the fee at one of the capped payment amounts are considered voluntary cancellations since the registration could be maintained without an additional fee payment. These cancellations are subject to a 30-day comment period and are listed in Table 1 below.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 2020, 1 year after the date on which the fee was due. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold, or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation order.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through special reviews or other Agency actions. These general

provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

III. What action is the Agency taking?

This notice announces the cancellation, as requested by registrant, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name
100–1164	100	Amistar Fungicide.
100–1356	100	Syn-AI7227.
264–976	264	Raxil MD Extra Fungicide.
264–997	264	Raxil MD Extra W Seed Treatment.
264–1000	264	RTU-Trifloxystrobin-Metalaxyl Flowable Fungicide.
264–1034	264	Prosper T400 Insecticide and Fungicide Seed Treatment.
400–486	400	Mefenoxam 2EC Fungicide.
400–597	400	Annihilate LV.
400–598	400	Annihilate SP.
432–875	432	AEH 315 Manufacturing Concentrate.
432–1477	432	Prostar 70 WDG Fungicide.
707–312	707	Rocima 80.
1015–72	1015	Roo-Pru Super Tri Pak.
1258–1323	1258	Arch OIT 45.
1381–209	1381	Quinclorac 75 DF.
1381–234	1381	Nicosulfuron 75%.
1381–235	1381	Metsulfuron Methyl 60% Herbicide.
2792–61	2792	Decco 240 Liquid Chlorine.
3008–60	3008	ACC 50% Wood Preservative.
3008–86	3008	Copper MEA Solution.
3008–90	3008	ORD-X372.
3008–94	3008	ORD-X280.
3008–103	3008	CMC 9.0 Wood Preservative.
3008–104	3008	Sustain 20CQ.
3008–105	3008	Sustain 20T.
3008–106	3008	Sustain 20.
3008–107	3008	Everlast CA-B.
3008–108	3008	Sustain 25 Antimicrobial.
3008–109	3008	Sustain 25T.
3008–113	3008	ORD-X380.
3008–118	3008	ORD-X042.
3008–119	3008	FIM 3.
3282–112	3282	D-CON Farm, Ranch & Home.
3282–114	3282	D-CON Bait Station XV.
4822–36	4822	Johnson Buggy Whip Airborne Bug Killer.
4822–220	4822	Raid Indoor Fogger Formula IV.
4822–388	4822	S.C. Johnson Wax Raid Flea Killer Plus VIII Egg Stop Formula.
4822–473	4822	Raid Ant & Roach Killer 16.
4822–563	4822	PC-GI-08.
5383–89	5383	Homeguard.
5383–117	5383	Polyphase 612.
5383–140	5383	Polyphase 710S.
5383–152	5383	Polyphase 853CR.
5383–153	5383	Polyphase 863CR.
5383–187	5383	Fungitrol 10 LC.
5481–513	5481	Discipline GC Granular Insecticide.
5481–514	5481	Discipline 2EC Insecticide/Miticide.
5481–515	5481	Discipline Flowable Insecticide/Miticide.
5481–516	5481	Wisdom TC Flowable Termiticide/Insecticide.
7969–105	7969	Polyram 80 DF.
7969–321	7969	Cabrio Plus Fungicide.
9198–172	9198	Anderson's Weedgrass Preventer.
9779–353	9779	Terronate WDG.
10163–301	10163	Moncut 70-DF.
10163–320	10163	Moncoat MZ.
10404–67	10404	Lesco 1% Dursban Granular Bait.
33270–35	33270	Glufosinate 280 Herbicide.
61842–17	61842	M-98-A10 Crop Protectant.
61842–19	61842	Manufacturing Use Product.
61842–36	61842	Carbaryl 97.5% Manufacturing Use Concentrate Insecticide.
66222–107	66222	Chief 3SC Herbicide.
66222–168	66222	Ecomazapyr 2SL.
66222–178	66222	Picket TM Herbicide.
66222–179	66222	Involve TM Herbicide.
66222–183	66222	Adapt Herbicide.
70299–1	70299	Zerotol Algaecide/Fungicide.

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name
70299–2	70299	Oxidate Broad Spectrum Bactericide/Fungicide.
70299–5	70299	Terracide Broad Spectrum Bactericide/Fungicide.
70299–6	70299	Greenclean Pro Granular Algaecide/Fungicide.
70299–8	70299	Sanidate 12.0 Microbiocide.
70299–11	70299	Sanidate 5.0 Sanitizer.
73049–9	73049	Devine Mycoherbicide.
74849–3	74849	Ultima Platinum Plus.
81824–2	81824	Maxxthor Golf CG.
82957–5	82957	Abamectin Technical.
83222–8	83222	Mighty Met 60 DF Herbicide.
83222–25	83222	Bighorn DF Herbicide.
83222–26	83222	Cherokee DF Herbicide.
83222–27	83222	Cherokee Extra DF Herbicide.
83222–28	83222	Unite Broadspectrum Herbicide.
83222–29	83222	Unite Tankmix Herbicide.
83222–35	83222	Pendimethalin 3.3 EC.
83923–1	83923	Bithor SC GC.
83923–3	83923	Prothor SC 0.5.
83923–5	83923	Turfthor 2F.
83923–9	83923	Turfthor 2.5G.
83923–10	83923	Turfthor 0.5 G.
83923–13	83923	Bithor XT.
85685–1	85685	Fourstar SBG.
89168–55	89168	Liberty Bioact.
90330–1	90330	Dicamba Technical.
90745–1	90745	Root Gatorx.
AL080001	279	Brigade 2EC Insecticide/Miticide.
AL110003	100	Subdue Maxx.
AL140001	100	Micora.
AL170002	7969	Engenia Herbicide.
AR870005	400	Dimilin 25W for Cotton/Soybean.
AZ070003	66222	Vegetable Pro Herbicide.
AZ080010	100	Solicam DF Herbicide.
AZ080014	66222	Mana Alias 4F.
CA060001	66222	Galigan 2E Oxyfluorfen Herbicide.
CA090001	71512	Beleaf 50SG Insecticide.
CA100002	5481	ABBA 0.15EC.
CA120001	100	Subdue Maxx.
CA140005	100	Micora.
FL110012	100	Subdue Maxx.
FL170003	71711	Tolfenpyrad 15 EC Insecticide.
GA170001	7969	Engenia Herbicide.
HI040003	264	Provado 1.6 Flowable Insecticide.
HI100002	264	Provado 1.6 Flowable Insecticide.
HI100005	264	Ethrel Brand Ethephon Plant Regulator.
IA100001	279	Mustang Max Insecticide.
IA130001	279	Mustang Maxx.
IA180003	7969	Engenia Herbicide.
ID040003	100	Fusilade Dx Herbicide.
ID060023	66222	Fanfare 2EC.
ID060024	66222	Fanfare 2EC.
ID070014	71512	Beleaf 50SG Insecticide.
ID150003	279	Capture LFR Soil Insecticide.
IL100002	279	Mustang Max Insecticide.
IL130001	279	Mustang Maxx.
KS130002	66222	Mana Atrazine 90DF.
KS990005	10163	Treflan H.F.P.
KS990006	10163	Treflan TR-10.
LA110004	279	Mustang Insecticide.
LA120013	66222	Parazone 3SL.
LA170001	7969	Engenia Herbicide.
MI110008	59639	Sureguard Herbicide.
MI120004	100	Subdue Maxx.
MI140001	264	Balance Flexx Herbicide.
MI140002	264	Corvus Herbicide.
MN000001	100	Dual Magnum Herbicide.
MN030009	279	Nufos 4E.
MN050001	100	Callisto.
MN060003	100	Beacon.
MN090003	264	Nortron Sc Herbicide.
MN100004	10163	Treflan HFP.
MN110001	10163	Moncut 70-DF.

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name
MN180002	7969	Engenia Herbicide.
MO050007	59639	Valor Herbicide.
MO170003	7969	Engenia Herbicide.
MO170004	352	Dupont Fexapan Herbicide.
MO180001	7969	Engenia Herbicide.
MS010006	4787	Glyfos X-TRA.
MS010037	4787	Glyfos Herbicide.
MS050003	71368	Extra Credit 5 Systemic Herbicide.
MS130005	10163	Malathion 8.
MT010002	10163	Sonalan HFP.
MT060003	10163	Sonalan 10G.
MT090003	71512	Beleaf 50SG Insecticide.
MT150003	279	Capture LFR Soil Insecticide.
NC110007	59639	V-10137 1 EC (Herbicide).
NC120001	264	Corvus Herbicide.
NC130004	61842	Sectagon 42.
NC150001	66222	Pyrimax 3.2 L Herbicide.
NC160001	264	Sivanto 200 SL.
NC170002	7969	Engenia Herbicide.
ND020013	4787	Glyfos Herbicide.
ND030013	279	Nufos 4E.
ND080003	228	Nufarm Polaris.
ND110005	264	Liberty 280 SL Herbicide.
ND130004	264	Laudis Herbicide.
ND160001	9779	Terranil 6L.
ND180001	7969	Engenia Herbicide.
NE100001	279	Mustang Max Insecticide.
NE100002	279	Mustang Max Insecticide.
NE130002	352	Dupont Basis Blend Herbicide.
NE150003	100	Subdue Maxx.
NJ010002	71368	Weedar 64 Broadleaf Herbicide.
NJ940006	71368	Weedar 64 Broadleaf Herbicide.
NM100002	71512	Beleaf 50SG Insecticide.
NV070007	71512	Beleaf 50SG Insecticide.
NV100001	10163	Moncut 70-DF.
NV900001	10163	Treflan TR-10 Granules.
NV950001	10163	Sonalan HFP.
NY150001	7969	Merivon Xemium Brand Fungicide.
OR160011	279	Exirel Insect Control.
PA150002	100	Subdue Maxx.
SD080001	7969	G-Max Lite Herbicide.
SD130007	264	Laudis Herbicide.
SD150004	264	SC 547 Herbicide.
TN180003	7969	Engenia Herbicide.
TX030005	400	Terramaster 4EC.
TX080001	279	Brigade 2EC Insecticide/Miticide.
TX080020	400	Firestorm.
TX080022	264	Ethrel Brand Ethephon Plant Regulator.
TX150004	100	Subdue Maxx.
TX930003	10163	Treflan TR-10.
TX940005	400	Comite II.
TX960012	10163	Treflan H.F.P.
UT070007	71512	Beleaf 50SG Insecticide.
UT140001	10163	Onager 1E.
UT180003	100	Gramoxone SL 2.0.
UT870002	10163	Treflan TR-10 Granules.
UT900001	10163	Treflan TR-10 Granules.
VA110004	264	Balance Flexx Herbicide.
VA110005	264	Corvus Herbicide.
VA130003	61842	Sectagon 42.
VA150003	100	Subdue Maxx.
WA000024	400	Dimilin 2L.
WA020030	264	Aliette WDG Fungicide.
WA040005	10163	Onager 1E.
WA060007	66222	Rimon 0.83 EC.
WA070013	71512	Beleaf 50SG Insecticide.
WA090005	9779	Simazine 4L.
WA150002	279	Capture LFR Soil Insecticide.
WA900016	10163	Treflan TR-10.
WA940018	10163	Sonalan HFP.
WA980001	10163	Gowan Cryolite Bait.
WI110002	71512	Omega 500F.

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name
WY030005	10163	Sonalan HFP.
WY030006	100	Fusilade DX Herbicide.
WY070004	400	Acramite-4SC.
WY080007	400	Firestorm.
WY080008	71512	Beleaf 50SG Insecticide.
WY100004	400	Dimilin 2L.
WY140004	66222	Parazone 3SL.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELED PRODUCTS

EPA company No.	Company name and address
100	Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419.
228	Nufarm Americas, Inc., 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.
264	Bayer Cropscience LP, 800 N Linbergh Blvd., St. Louis, MO 63167.
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
352	E. I. Du Pont de Nemours and Company, 9330 Zionsville Road, Indianapolis, IN 46268.
400	MacDermid Agricultural Solutions, Inc., c/o Arysta Lifescience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
432	Bayer Environmental Science, A Division of Bayer Cropscience LP, 5000 Centregreen Way, Suite 400, Cary, NC 27513.
707	DDP Specialty Electronic Materials US 5, LLC, 200 Powder Mill Road—ESL 353, Wilmington, DE 19803.
1015	Pyxis Regulatory Consulting, Inc., Agent for Douglas Products and Packaging Co., 4110 136th Street CT NW, Gig Harbor, WA 98332.
1258	Arch Chemicals, Inc., 1200 Bluegrass Lakes Parkway, Alpharetta, GA 30004.
1381	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164.
2792	Decco US Post-Harvest, Inc., 1713 South California Avenue, Monrovia, CA 91016.
3008	Koppers Performance Chemicals, Inc., 1016 Everee Inn Road, Griffin, GA 30224.
3282	Reckitt Benckiser LLC, 399 Interpace Parkway, Parsippany, NJ 07054.
4787	FMC Corporation, Agent for Cheminova A/S, 1735 Market Street, Philadelphia, PA 19103.
4822	S.C. Johnson & Son, Inc., 1525 Howe Street, Racine, WI 53403.
5383	Troy Chemical Corp., c/o. Troy Corporation, 8 Vreeland Road, Florham Park, NJ 07932.
5481	AMVAC Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660.
7969	BASF Corporation, Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709.
9198	The Andersons, Inc., P.O. Box 119, Maumee, OH 43537.
9779	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
10404	LESCO, Inc., 1385 East 36th Street, Cleveland, OH 44114.
33270	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164.
59639	Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596.
61842	Pyxis Regulatory Consulting, Inc., Agent for Tessenderlo Kerley, Inc., 4110 136th Street CT NW, Gig Harbor, WA 98332.
66222	Makhteshim Agan of North America, Inc., D/B/A Adama, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
70299	Biosafe Systems, LLC, 22 Meadow Street, East Hartford, CT 06108.
71368	Nufarm, Inc., 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.
71512	ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077.
71711	Nichino America, Inc., 4550 Linden Hill Road, Suite 501, Wilmington, DE 19808.
73049	Valent Biosciences LLC, 870 Technology Way, Libertyville, IL 60048.
74849	Innovative Water Care, LLC, D/B/A Advantis Technologies, 1400 Bluegrass Lakes Parkway, Alpharetta, GA 30004.
81824	Pyxis Regulatory Consulting, Inc., Agent for Ensystex II, Inc., 4110 136th Street CT NW, Gig Harbor, WA 98332.
82957	Pyxis Regulatory Consulting, Inc., Agent for Ensystex III, Inc., 4110 136th Street CT NW, Gig Harbor, WA 98332.
83222	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164.
83923	Pyxis Regulatory Consulting, Inc., Agent for Ensystex IV, Inc., 4110 136th Street CT NW, Gig Harbor, WA 98332.
85685	Fourstar Microbial Products, LLC, 1501 East Woodfield Road, Suite 200 West, Schaumburg, IL 60173.
89168	Liberty Crop Protection, LLC, 1880 Fall River Drive, #100, Loveland, CO 80538.
90330	Pyxis Regulatory Consulting, Inc., Agent for US Raymat AG LLC, 4110 136th Street CT NW, Gig Harbor, WA 98332.
90745	KRK Consulting LLC, Agent for RCS II Inc., 5807 Churchill Way, Medina, OH 44256.

Table 3 of this unit lists all the FIFRA section 3 and section 24(c) registrations which were canceled for non-payment of the 2019 maintenance fee. These registrations have been canceled by order on September 30, 2019 and without a hearing.

TABLE 3—FIFRA SECTION 3 AND SECTION 24(C) REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2019 MAINTENANCE FEE

Registration No.	Company No.	Product name
748–240	748	Repak Dry Chlorinating Tablets.
748–284	748	PITTABS—G65 Calcium Hypochlorite Tablets.
748–300	748	PPG 70 Calcium Hypochlorite Tablets.
748–310	748	ZAPPIT Lite.
1072–20	1072	Precise.
1624–11	1624	Polybor 3.
2749–575	2749	Halomax Plus II Herbicide.
2781–53	2781	Tri-Plex Spray.
3095–47	3095	PIC Liquid Ant Bait Killer.
3546–37	3546	Shoo-Fly Termite & Carpenter Ant Killer.
3546–40	3546	Shoo-Fly Hornet Wasp Jet Bomb II.
7698–28	7698	V.M.S. Rabon 7.76 Oral Larvicide Premix.
8281–4	8281	Hormex Rooting Powder No. 30.
8730–75	8730	Hercon Disrupt Bio-Flake GM.
8730–82	8730	Disrupt Bio-GM+.
9386–10	9386	AMA–35D.
11411–18	11411	Leslie's Swimming Pool Supplies Standard Kit.
11411–19	11411	Leslie's Swimming Pool Supplies Spa Maintenance Kit.
11411–20	11411	Leslie's Swimming Pool Supplies Above-Ground Kit.
11411–21	11411	Leslie's Swimming Pool Supplies Deluxe Kit.
11435–3	11435	Copper Sulfate Liquid.
29909–1	29909	Rid Flea and Tick Shampoo Concentration for Dogs and Cats.
29909–21	29909	Cardinal Tick Terminator Flea & Tick Shampoo for Dogs & Cats.
34688–84	34688	Peroxy-Blend S/D.
34810–18	34810	Thymo-Cide.
35896–20	35896	Copper Sulfate Pentahydrate.
39775–4	39775	Messina Wildlife's Mole Stopper Smoke.
39924–3	39924	Universal Chemicals Sodium Hypochlorite Solution.
43813–19	43813	Wocosen 100SL.
45337–7	45337	Spring Treat Algicide.
46579–8	46579	Pyra-Fog 3–6–10.
48222–12	48222	Sysstem ZN.
49620–7	49620	EKA SC BC 100.
49620–10	49620	EKA SC BC 47.
50233–1	50233	Polar Pure.
50584–5	50584	Pro-Treat 151 Pan Treatment.
50600–9	50600	G.W. Sani-Clean.
53575–43	53575	Isomate CM Mist Eco.
53575–44	53575	Isomate CM/OFM Mist.
54287–13	54287	Deet Plus Composite Insect Spray II.
57242–6	57242	Gladeamine 4.
57538–19	57538	Vigor S.
57538–30	57538	Green Keeper.
57538–58	57538	N-Large Plus.
57538–59	57538	N-Large Premier Plus.
57787–14	57787	Crystal Shock.
58232–1	58232	IV Chlorinating Liquid.
60061–10	60061	Pettit Marine Paint Premium Line Super Premium Performance Antifouling Finish 1290 Blue.
60061–12	60061	Woolsey/Z*Spar Super Tox Anti-Fouling Finish B–70 Red.
60061–79	60061	Pettit Marine Paint ACP–50 Ablative Copper Polymer Antifouling Bottom Paint.
60061–95	60061	Pettit Marine Paint Trinidad SR Antifouling Paint.
60061–118	60061	Pettit Marine Paint Alumacoat + Antifouling Paint.
62637–8	62637	BMP 123 (10G).
62637–10	62637	BMP 123 (64ES).
62637–11	62637	BMP 144 DF.
62637–12	62637	BMP 144 DFX.
64429–20001	64429	Sodium Hypochlorite.
64820–1	64820	Core.
65527–1	65527	Flea Stoppers Carpet Powder.
65723–3	65723	ACT 90 Chlorinating Tablets.
65723–5	65723	ACT 90 Granular.
66524–2	66524	NoMix Grass and Weed I Herbicide.
67071–15	67071	Acticide PM Flowable.
67071–17	67071	Acticide SR–1216/6.
67071–24	67071	Acticide BW 10.
67071–25	67071	Acticide B10.
67071–39	67071	Thor GMBH Acticide PAX.
67071–67	67071	Acticide IPW 50.
67071–69	67071	Acticide 45–WD.
67071–70	67071	Acticide 14–WD.
67071–71	67071	Acticide MBZ–F.

TABLE 3—FIFRA SECTION 3 AND SECTION 24(C) REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2019 MAINTENANCE FEE—Continued

Registration No.	Company No.	Product name
67071–80	67071	Acticide SR 9069.
68868–4	68868	Surcide ICP.
69096–3	69096	Biotect.
69340–8	69340	AN6006.
69587–4	69587	Wolman F&P Premium Wood Finish & Preservative.
69587–5	69587	Wolman(R) F&P Premium Wood Finish and Preservative.
70258–4	70258	Sani-Pure Sanitizer and Cleaner.
70504–1	70504	Algae Ban.
71410–3	71410	Croc Bloc Insect Repellent Towelette.
71814–1	71814	Stercid.
72336–1	72336	Nosquito by Stinger 2-in-1 Power Bait.
72437–4	72437	Stellar 75 Tabs.
72977–6	72977	SDC0240CP.
73667–6	73667	MB 2001 G.
73745–1	73745	SG Tube.
73771–3	73771	Fluorescens Technical.
74468–6	74468	Pre-Amine 0.22% Plus.
74468–7	74468	Pre-Amine 0.30 Plus.
74468–13	74468	Metsulfuron-Methyl Technical.
74655–25	74655	Biosperse 3001 Microbiocide.
74693–1	74693	Scent-Off Aroma Pouches.
74693–2	74693	Scent-Off Pellets.
74693–3	74693	JT Eaton Answer the Liquid Bait System with Activator.
74779–16	74779	BACASTAT 4.3.
81041–1	81041	Expel.
81927–34	81927	Alligare Glyphosate 4.
81927–49	81927	Alligare Prodiamine 4L.
81927–50	81927	Alligare Fluridone Granule.
81927–51	81927	Alligare Fluridone RTU.
81927–56	81927	Triclopyr 3 SL.
81927–59	81927	Alligare Atrazine 4L.
81927–70	81927	Picloram K-Salt Rangeland.
81927–71	81927	Picloram + 2,4-D Rangeland.
81927–72	81927	Picloram K-Salt IVM.
81927–73	81927	Picloram + 2,4-D IVM.
82397–1	82397	Chem Fish Regular.
82397–4	82397	Chem Sect Brand Rotenone Resins.
82397–5	82397	Cube Powder Fish Toxicant.
82437–5	82437	K & W Paclo 0.4% L.
82481–1	82481	Unicorn Thermal Marine Coating Anti-Fouling Plastic.
83189–1	83189	TechFilter.
83411–1	83411	Clean Field 41% Plus.
83676–3	83676	4 Day Killer.
83831–1	83831	Surface Disinfectant Plus.
84178–2	84178	DeerPro Deer Repellent.
84178–3	84178	DeerPro Deer Repellent Concentrate.
84396–12	84396	Sungro Residual Spray.
84545–8	84545	Steriplex Ultra (Part A).
84545–9	84545	Steriplex Ultra Activator Part B.
85341–1	85341	Revere Antimicrobial Copper.
85724–5	85724	Rock 500 SC.
86145–5	86145	Magnolia Black Algaecide.
86145–6	86145	Magnolia Chlorinating Granules.
86145–7	86145	Magnolia 1″ or 3″ Chlorinating Tablets.
86282–3	86282	Planet Breeze S.
87273–4	87273	Pro Chlor Tabs.
87357–1	87357	Anti-Pest-O Concentrate.
87357–2	87357	Anti-Pest-O RTU.
88259–1	88259	Chemicals International Chlorinating Tablets.
88259–2	88259	Trichlor Shock.
88279–1	88279	Dismate PE.
88279–2	88279	Fytomax AZA 3% EC.
88346–6	88346	Pooline Superchlor Shock 70.
88373–2	88373	525 TBD.
88599–1	88599	Livewell Filter.
88863–2	88863	Grasstopper.
88943–4	88943	Spraytex M Agricultural Spray Oil.
88951–4	88951	Panax 500 15.
88951–5	88951	Panax 500 45.
89174–1	89174	Handstands Cleaner Spray.
89174–2	89174	Handstands Cleaner Wipes.

TABLE 3—FIFRA SECTION 3 AND SECTION 24(C) REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2019 MAINTENANCE FEE—Continued

Registration No.	Company No.	Product name
89174–3	89174	Handstands High Shine Protectant Spray.
89174–4	89174	Handstands High Shine Protectant Wipes.
90748–4	90748	Spectrakill-M.
90881–1	90881	Novabella Bleach Crystal Formula 93542 Hard Surface Disinfectant Cleaner.
90927–1	90927	Last Treats.
91090–3	91090	Neove Spot On #001 for Dogs.
91282–2	91282	Iomax Recharge.
91411–5	91411	Kocide 4.5 LF.
91411–6	91411	Kocide DF.
91543–2	91543	2,4-D Amine Weed Killer.
91543–3	91543	2,4-D LO–V Ester Weed Killer.
91570–1	91570	Skin Technology Insect Repellent Spray.
91577–2	91577	Mopack 5.25%.
91586–1	91586	Justifly 0.04% Diflubenzuron Larvicide Premix.
91853–2	91853	Sodium Percarbonate Technical.
91853–4	91853	Neo-Boost.
91974–1	91974	Seven Star Moth Balls.
92115–1	92115	FBN Paraquat 3L.
92115–3	92115	FBN Glufosinate 2.34SL.
92115–7	92115	FBN Dicamba 4DMA.
92115–9	92115	FBN 2800.
92115–13	92115	FBN 400.
92115–14	92115	FBN 40.
92115–15	92115	FBN 234.
92115–16	92115	FBN 28.
92115–17	92115	FBN 280.
92206–3	92206	5000 TBD.
92427–1	92427	Larvanator ALD–365 Refill Packet.
92534–1	92534	Cavalletta.
92534–2	92534	Coperta XCEL.
92629–2	92629	Rotstar.
92629–4	92629	Viola CS.
92629–5	92629	Questar.
93373–1	93373	Bodyguard Insect Repellent 20% Cream.
93373–2	93373	Bodyguard Insect Repellent 20% Spray.
FL140005	71096	Slug-Fest All Weather Formula.
NJ140004	39924	Universal Chemicals Sodium Hypochlorite Solution.

IV. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received one comment in response to the September 23, 2019 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 of Unit III. The comment was from FMC Corporation requesting that EPA Reg. No. WA070015 and WA070017 be retained because the voluntary cancellation requests were made in error. As a result of this comment, the Agency is retaining the registration of EPA Reg. Nos. WA070015 and WA070017.

V. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit III. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit III. are canceled. The effective date of the cancellations that are the subject of this notice is February 4, 2020. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit III. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VII. will be a violation of FIFRA.

VI. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of September 23, 2019. The comment period closed on October 23, 2019.

VII. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II. until January 15, 2020, or the date of publication of this FR notice, whichever is later. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o), or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit III. until existing stocks

are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 18, 2019.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–02047 Filed 2–3–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0750; FRL–10004–41]

Pesticide Registration Review; Proposed Interim Decisions for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed interim registration review decisions and opens a 60-day public comment period on the proposed interim decisions for the following pesticides: 2,4-DP-p, aliphatic alcohols, alkylbenzene sulfonates, *Bacillus pumilus,* bromacil, dimethyl disulfide (DMDS), fatty acid monoesters, MCPA, methyl bromide, pyroxsulam, tefluthrin, and thiencarbazone methyl.

DATES: Comments must be received on or before April 6, 2020.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on 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

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed proposed interim decisions for all pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV. pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed interim registration review decisions for the pesticides shown in the following Table and opens a 60-day public comment period on the proposed interim registration review decisions. This notice also announces the availability of EPA's preliminary workplan and human health and/or ecological risk assessments for pyroxsulam and thiencarbazone methyl.

TABLE—PROPOSED INTERIM DECISIONS

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
2,4-DP-p, Case No. 0294	EPA–HQ–OPP–2013–0726	Ana Pinto, *pinto.ana@epa.gov*, (703) 347–8421.
Aliphatic alcohols, C6-C16, Case No. 4004	EPA–HQ–OPP–2016–0261	Susanne Cerrelli, *cerrelli.susanne@epa.gov*, (703) 308–8077.
Alkylbenzene Sulfonates (ABS), Case No. 4006	EPA–HQ–OPP–2013–0097	Erin Dandridge, *dandridge.erin@epa.gov*, (703) 347–0185.
Bacillus pumilus, Case No. 6015	EPA–HQ–OPP–2012–0857	Susanne Cerrelli, *cerrelli.susanne@epa.gov*, (703) 308–8077.
Bromacil, Case No. 0041	EPA–HQ–OPP–2012–0445	Lauren Bailey, *bailey.lauren@epa.gov*, (703) 347–0374.
Dimethyl Disulfide (DMDS), Case No. 7454	EPA–HQ–OPP–2013–0488	Katherine St. Clair, *stclair.katherine@epa.gov*, (703) 347–8778.
Fatty Acid Monoesters, Case No. 6016	EPA–HQ–OPP–2017–0353	Bibiana Oe, *oe.bibiana@epa.gov*, (703) 347–8162.
MCPA, Case No. 0017	EPA–HQ–OPP–2014–0180	Steven R. Peterson, *peterson.stevenr@epa.gov*, (703) 347–0755.
Methyl Bromide, Case No. 0335	EPA–HQ–OPP–2013–0269	Tiffany Green, *green.tiffany@epa.gov*, (703) 347–0314.
Pyroxsulam, Case No. 7275	EPA–HQ–OPP–2019–0035	Srijana Shrestha, *shrestha.srijana@epa.gov*, (703) 305–6471.
Tefluthrin, Case No. 7409	EPA–HQ–OPP–2012–0501	Carolyn Smith, *smith.carolyn@epa.gov*, (703) 347–8325.
Thiencarbazone-methyl, Case No. 7276	EPA–HQ–OPP–2019–0481	Eric Fox, *fox.ericm@epa.gov*, (703) 347–0104.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of the pesticides included in the tables in Unit IV, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. These proposed interim registration review decisions are supported by the rationales included in those documents. Following public comment, the Agency will issue interim or final registration review decisions for the pesticides listed in Unit IV.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed interim registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed interim decision. All comments should be submitted using the methods in **ADDRESSES** and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the Tables in Unit IV. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The interim registration review decision will explain the effect that any comments had on the interim decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 27, 2020.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2020–02099 Filed 2–3–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0014; FRL–10004–11]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations and Amend Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by the registrants to voluntarily cancel certain pesticide product registrations and to amend certain product registrations to terminate uses. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled and uses terminated only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before August 3, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2018–0014, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Mail: OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200

Pennsylvania Ave. NW, Washington, DC 20460–0001. ATTN: Christopher Green.

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: Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the Agency taking?

This notice announces receipt by EPA of requests from registrants to cancel certain pesticide products and amend product registrations to terminate certain uses registered under FIFRA section 3 (7 U.S.C. 136a) or 24(c) (7 U.S.C. 136v(c)). The affected products and the registrants making the requests are identified in Tables 1–3 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order in the **Federal Register** canceling and amending the affected registrations.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
1007–99	1007	Nolvasan Solution	Chlorhexidine diacetate.
1007–100	1007	Fort Dodge Nolvasan S (Active) Nolvasan S (Alternate).	Chlorhexidine diacetate.
1007–101	1007	Chlorhexidine Diacetate	Chlorhexidine diacetate.
AL–040003	279	AIM EC Herbicide	Carfentrazone-ethyl.
AL–080002	82541	DuPont Direx 4L Herbicide	Diuron.
AL–080003	82541	DuPont Karmex XP (DF) Herbicide	Diuron.
AL–940001	5481	Orthene 75 S Soluble Powder	Acephate.

TABLE 1A—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
432–1360	432	Bayleton 50 Turf and Ornamental Fungicide in Water Soluble Packets.	Triadimefon.
432–1367	432	Bayleton 50 WDG Nursery and Greenhouse Systemic Fungicide.	Triadimefon.
432–1445	432	Bayleton Flo Turf and Ornamental Fungicide	Triadimefon.
432–1446	432	Tartan Fungicide	Trifloxystrobin & Triadimefon.
432–1513	432	Armada 50 WDG	Triadimefon & Trifloxystrobin.

The registrant of the products listed in Table 1A, of Unit II, has requested the effective date of June 30, 2023, for the cancellations.

TABLE 2—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
5481–197	5481	Technical Grade PCNB	Pentachloronitrobenzene.	Beans, cotton, garlic, peanuts, peppers and tomatoes.
5481–8988	5481	Turfcide 10% Granular	Pentachloronitrobenzene.	Beans, cotton, peanuts, peppers and additionally beans, peppers and tomatoes as vegetable bedding plants.

TABLE 2—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT—Continued

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
5481–8992	5481	Turfcide 4F	Pentachloronitrobenzene.	Beans, cotton, garlic, peanuts, peppers, tomatoes and additionally peppers and tomatoes as vegetable bedding plants.

Table 3 of this unit includes the names and addresses of record for all the registrants of the products listed in Tables 1, 1A & 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1, Table 1A and Table 2 of this unit.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA company No.	Company name and address
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
432	Bayer Environmental Science, A Division of Bayer CropScience, LP, 5000 CentreGreen Way, Suite 400, Cary, NC 27513.
1007	Zoetis, Inc., 333 Portage Street, Kalamazoo, MI 49007–4931.
5481	AMVAC Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706.
82541	Catfish Farmers Registration Corporation, 1100 Highway 82 East, Suite 202, Indianola, MS 38751.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants listed in Table 3 of Unit II have not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation or use termination should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation or termination action, the effective date of cancellation or termination and all other provisions of any earlier cancellation or termination action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the requests for voluntary cancellation and amendments to terminate uses are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to these requests for cancellation of product registrations and for amendments to terminate uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Table 1 and Table 1A of Unit II.

A. For Products 1007–99, 1007–100 & 1007–101

For products 1007–99, 1007–100 & 1007–101, listed in Table 1 of Unit II, the registrants have requested to sell existing stocks until May 31, 2021. Registrants will be permitted to sell and distribute existing stocks of these products until May 31, 2021. Thereafter, registrants will be prohibited from selling or distributing these products, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

B. For Products 432–1360, 432–1367, 432–1445, 432–1446 & 432–1513

For the products 432–1360, 432–1367, 432–1445, 432–1446 & 432–1513 listed in Table 1A of Unit II, the registrant has requested the effective date of the cancellations to be June 30, 2023; therefore, registrants will be permitted to sell and distribute existing stocks of these products until June 30, 2024. Thereafter, registrants will be prohibited from selling or distributing the products in Table 1A of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

For all other voluntary product cancellations, identified in Table 1 of Unit II, registrants will be permitted to sell and distribute existing stocks of voluntarily canceled products for 1 year after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing all other products identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Once EPA has approved product labels reflecting the requested amendments to terminate uses, identified in Table 2 of Unit II, registrants will be permitted to sell or distribute products under the previously approved labeling for a period of 18-months after the date of **Federal Register** publication of the cancellation order, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified

in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products and products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and terminated uses.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 21, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–02040 Filed 2–3–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10004–96–OP]

National Environmental Justice Advisory Council; Notification of Public Meeting With Teleconference Option and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering to attend the meeting or to provide public comment, please see ''REGISTRATION'' under **SUPPLEMENTARY INFORMATION**. Due to limited space, seating at the NEJAC meeting will be on a first-come, first served basis. Pre-registration is highly suggested.

DATES: The NEJAC will convene a public meeting with a teleconference option beginning on Tuesday, February 25, 2020, starting at 6:00 p.m., Eastern Time. The NEJAC meeting continues on February 26–27, 2020, from 8:00 a.m. until 6:00 p.m., Eastern Time. Members of the public are encouraged to provide comments in writing or verbally during the public comment period on Tuesday evening. The public comment period begins at 6:00 p.m., Eastern Time (see **SUPPLEMENTARY INFORMATION**). Members of the public who wish to participate during the public comment period are highly encouraged to pre-register by 11:59 p.m., Eastern Time on Sunday, February 16, 2020.

The meeting on Wednesday and Thursday will focus on several topics including, but not limited to, the discussion and deliberation of a charge related to the reuse and revitalization of Superfund and other contaminated sites and resiliency of communities after natural disasters.

ADDRESSES: The NEJAC meeting will be held at the Omni Jacksonville, 245 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the public meeting should be directed to Karen L. Martin, U.S. Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW (MC2201A), Washington, DC 20460; by telephone at 202–564–0203; via email at *nejac@epa.gov.* Additional information about the NEJAC is available at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council.*

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee ''will provide independent advice and recommendations to the Administrator about broad, crosscutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice.''

Registration

Registration for the February 25–27, 2020, public meeting will be processed at *https://nejac-february-2020-in-person-option.eventbrite.com.* Pre-registration is highly suggested. Pre-registration is required to participate in the teleconference option and will be processed at *https://nejac-february-2020-teleconference-option.eventbrite.com.* Registration for the meeting closes at 11:59 p.m., Eastern Time on Sunday, February 16, 2020. The deadline to sign up to speak during the public comment period, or to submit written public comments, is 11:59 p.m., Eastern Time on Sunday, February 16, 2020. When registering, please provide your name, organization, city and state, email address, and telephone number for follow up. Please also indicate whether you would like to provide public comment during the meeting, and whether you are submitting written comments before the Sunday, February 16, 2020, deadline.

A. Public Comment

Individuals or groups making remarks during the public comment period will be limited to seven (7) minutes. To accommodate the number of people who want to address the NEJAC, only one representative of a particular community, organization, or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: Name of speaker; name of organization/community; city and state; and email address; brief description of the concern, and what you want the NEJAC to advise EPA to do. Written comments received by registration deadline, will be included in the materials distributed to the NEJAC prior to the teleconference. Written comments received after that time will be provided to the NEJAC as time allows. All written comments should be sent to Karen L. Martin, EPA, via email at *nejac@epa.gov.*

B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Karen L. Martin, at (202) 564–0203 or via email at *nejac@epa.gov.* To request special accommodations for a disability or other assistance, please submit your request at least fourteen (14) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Matthew Tejada,

Director for the Office of Environmental Justice.

[FR Doc. 2020–02129 Filed 2–3–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0014; FRL–10004–10]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations and Amend Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by the registrants to voluntarily cancel certain pesticide product registrations and to amend certain product registrations to terminate uses. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled and uses terminated only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before March 5, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2018–0014, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Mail: OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001. ATTN: Christopher Green.

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: Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the Agency taking?

This notice announces receipt by EPA of requests from registrants to cancel certain pesticide products and amend product registrations to terminate certain uses registered under FIFRA section 3 (7 U.S.C. 136a) or 24(c) (7 U.S.C. 136v(c)). The affected products and the registrants making the requests are identified in Tables 1–3 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order in the **Federal Register** canceling and amending the affected registrations.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
464–8123	464	Filmguard IPBC 100 Fungicidal Agent (Active), Bioban IPBC 100 Antimicrobial (Alternate).	Carbamic acid, butyl-, 3-iodo-2-propynyl ester.
464–8125	464	Filmguard IPBC 20 Fungicidal Agent (Active), Bioban IPBC 20 Antimicrobial and Bioban IPBC 20 LE (Alternate).	Carbamic acid, butyl-, 3-iodo-2-propynyl ester.
499–322	499	Whitmire Avert PT 300 Pressurized Spray	Abamectin.
499–383	499	Whitmire Avert PT 310 HO Abamectin Bait Dust	Abamectin.
499–394	499	Whitmire Avert Prescription Treatment 320 Crack & Crevice Gel Bait.	Abamectin.
499–406	499	Avert Prescription Treatment TC 93A Bait	Abamectin.
499–410	499	Avert Prescription Treatment TC 93B Bait	Abamectin.
499–434	499	Whitmire TC 149A Insecticide	Abamectin.
499–440	499	Whitmire TC 149B	Abamectin.
499–467	499	Whitmire Avert TC 181	Abamectin.
1448–100	1448	Busan 1069	2-(Thiocyanomethylthio)benzothiazole.
1448–341	1448	Busan 1127	2-(Thiocyanomethylthio)benzothiazole.
3573–73	3573	Tide with Bleach Opal	Hydrogen peroxide & Nonanoic acid, sulfophenyl ester, sodium salt.
4959–34	4959	YYY Disinfectant	Iodine.
5185–498	5185	Bioguard Crystal Blue Mineral Cartridge	Silver nitrate.
7364–60	7364	Spa/Hot Tub Products Chlorinating Concentration Granular.	Sodium dichloro-s-triazinetrione.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Active ingredients
7969–189	7969	Baseline Plant Regulator	Prohexadione calcium.
8378–54	8378	Gro-Fine Bayleton Fungicide	Triadimefon.
8378–55	8378	Shaw's Fungicide 100	Triadimefon.
9198–187	9198	Andersons Golf Products Fungicide VII	Triadimefon.
9198–190	9198	Andersons Golf Products Fertilizer Plus Fungicide VII.	Triadimefon.
9386–7	9386	AMA–31	Nabam & Sodium dimethyldithiocarbamate.
9386–11	9386	AMA–30	Nabam & Sodium dimethyldithiocarbamate.
9386–23	9386	AMA–9	Nabam & Sodium dimethyldithiocarbamate.
10324–18	10324	Algaesil	Nanosilver 002.
10324–165	10324	Maquat MC1416–90%	Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12).
33677–1	33677	Tolcide(R) MBT	Methylene bis(thiocyanate).
34688–76	34688	Aquatreat DNM–30	Nabam & Sodium dimethyldithiocarbamate.
34688–77	34688	Aquatreat KM	Potassium dimethyldithiocarbamate.
34688–78	34688	Aquatreat SDM	Sodium dimethyldithiocarbamate.
34688–79	34688	Aquatreat DN–30	Nabam.
34704–882	34704	Oryzalin T&O	Oryzalin.
34704–918	34704	Ethofume SC Herbicide	Ethofumesate.
34704–949	34704	Intensity Max	Clethodim.
35917–2	35917	Iodinated Resin H–465	Iodine.
45309–12	45309	Spa Clear Spa Chlor-56	Sodium dichloro-s-triazinetrione.
45309–21	45309	Aqua Clear Iso-Gran	Sodium dichloro-s-triazinetrione.
45309–59	45309	Aqua Clear Aqua-Shock	Sodium dichloro-s-triazinetrione.
45309–61	45309	Aqua Clear Winterizer	Sodium dichloro-s-triazinetrione.
45309–84	45309	Red Plug Cartridge with Concentrated Chlorinated Tablets.	Trichloro-s-triazinetrione.
45309–94	45309	Speed-Y-Tabs	Sodium dichloroisocyanurate dihydrate.
62719–694	62719	MON 89034 X TC1507 X MIR162	Bacillus thuringiensis Vip3Aa20 protein encoded by vector pNOV1300 in event MIR162 corn (SYN-IR162-4), % dw; Bacillus thuringiensis Cry1F protein and the genetic material necessary for its production (plasmid insert PHI8999) in corn; Bacillus thuringiensis Cry2Ab2 protein and the genetic material necessary (vector PV-ZMIR245) for its production in corn & Bacillus thuringiensis Cry1A.105 protein and genetic material necessary (vector PV-ZMIR245) for its production in corn.
67262–18	67262	3″ Stabilized Chlorinator Tablets	Trichloro-s-triazinetrione.
70506–50	70506	Surflan 85DF	Oryzalin.
70506–51	70506	Turf Fertilizer Contains Surflan 1%	Oryzalin.
70506–52	70506	Turf Fertilizer Contains Surflan 0.75%	Oryzalin.
70506–53	70506	Up-Shot DF Herbicide	Oryzalin & Isoxaben.
70506–54	70506	Surflan 75W	Oryzalin.
70506–55	70506	Turf Fertilizer Contains Galley Plus Surflan	Oryzalin & Isoxaben.
70506–96	70506	Oryza Ag	Oryzalin.
70506–97	70506	Oryza T&O	Oryzalin.
72616–9	72616	Taratek TC	Triadimefon & Cyproconazole.
85678–55	85678	Flucarbazone 35% SC	Flucarbazone-sodium.
87262–4	87262	Compass THPS	Tetrakis(hydroxymethyl)phosphonium sulphate (THPS).
87262–6	87262	Compass THPS 50	Tetrakis(hydroxymethyl)phosphonium sulphate (THPS).
87262–7	87262	Compass THPS 35	Tetrakis(hydroxymethyl)phosphonium sulphate (THPS).
87262–8	87262	Compass THPS 20	Tetrakis(hydroxymethyl)phosphonium sulphate (THPS).
88276–1	88276	Octopol DSM–30	Nabam & Sodium dimethyldithiocarbamate.
89442–2	89442	Ethofumesate Select	Ethofumesate.
91813–24	91813	Agvalue Oryzalin Technical	Oryzalin.
AL–870002	400	Dimilin 25W for Cotton/Soybean	Diflubenzuron.
CA–100013	63206	Lorsban Advanced	Chlorpyrifos.
CA–790138	5481	Orthene 75 S Soluble Powder	Acephate.
CA–950010	5481	Fruit Fix Concentrate 200	Ammonium 1-naphthaleneacetate.
CO–070003	71512	Omega 500F	Fluazinam.
CO–080008	62719	Lorsban Advanced	Chlorpyrifos.
CO–090005	71512	Beleaf 50SG Insecticide	Flonicamid.
CO–140002	1381	Carnivore Herbicide	MCPA, 2-ethylhexyl ester; Bromoxynil octanoate & Fluroxypyr-meptyl.
HI–090001	62719	Lorsban Advanced	Chlorpyrifos.
WA–000035	352	Curzate 60DF	Cymoxanil.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Active ingredients
WA–020019	62719	NAF–522	Glyphosate-isopropylammonium.

TABLE 2—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
45728–7	45728	Ferbam Granuflo	Ferbam	Grapes and cherries.
45728–14	45728	Thionic Ziram Technical	Ziram	Industrial yarns and fabrics.

Table 3 of this unit includes the names and addresses of record for all the registrants of the products listed in Tables 1 & 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 and Table 2 of this unit.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA company No.	Company name and address
352	E. I. Du Pont De Nemours and Company, 9330 Zionsville Road, Indianapolis, IN 46268.
400	MacDermid Agricultural Solutions, Inc., C/O Arysta LifeScience North America, LLC, Agent Name: UPL NA, Inc., 630 Freedom Business Center, #402, King of Prussia, PA 19406.
464	DDP Specialty Electronic Materials US, Inc., A Wholly Owned Subsidiary of The Dow Chemical Company, 1501 Larkin Center Drive, Midland, MI 48674.
499	BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
1381	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164–0589.
1448	Buckman Laboratories, Inc., 1256 North Mclean Blvd., Memphis, TN 38108.
3573	The Procter & Gamble Company, D/B/A Procter & Gamble, 5299 Spring Grove Ave.,—F&HC PS&RA, Cincinnati, OH 45217.
4959	West Agro, Inc., 11100 N Congress Ave., Kansas City, MO 64153.
5185	Bio-Lab, Inc., P.O. Box 300002, Lawrenceville, GA 30049–1002.
5481	AMVAC Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706.
7364	Innovative Water Care, LLC, D/B/A GLB Pool & Spa, 1400 Bluegrass Lakes Parkway, Alpharetta, GA 30004.
7969	BASF Corporation, Agricultural Products, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
8378	Knox Fertilizer Company, Inc., Agent Name: Fred Betz Regulatory Strategies, 922 Melvin Road, Annapolis, MD 21403.
9198	The Andersons, Inc., 1947 Briarfield Blvd., P.O. Box 119, Maumee, OH 43537.
9386	Kemira Chemicals, Inc., 1000 Parkwood Circle, Suite 500, Atlanta, GA 30339.
10324	Mason Chemical Company, 9075 Centre Pointe Dr., Suite 400, West Chester, OH 45069.
33677	Solvay Solutions UK Limited, Agent Name: Delta Analytical Corporation, 12510 Prosperity Drive, Suite 160, Silver Spring, MD 20904.
34688	Akzo Nobel Surface Chemistry, LLC, 525 W Van Buren St., Chicago, IL 60607–3823.
34704	Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632–1286.
35917	Hybrid Technologies Corporation, Agent Name: RegWest Company, LLC, 8209 West 20th Street, Suite B, Greeley, CO 80634–4699.
45309	Aqua Clear Industries, LLC, P.O. Box 2456, Suwanee, GA 30024–0980.
45728	Taminco US, LLC, A Subsidiary of Eastman Chemical Company, 200 S. Wilcox Dr., Kingsport, TN 37660–5147.
62719	Dow Agrosciences, LLC, 9330 Zionsville Rd., 308/2E, Indianapolis, IN 46268–1054.
63206	California Citrus Quality Council, 853 Lincoln Way, Suite 206, Auburn, CA 95603.
67262	Recreational Water Products, Inc., D/B/A Recreational Water Products, P.O. Box 1449, Buford, GA 30515–1449.
70506	UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
71512	ISK BioSciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077.
72616	Lonza NZ Limited, Agent Name: Arch Wood Protection, Inc., 3941 Bonsal Road, Conley, GA 30288.
85678	RedEagle International, LLC, Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707.
87262	Italmatch USA Corporation, 5544 Oakdale Road SE, Smyrna, GA 30082.
88276	Tiarco Chemical Company, 1300 Tiarco Drive SW, Dalton, GA 30720.
89442	Prime Source, LLC, Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, 7217 Lancaster Pike, Suite A, Hockessin, DE 19707.
91813	UPL Delaware, Inc., 630 Freedom Business Ctr., #402, King of Prussia, PA 19406.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants listed in Table 3 of Unit II have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation or use termination should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation or termination action, the effective date of cancellation or termination and all other provisions of any earlier cancellation or termination action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the requests for voluntary cancellation and amendments to terminate uses are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to these requests for cancellation of product registrations and for amendments to terminate uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Table 1 of Unit II.

A. For Products 464–8123, 10324–18 & 10324–165

For products 464–8123, 10324–18 & 10324–165, listed in Table 1 of Unit II, the registrants have requested 18-months to sell existing stocks. Registrants will be permitted to sell and distribute existing stocks of these products for 18-months after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing these products, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

B. For Products 87262–4, 87262–6, 87262–7 & 87262–8

For products 87262–4, 87262–6, 87262–7 & 87262–8, listed in Table 1 of Unit II, the registrant has requested to sell existing stocks until December 31, 2020. Registrants will be permitted to sell and distribute existing stocks of these products until December 31, 2020. Thereafter, registrants will be prohibited from selling or distributing these products, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

For all other voluntary product cancellations, identified in Table 1 of Unit II, registrants will be permitted to sell and distribute existing stocks of voluntarily canceled products for 1 year after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing all other products identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Once EPA has approved product labels reflecting the requested amendments to terminate uses, identified in Table 2 of Unit II, registrants will be permitted to sell or distribute products under the previously approved labeling for a period of 18-months after the date of **Federal Register** publication of the cancellation order, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products and products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and terminated uses.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 21, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–02103 Filed 2–3–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2019–0039; FRL–10003–18]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients (November 2019)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before March 5, 2020.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets/about-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

New Active Ingredients

1. *File Symbol:* 279–OALN. *Docket ID numbers:* EPA–HQ–OPP–2019–0473 and EPA–HQ–OPP–2019–0476. *Applicant:* FMC Corporation, 2929 Walnut St., Philadelphia, PA 19104. *Product name:* F4034–5. *Active ingredients:* Fungicide—*Bacillus subtilis* strain RTI477 at 2.5% and Fungicide—*Bacillus velezensis* strain RTI301 at 7.5%. *Proposed use:* For seed treatment, in-furrow, or at-transplant application for the early season protection of seedlings against diseases caused by *Rhizoctonia solani, Fusarium* spp., and *Phytophthora* spp.

2. *File Symbol:* 279–OALR. *Docket ID numbers:* EPA–HQ–OPP–2019–0473 and EPA–HQ–OPP–2019–0476. *Applicant:* FMC Corporation, 2929 Walnut St., Philadelphia, PA 19104. *Product name:* F4092–3. *Active ingredients:* Fungicide—*Bacillus subtilis* strain RTI477 at 2.5%, Fungicide—*Bacillus velezensis* strain RTI301 at 2.5%, and Insecticide—Bifenthrin at 15.7%. *Proposed use:* For in-furrow, at-plant; pre-plant incorporated; pre-emergent; or lay-by application to protect agricultural crops against certain soil insects and diseases.

3. *File Symbol:* 279–OAUI. *Docket ID number:* EPA–HQ–OPP–2019–0476. *Applicant:* FMC Corporation, 2929 Walnut St., Philadelphia, PA 19104. *Product name: Bacillus velezensis* strain RTI301 Technical. *Active ingredient:* Fungicide—*Bacillus velezensis* strain RTI301 at 100.0%. *Proposed use:* For manufacturing use.

4. *File Symbol:* 279–OAUO. *Docket ID number:* EPA–HQ–OPP–2019–0476. *Applicant:* FMC Corporation, 2929 Walnut St., Philadelphia, PA 19104. *Product name:* F4007–9. *Active ingredient:* Fungicide—*Bacillus velezensis* strain RTI301 at 5.5%. *Proposed use:* For seed treatment application for the early season protection of seedlings against diseases caused by *Rhizoctonia solani, Fusarium* spp., and *Phytophthora* spp.

5. *File Symbol:* 279–OAUT. *Docket ID number:* EPA–HQ–OPP–2019–0473. *Applicant:* FMC Corporation, 2929 Walnut St., Philadelphia, PA 19104. *Product name: Bacillus subtilis* strain RTI477 Technical. *Active ingredient:* Fungicide—*Bacillus subtilis* strain RTI477 at 100.0%. *Proposed use:* For manufacturing use.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 18, 2019.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–02046 Filed 2–3–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Thursday, January 30, 2020

January 27, 2020.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 30, 2020 which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW, Washington, DC.

Item No.	Bureau	Subject
1	Wireline Competition	*Title:* Rural Digital Opportunity Fund (WC Docket No. 19–126); Connect America Fund (WC Docket No. 10–90). *Summary:* The Commission will consider a Report and Order that would adopt a two-phase reverse auction framework for the Rural Digital Opportunity Fund, committing $20.4 billion in high-cost universal service support to bring high-speed broadband service to millions of unserved Americans.
2	Wireless Tele-Communications	*Title:* Amendment of the Commission's Rules Governing Standards for Hearing Aid-Compatible Handsets (WT Docket No. 20–3); Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets (WT Docket No. 07–250); Comment Sought on 2010 Review of Hearing Aid Compatibility Regulations (WT Docket No. 10–254). *Summary:* The Commission will consider a Notice of Proposed Rulemaking that would propose to incorporate a new technical standard for determining whether a wireless handset is hearing aid-compatible and to simplify and update the Commission's hearing aid compatibility rules.
3	Consumer & Governmental Affairs	*Title:* Structure and Practices of the Video Relay Service Program (CG Docket No. 10–51); Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03–123).

Item No.	Bureau	Subject
4	Media	*Summary:* The Commission will consider a Report and Order that would adopt regulations on the handling of Video Relay Service (VRS) calls by communications assistants working from their homes. *Title:* Electronic Delivery of Notices to Broadcast Television Stations (MB Docket No. 19–165); Modernization of Media Regulation Initiative (MB Docket No. 17–105). *Summary:* The Commission will consider a Report and Order that would modernize certain cable and satellite television provider notice provisions in Part 76 of the FCC's Rules by requiring certain notices to be delivered to broadcasters by e-mail instead of on paper.
5	Enforcement	*Title:* Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

FCC.

Marlene Dortch,

Secretary.

[FR Doc. 2020–02080 Filed 2–3–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0905, 3060–1229; FRS 16458]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 6, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0905.

Title: Section 18.213, Information to the User (Regulations for RF Lighting Devices).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents and Responses: 250 respondents; 250 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

Total Annual Burden: 250 hours.

Total Annual Cost: $18,750.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted as an extension after this 60 day comment period to the Office of Management and Budget (OMB) in order to obtain the full three year clearance.

Section 18.213 (for which the Commission is seeking continued OMB approval) requires information on industrial, scientific and medical equipment shall be provided to the user in the instruction manual or on the packaging of an instruction manual is not provided for any type of ISM equipment. (a) The interference potential of the device or system (b) maintenance of the system; (c) simple measures that can be taken by the user to correct interference; and (d) manufacturers of RF lighting devices must provide documentation, similar to the following:

This product may cause interference to radio equipment and should not be installed near maritime safety communications equipment or other critical navigation or communication equipment operating between 0.45–30 MHz. Variations of this language are permitted provided all the points of the statement are addressed and may be presented in any legible font or text style.

OMB Control Number: 3060–1229.

Title: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 832 respondents and 832 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement; recordkeeping and third party disclosure requirements. Wireless licensees who are required to conduct an interference study will be required to produce the study upon request and when an interference complaint occurs.

Obligation to Respond: Mandatory. The statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 316, 319, 332, 403, 1452 and 1454.

Total Annual Burden: 832 hours.

Total Annual Cost: $10.

Nature and Extent of Confidentiality: There is no need for confidentiality. However, applicants may request that any information supplied be withheld from public inspection, pursuant to 47 CFR 0.459 of the FCC's rules. This request must be justified pursuant to 47 CFR 0.457.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: This information collection will be submitted as an extension (no change in the reporting and/or third-party disclosure requirements) after this 60-day comment period to the Office of Management and Budget (OMB) to obtain the three-year clearance.

On October 26, 2015, the Federal Communications Commission released a Third Report and Order, *OET seeks to Supplement the Incentive Auction Proceeding Record Regarding Potential Interference Between Broadcast Television and Wireless Services,* ET Docket Nos. 13–26 and 14–14, which resolved the remaining technical issues affecting the operation of 600 MHz wireless licenses and broadcast television stations in areas where they operate on the same or adjacent channels in geographic proximity. Specifically, the Commission adopted a rule requiring wireless licensees to conduct an interference study prior to deploying or operating a wireless base station within a secified distance of a broadcast television station that is co-channel or adjacent channel to their spectrum. A wireless licensee is required to provide this interference study to the Commission upon request or to the broadcast television station when there is an interference complaint.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–02151 Filed 2–3–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0053; FRS 16455]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before April 6, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA, 44 U.S.C. 3501–3520, the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0053.

Title: Experimental Authorization Applications—FCC Form 702, Consent to Assign an Experimental Authorization; and FCC Form 703, Consent to Transfer Control of Corporation Holding Station License.

Form Nos.: FCC Forms 702 and 703.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and not-for-profit institutions.

Number of Respondents and Responses: 60 respondents; 60 responses.

Estimated Time per Response: 0.6 hours (36 minutes).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154, 302 and 303.

Total Annual Burden: 36 hours.

Total Annual Cost: $3,900.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. However, if respondents wish to request that their information be withheld from public inspection, they may do so under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: This information collection will be submitted as an extension (no change in reporting requirements and/or third-party disclosure requirements) after this 60-day comment period to the Office of Management and Budget (OMB) to obtain the three-year clearance from them.

Applicants for Experimental Radio Services are required by 47 CFR 5.59(e) of the Commission's rules: To submit FCC Form 702 when the legal right to control the use and operation of a station is to be transferred, as a result of a voluntary act (contract or other agreement); of an involuntary act (death or legal disability) of the grantee of a station authorization; by involuntary assignment of the physical property constituting the station under a court decree in bankruptcy proceedings or other court order; or by operation of law in any other manner; and they are also required to submit FCC Form 703 when they propose to change the control of a corporation holding a station license via a transfer of stock ownership or control of a station. The Commission uses the information to determine the eligibility for licenses, without which, violations of ownership regulations may occur.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–02148 Filed 2–3–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1268; FRS 16449]

Information Collection Approved by the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Nicole Ongele, Office of the Managing Director, at (202) 418–2991, or email: *Nicole.Ongele@fcc.gov*.

SUPPLEMENTARY INFORMATION: The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1268.

OMB Approval Date: January 15, 2020.

OMB Expiration Date: January 31, 2023.

Title: Incumbent 39 GHZ Licensee Payment Instructions.

Form No.: FCC Form 1877.

Respondents: Individuals or household, Business or other for-profit.

Number of Respondents and Responses: 10 respondents; 10 responses.

Estimated Time per Response: 5 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 50 hours.

Total Annual Cost: No Cost.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 309(j)(8)(G).

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The information collection includes information identifying bank accounts and providing account and routing numbers to access those accounts. FCC considers that information to be records not routinely available for public inspection under 47 CFR 0.457, and exempt from disclosure under FOIA exemption 4 (5 U.S.C. 552(b)(4)).

Needs and Uses: Pursuant to 47 U.S.C. 309(j)(8)(G), the Commission is conducting an auction for 39 GHz spectrum in which it is offering incumbent licensees a share of auction proceeds as an incentive to relinquish voluntarily previously granted spectrum usage rights in order to permit the assignment of new initial licenses subject to flexible use rules. The information in the form is needed to make payments of the respective shares of auction proceeds. See also 47 CFR 1.2115(b) information required from a licensee with respect to payments in incentive auctions.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–02146 Filed 2–3–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0289, OMB 3060–0331, 3060–0419, 3060–1045; FRS 16442]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before March 5, 2020. If you anticipate that you will be submitting comments but find it difficult to do so with the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@OMB.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4)

select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0289.

Title: Section 76.601, Performance Tests; Section 76.1704, Proof of Performance Test Data; Section 76.1717, Compliance with Technical Standards.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, and state, local, or tribal government.

Number of Respondents: 4,085 respondents, 6,433 responses.

Estimated Time per Response: 0.5 to 70 hours.

Frequency of Response: Recordkeeping requirement, Semi-annual and Triennial reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i) and 624(e) of the Communications Act of 1934, as amended.

Total Annual Burden: 166,405 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Commission seeks to modify this submission to reflect that the testing required under Section 76.601(b) applies only to cable systems that deliver analog signals, and the cable operator must only test analog channels (see FCC 17–120). We expect that this change will reduce the number of filers associated with this information collection.

OMB Control Number: 3060–0331.

Title: Aeronautical Frequency Notification, FCC Form 321.

Form Number: FCC Form 321.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; not-for-profit institutions.

Number of Respondents: 1,886 respondents, 1,886 responses.

Estimated Time per Response: 0.67 hours.

Frequency of Response: One time and on occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 301, 303, 308, 309 and 621 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,264 hours.

Total Annual Cost: $132,020

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Multichannel Video Programming Distributors (MVPDs) provide their programming over a closed system and, thus, may use all frequencies to do so. They must, however, prevent leakage of those signals from the system and guard against and minimize any harm to aeronautical communications should leak occur. Part of the regime for protecting aeronautical frequencies from interference and resolving interference is notification of the Commission of use of those frequencies and that proper frequency offsets and other precautions are taken. Form 321 is used for this purpose.

The Commission seeks to modify this submission to reflect that the Commission adopted a rule, 47 CFR 76.1804, which a new trigger for filing FCC Form 321 (see FCC 17–120, adopted on September 22, 2017). Under 47 CFR 76.1804, an MVPD shall notify the Commission before transmitting any digital signal with average power exceeding 10^{-5} watts across a 30 kHz bandwidth in a 2.5 millisecond time period, or for other signal types, any carrier of other signal component with an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than 10^{-4} watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical radio frequency bands (108–137 MHz, 225–400 MHz). The notification shall be made on FCC Form 321.

OMB Control Number: 3060–0419.

Title: Network Non-duplication Protection and Syndication Exclusivity: Sections 76.94, Notification; 76.95, Exceptions; 76.105, Notifications; 76.106, Exceptions; 76.107, Exclusivity Contracts; and 76.1609, Non-Duplication and Syndicated Exclusivity.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5,980 respondents; 249,880 responses.

Estimated Time per Response: 0.5 to 2 hours.

Frequency of Response: On occasion reporting requirement; One-time reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this Information collection is contained in Section 4(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 233,420 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: This information collection is being revised to receive approval for a minor revision to 47 CFR 76.105(b), which requires broadcasters entering into contracts that contain syndicated exclusivity protection to notify affected cable systems within 60 calendar days of the signing of such a contract. The revision to 47 CFR 76.105(b) removes outdated language about contracts entered into before August 18, 1988 (see FCC 17–120).

OMB Control Number: 3060–1045.

Title: Section 76.1610, Change of Operational Information; FCC Form 324, Operator, Mail Address, and Operational Status Changes.

Form Number: FCC Form 324.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 325 respondents; 325 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 154(i), 303, 308, 309 and 621 of the Communications Act of 1934, as amended.

Total Annual Burden: 163 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained in 47 CFR 76.1610 require that operators shall inform the Commission on FCC Form 324 whenever there is a change of cable television system operator; change of legal name, change of the operator's mailing address or FCC Registration Number (FRN); or change in the operational status of a cable television system. Notification must be done within 30 days from the date the change occurs and must include the following information, as appropriate: (a) The legal name of the operator and whether the operator is an individual, private association, partnership, corporation, or government entity. See Section 76.5(cc). If the operator is a partnership, the legal name of the partner responsible for communications with the Commission shall be supplied; (b) The assumed name (if any) used for doing business in each community; (c) The physical address, including zip code, and email address, if applicable, to which all communications are to be directed; (d) The nature of the operational status change (*e.g.,* operation terminated, merged with another system, inactive, deleted, etc.); (e) The names and FCC identifiers (*e.g.,* CA 0001) of the system communities affected.

The Commission removed 47 CFR 76.1620(f) and (g) from its rules to remove duplication from that rule section (see FCC 17–120, adopted on September 22, 2017).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–02118 Filed 2–3–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0917; FRS 16450]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 6, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0917.

Title: CORES Registration Form, FCC Form 160.

Form Number: FCC Form 160.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; Individuals or households; Not-for-profit institutions; and State, Local, or Tribal Governments.

Number of Respondents and Responses: 79,922 respondents; 79,922 responses.

Estimated Time per Response: 10 minutes (0.167 hours).

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the *Debt Collection Act of 1996* (DCCA), Public Law 104–134, Chapter 10, Section 31001.

Total Annual Burden: 13,347 hours.

Total Annual Costs: No Cost.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment (PIA) covering the PII in the CORES information system is being updated. Upon completion it will be posted at: *https://www.fcc.gov/general/privacy-act-information#pia.*

Nature and Extent of Confidentiality: The FCC is not requesting that respondents submit confidential information to the Commission. If the FCC requests that respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to Section 0.459 of the FCC's rules, 47 CFR 0.459. The FCC has a system of records, FCC/OMD–25, Financial Operations Information System (FOIS), to cover the collection, purpose(s), storage, safeguards, and disposal of the personally identifiable information (PII) that individual respondents may submit on FCC Form 160, which is posted at: *https://www.fcc.gov/general/privacy-act-information#systems.*

Needs and Uses: Respondents use FCC Form 160 to register in FCC's Commission Registration System (CORES). Entities must register in CORES to do regulatory transactions with FCC, including receiving licenses, paying fees, participating in auctions, etc. Without this collection of information, FCC would not have a database of the identity and contact information of the entities it does regulatory business with.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–02147 Filed 2–3–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0298; FRS 16457]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before March 5, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov*; and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0298.

Title: Part 61, Tariffs (Other than the Tariff Review Plan).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,840 respondents; 5,605 responses.

Estimated Time per Response: 1–50 hours.

Frequency of Response: On occasion, annual, biennial, and one-time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151–155, 201–205, 208, 251–271, 403, 502 and 503 of the Communications Act of 1934, as amended.

Total Annual Burden: 196,677 hours.

Total Annual Cost: $1,444,800.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe are confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: On September 27, 2019, the Commission released the *Access Arbitrage Order,* WC Docket No. 18–155, FCC 19–94, making access-stimulating local exchange carriers (LECs) financially responsible for the terminating tandem switching and transport service access charges associated with the delivery of traffic from an interexchange carrier (IXC) to the access-stimulating LEC end office or its functional equivalent. The *Access Arbitrage Order* required that, within 45 days of its effective date, access-stimulating LECs remove any existing tariff provisions for terminating tandem switching or terminating tandem switched transport access charges. Affected intermediate access providers have the same time period to prepare any tariff revisions which they may wish to file. The *Access Arbitrage Order* also required that access-stimulating LECs provide notice of their assumption of that financial responsibility to the Commission by filing a record of its access-stimulating status and acceptance of financial responsibility to the Commission by filing a record of its access-stimulating status and acceptance of financial responsibility in the Commission's *Access Arbitrage Order* docket, and to provide notice to any affected IXCs and intermediate access providers of the same, within 45 days of approval by the Office of Management and Budget (OMB). If, after approval of this requirement by OMB, access-stimulating LECs no longer engage in access stimulation they must also file notice of that change in status with the Commission and with any affected IXCs and intermediate access providers.

The information collected through carriers' tariffs is used by the Commission and state commissions to determine whether services offered are just and reasonable, as the Act requires. The tariffs and any supporting documentation are examined in order to

determine if the services are offered in a just and reasonable manner.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–02150 Filed 2–3–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Notification of Nonfinancial Data Processing Activities (FR 4021; OMB No. 7100–0306).

DATES: Comments must be submitted on or before April 6, 2020.

ADDRESSES: You may submit comments, identified by *FR 4021,* by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number 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 from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, 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.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal under OMB Delegated Authority to Extend for Three Years, Without Revision, the Following Information Collection:

Report title: Notification of Nonfinancial Data Processing Activities.

Agency form number: FR 4021.

OMB control number: 7100–0306.

Frequency: As needed.

Respondents: Bank holding companies (BHCs).

Estimated number of respondents: 1.

Estimated average hours per response: 2.

Estimated annual burden hours: 2.

General description of report: The FR 4021 consists of the notice that BHCs may file to request permission to administer the Regulation Y revenue limit on nonfinancial data processing activities on a business-line or multiple-entity basis. A BHC may submit such a request to the Board's General Counsel in letter form. The request should describe the structure of the requesting BHC's data processing operations, the methodology the BHC proposes to use to administer the 49-percent revenue limit, and the reasons why the BHC believes that the proposed methodology is appropriate.

Legal authorization and confidentiality: The Board is authorized to collect the information associated with the notification process from BHCs pursuant to 12 U.S.C. 1843(c)(8) and (k). The submission of the notification (request) associated with the FR 4021 is required to obtain a benefit. To the extent a BHC submits nonpublic commercial or financial information in connection with the FR 4021, which is both customarily and actually treated as private by the BHC, the BHC may request confidential treatment pursuant to exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). The entity should separately designate such information as ''confidential commercial information'' or ''confidential financial information,'' as appropriate, and the Board will treat such designated information as confidential to the extent permitted by law, including the FOIA, 5 U.S.C. 552.

Board of Governors of the Federal Reserve System, January 30, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–02138 Filed 2–3–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Filings Related to the Gramm-Leach-Bliley Act (FR 4010, FR 4011, FR 4012, FR 4017, FR 4019, and FR 4023; OMB NO. 7100–292).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Filings Related to the Gramm-Leach-Bliley Act.

Agency form number: FR 4010, FR 4011, FR 4012, FR 4017, FR 4019, and FR 4023.

OMB control number: 7100–0292.

Frequency: On occasion.

Respondents: Bank holding companies (BHCs), savings and loan holding companies (SLHCs), foreign banking organizations (FBOs), and state member banks.

Estimated number of respondents: FR 4010: BHCs and SLHCs, 58, and FBOs, 4; FR 4011: 1; FR 4012: BHCs and SLHCs decertified as a financial holding company (FHC), 2, and FHCs back into compliance—BHCs and SLHCs, 14; FR 4017: 1; FR 4019: Regulatory relief requests, 1, and Portfolio company notification, 1; FR 4023: 30.

Estimated average hours per response: FR 4010: BHCs and SLHCs, 3, and FBOs, 3.5; FR 4011: 10; FR 4012: BHCs and SLHCs decertified as an FHC, 1, and FHCs back into compliance—BHCs and SLHCs, 10; FR 4017: 4; FR 4019: Regulatory relief requests, 1, and Portfolio company notification, 1; FR 4023: 50.

Estimated annual burden hours: FR 4010: BHCs and SLHCs, 174, FBOs, 14; FR 4011: 10; FR 4012: BHCs and SLHCs decertified as an FHC, 2, and FHCs back into compliance—BHCs and SLHCs, 140; FR 4017: 4; FR 4019: Regulatory relief requests, 1, and Portfolio company notification, 1; FR 4023: 1,500.

General description of report: These reporting and recordkeeping requirements, which are related to amendments made by the Gramm-Leach-Bliley Act (GLB Act) to the Bank Holding Company Act (BHC Act) and the Federal Reserve Act (FRA), are composed of the following:

- Declarations to Become a Financial Holding Company (FR 4010);
- Requests for Determinations and Interpretations Regarding Activities Financial in Nature (FR 4011);
- Notices of Failure to Meet Capital or Management Requirements (FR 4012);
- Notices by State Member Banks to Invest in Financial Subsidiaries (FR 4017);
- Regulatory Relief Requests Associated with Merchant Banking Activities (FR 4019); and
- Recordkeeping Requirements Associated with Merchant Banking Activities (FR 4023).

These collections of information are event-generated and there are no formal reporting forms for these collections of information. In each case, the information required to be filed is described in the Board's regulations.

Legal authorization and confidentiality: The FR 4010 is authorized pursuant to section 4(*l*) of the BHC Act [1] and section 10(c)(2)(H) of the Home Owners' Loan Act (HOLA).[2] The FR 4011 is authorized pursuant to sections 4(j) and (k) of the BHC Act.[3] The FR 4012 is authorized pursuant to section 5(b) of the BHC Act [4] and section 10(g) of the HOLA.[5] The FR 4017 is authorized pursuant to section 9 of the FRA.[6] The FR 4019 and FR 4023 are authorized pursuant to section 4(k)(7) of the BHC Act.[7] The obligation to respond to the FR 4010, FR 4011, FR 4017, and FR 4019 is required to obtain a benefit. The obligation to respond to the FR 4012 and comply with the recordkeeping requirements of the FR 4023 is mandatory.

Regarding information submitted pursuant to the FR 4010, FR 4011, FR 4017, and FR 4019, a firm may request confidential treatment under the Board's Rules Regarding Availability of Information (12 CFR 261.15). The Board will consider whether such information may be kept confidential in accordance with exemption 4 of the Freedom of Information Act (FOIA), which protects from disclosure trade secrets and commercial or financial information (5 U.S.C. 552(b)(4)), or any other applicable FOIA exemption. Information submitted pursuant to the FR 4012 may be considered confidential under FOIA exemption 4 and FOIA exemption 8, which protects from disclosure information related to the supervision or examination of a regulated financial institution (5 U.S.C. 552(b)(8)). Because the FR 4023 is a recordkeeping requirement, the FOIA would only be implicated if the Board's examiners retained a copy of the record as part of the supervision of a banking institution. Accordingly, such record may be exempt from disclosure under FOIA exemption 8.

[1] 12 U.S.C. 1843(*l*). For FBOs, the FR 4010 is authorized pursuant to section 4(*l*) of the BHC Act (12 U.S.C. 1843(*l*)), in conjunction with section 8 of the International Banking Act (12 U.S.C. 3106(a)).

[2] 12 U.S.C 1467a(c)(2)(H).

[3] 12 U.S.C. 1843(j)–(k).

[4] 12 U.S.C. 1844(b). For FBOs, the FR 4012 is authorized pursuant to section 5(b) of the BHC Act (12 U.S.C. 1844(b)), in conjunction with section 8 of the International Banking Act (12 U.S.C. 3106).

[5] 12 U.S.C. 1467a(g).

[6] 12 U.S.C. 335.

[7] 12 U.S.C. 1843(k)(7). For FBOs, the FR 4019 and 4023 are authorized pursuant to section 4(k)(7) of the BHC Act (12 U.S.C. 1843(k)(7)), in conjunction with section 8 of the International Banking Act (12 U.S.C. 3106).

Current actions: On October 18, 2019, the Board published a notice in the **Federal Register** (84 FR 55956) requesting public comment for 60 days on the extension, without revision, of the Filings Related to the Gramm-Leach-Bliley Act information collection. The comment period for this notice expired on December 17, 2019. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, January 30, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–02137 Filed 2–3–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Intermittent Survey of Businesses (FR 1374; OMB No. 7100–0302). The revisions are applicable March 5, 2020.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Report title: Intermittent Survey of Businesses.

Agency form number: FR 1374.

OMB control number: 7100–0302.

Effective Date: The revisions are effective March 5, 2020.

Frequency: On occasion.

Respondents: Businesses and state and local governments.

Estimated number of respondents: 720.

Estimated average hours per response: 15 minutes.

Estimated annual burden hours: 540.

General description of report: The survey data are used to gather information specifically tailored to the Federal Reserve's policy and operational responsibilities. Currently, this event-generated survey is approved to operate in two ways. First, under the guidance of Board staff, the Reserve Banks survey business contacts as economic developments warrant. Although each survey is contemplated to have approximately 2,400 business respondents (about 200 respondents per Reserve Bank), surveys in recent years have had far fewer respondents; occasionally, state and local government officials are surveyed rather than business, in which case there are also far fewer respondents. It is necessary to conduct these surveys to provide timely information to the members of the Board and presidents of the Reserve Banks. Usually, these surveys are conducted by Reserve Bank economists telephoning or emailing purchasing managers, economists, or other knowledgeable individuals at selected, relevant businesses. Reserve Bank staff may also use online survey tools to collect responses to the survey. The frequency and content of the questions, as well as the entities contacted, vary depending on developments in the economy. The draft reporting form provides a sample of the types of questions used in a previous survey to illustrate the format of these surveys. Second, economists at the Board survey business contacts by telephone, inquiring about current business conditions. Board economists conduct these surveys as economic conditions require, with approximately ten respondents for each survey.

Legal authorization and confidentiality: The FR 1374 is authorized by sections 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires that the Board and the Federal Open Market Committee (FOMC) ''maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates.'' [1] Under section 12A of the FRA, the FOMC is required to implement regulations relating to the open market operations conducted by Federal Reserve Banks ''with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.'' [2] In order to carry out these objectives, the Board must collect economic data, including by using the FR 1374. Survey submissions are voluntary.

Individual respondents may request that information submitted to the Board through a survey under FR 1374 be kept confidential. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis under exemption 4 of the Freedom of Information Act (FOIA), which protects privileged or confidential commercial or financial information,[3] or any other applicable FOIA exemption.

Current actions: On October 25, 2019, the Board published a notice in the **Federal Register** (84 FR 57428) requesting public comment for 60 days on the extension, with revision, of the FR 1374. For surveys conducted by the Reserve Banks at the direction of the Board, the Board proposes to decrease the number of respondents from 2,400 to 720 (an average of 60 per Reserve Bank). This decrease better reflects the actual number of respondents in recent years. In addition, the Board proposes to discontinue the surveys conducted solely by the Board, as they have not been conducted in recent years and are not anticipated to be needed in the future. The comment period for this notice expired on December 24, 2019. The Board did not receive any comments.

[1] 12 U.S.C. 225a.

[2] 12 U.S.C. 263(c).

[3] 5 U.S.C. 552(b)(4).

Board of Governors of the Federal Reserve System, January 30, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–02136 Filed 2–3–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Savings and Loan Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and of the Board's Regulation LL (12 CFR 238.31) to acquire shares of a savings and loan holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 20, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Cascade Investment, L.L.C., Kirkland, Washington, and sole member William H. Gates III, Medina, Washington;* to retain over 10 percent of the voting shares of Deere & Company Inc., Moline, Illinois, and thereby indirectly retain over 10 percent of the voting shares of John Deere Financial, F.S.B., Madison, Wisconsin.

Board of Governors of the Federal Reserve System, January 30, 2020.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–02121 Filed 2–3–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 19, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Forsyth Equity Partners, LP, and its general partner Rakesh Alla, both of Rock Island, Illinois;* to acquire voting shares of AmBank Holdings, Inc., and thereby indirectly acquire voting shares of American Bank and Trust Company, N.A, both of Davenport, Iowa.

B. *Federal Reserve Bank of Kansas City* (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Lois D. Fenster, individually, and as co-trustee of The Lois D. Fenster Living Trust; co-trustee of The Stephen R. Fenster Living Trust; general partner of The Fenster Family Partnership, L.P.; and co-owner (along with Pamela Jennison) of Jennison Investments, Inc., which serves as general partner of The Jennison Family Partnership, L.P., all of Healy, Kansas;* to retain voting shares of Security Bancshares, Inc., Scott City, Kansas and thereby indirectly retain voting shares of Farmers & Merchants Bank of Colby, Colby, Kansas; Security State Bank, Scott City, Kansas; and The Farmers State Bank of Oakley, Oakley, Kansas. Additionally, The Fenster Family Partnership, L.P.; The Jennison Family Partnership, L.P.; The Lois D. Fenster Living Trust, Stephen Fenster, as co-trustee; The Stephen R. Fenster Living Trust, Stephen Fenster, as co-trustee, all of Healy, Kansas; Danielle E. Demuth, Pratt, Kansas; Kurt A. Fenster, Indianapolis, Indiana; Neil S. Wilson, Healy, Kansas; and Paul A. Wilson, Stratford, Oklahoma to be approved as members of the Fenster/Jennison Family Group, and to retain voting shares of Security Bancshares, Inc., and thereby indirectly retain voting shares of Farmers & Merchants Bank of Colby, Security State Bank, and The Farmers State Bank of Oakley.

Board of Governors of the Federal Reserve System, January 30, 2020.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–02120 Filed 2–3–20; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests that the Office of Management and Budget (''OMB'') extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for its shared enforcement authority with the Consumer Financial Protection Bureau (''CFPB'') for information collection requirements contained in the CFPB's Regulation O. That clearance expires on February 29, 2020.

DATES: Comments must be submitted on or before March 6, 2020.

ADDRESSES: Comments in response to this notice should be submitted to the OMB Desk Officer for the Federal Trade Commission within 30 days of this notice. You may submit comments using any of the following methods:

Electronic: Write ''MARS (Regulation O) PRA Comment, FTC File No. P134812'' on your comment and file your comment online at *https://www.regulations.gov,* by following the instructions on the web-based form.

Email: MBX.OMB.OIRA.Submission@OMB.eop.gov.

Mail: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Stephanie Rosenthal, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580, (202) 326–3332.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FTC has submitted to the Office of Management and Budget (''OMB'') this request for extension of the previously approved collection of information discussed below.

Title: Regulation O.

OMB Control Number: 3084–0157.

Type of Review: Extension of currently approved collection.

Estimated Number of Respondents: 120.

Estimated Annual Burden Hours: 360.

Abstract: The FTC and CFPB share enforcement authority for the Mortgage Assistance Relief Services (Regulation O), 12 CFR 1015. The rule includes disclosure requirements to assist purchasers of mortgage assistance relief services in making well-informed decisions and avoiding unfair or deceptive acts and practices. The information that must be retained under Regulation O's recordkeeping requirements is used by the CFPB and the FTC for enforcement purposes and to ensure compliance by MARS providers with Regulation O. The information is requested only on a case-by-case basis.

Request for Comment: On October 31, 2019, the Commission sought comment on the information collection requirements associated with the Commission's shared enforcement with the CFPB of Regulation O (12 CFR 1015). 84 FR 58388. One comment was received from an interested person that indicated ''wholehearted support'' for the proposed three-year extension. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for those information collection requirements. 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 OMB control number.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential'' as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

Heather Hippsley,

Deputy General Counsel.

[FR Doc. 2020–02104 Filed 2–3–20; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comment on its proposal to extend for an additional three years, the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements contained in its Funeral Industry Practice Rule (''Funeral Rule'' or ''Rule''). That clearance expires on June 30, 2020.

DATES: Comments must be filed by April 6, 2020.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Funeral Rule PRA Comment: FTC File No. P084401'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Patricia H. Poss, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580, *pposs@ftc.gov,* (202) 326–2413.

SUPPLEMENTARY INFORMATION:

Title of Collection: Funeral Industry Practice Rule, 16 CFR 453.

OMB Control Number: 3084–0025.

Type of Review: Extension without change of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 164,006.

Estimated Annual Labor Costs: $5,429,859.

Abstract: The Funeral Rule ensures that consumers who are purchasing funeral goods and services have access to accurate itemized price information so they can purchase only the funeral goods and services they want or need. Among other things, the Rule requires a funeral provider to: (1) Provide consumers a copy of the funeral provider's General Price List that itemizes the goods and services it offers; (2) show consumers a Casket Price List and an Outer Burial Container Price List at the outset of any discussion of those items or their prices, and in any event before showing consumers caskets or vaults; (3) provide price information from its price lists over the telephone; and (4) give consumers a Statement of Funeral Goods and Services Selected after determining the funeral arrangements with the consumer during an ''arrangements conference.'' The Rule requires that funeral providers disclose this information to consumers and maintain records documenting their compliance with the Rule.

Burden Statement

Estimated burden hours for the tasks described below are based on the number of funeral providers (approximately 19,136),[1] the number of funerals per year (an estimated 2,813,503),[2] and the time needed to

[1] The estimated number of funeral providers is from 2019 data provided on the National Funeral Directors Association (''NFDA'') website (see *http://www.nfda.org/news/statistics*) (within ''General Funeral Service Facts'').

[2] The estimated number of funerals conducted annually is derived from the National Center for Health Statistics (''NCHS''), *https://www.cdc.gov/nchs/nvss/deaths.htm.* According to NCHS, 2,813,503 deaths occurred in the United States in

Continued

complete the information collection tasks required by the Rule. Labor costs associated with the Funeral Rule are derived by applying hourly cost figures to the burden hours for each task.

Recordkeeping: The Rule requires that funeral providers retain copies of price lists and statements of funeral goods and services selected by consumers for one year. Commission staff estimates that providers will spend approximately one hour per provider per year on compliance with this task, resulting in a total burden of 19,136 hours per year (19,136 providers × 1 hour per year = 19,136 hours).

Staff anticipates that clerical personnel, at an hourly rate of $12.58,[3] will typically perform these tasks. Based on the estimated burden of 19,136 hours, the estimated labor cost for recordkeeping is $240,731.

Disclosure: The Rule's disclosure requirements mandate that funeral providers: (1) Maintain current price lists for funeral goods and services, (2) provide written documentation of the funeral goods and services selected by consumers making funeral arrangements, and (3) provide information about funeral prices in response to telephone inquiries.

1. Maintaining accurate price lists may require that funeral providers revise their price lists occasionally to reflect price changes. Staff estimates that this task requires 2.5 hours per provider per year. Thus, the total burden for covered providers is 47,840 hours (19,136 providers × 2.5 hours per year = 47,840 hours).

Staff estimates that the 2.5 hours required, on average, to update price lists consists of approximately 1.5 hours of managerial or professional time, at $45.09 per hour,[4] and one hour of clerical time, at $12.58 per hour, for a total annual labor cost of $1,535,090 for maintaining price lists:

Hourly wage and labor category	Hours per respondent	Total hourly labor cost	Number of respondents	Approx. total annual labor costs
$45.09 Management Employees	1.5	$67.64	19,136	$1,294,359
$12.58 Clerical Workers	1	12.58	.....	240,731
	.....	.....	.....	1,535,090

2. The rulemaking record indicates that 87% or more of funeral providers provided written documentation of funeral arrangements prior to the enactment of the Rule and would continue to do so absent the Rule's requirements.[5] Based on this data, Staff estimates that 13% of funeral providers (typically, small funeral homes) may prepare written documentation for funeral goods and services selected by consumers specifically due to the Rule's mandate. Staff estimates that these smaller funeral homes arrange, on average, approximately 20 funerals per year and that it would take about three minutes to record prices for each consumer on the standard form. This yields a total annual burden of 2,488 hours [(19,136 funeral providers × 13%) × (20 statements per year × 3 minutes per statement) = 2,488 hours].

Staff anticipates that managerial or professional staff will typically perform these tasks, at an hourly rate of $45.09 per hour. Based on the estimated burden of 2,488 hours, the associated labor cost would be $112,184.

3. The Funeral Rule also requires funeral providers to provide information about funeral prices in response to telephone inquiries. The rulemaking record indicates that approximately 12% of funeral purchasers request funeral prices through telephone inquiries, with each call lasting an estimated 10 minutes.[6] Assuming that the average purchaser who makes telephone inquiries places one call per funeral to determine prices,[7] the estimated burden is 56,270 hours (2,813,503 funerals per year × 12% × 10 minutes per inquiry = 56, 270 hours).

Staff understands that managerial or professional time is typically required to respond to telephone inquiries about prices, at an hourly rate of $45.09 per hour.[8] Based on the estimated burden of 56,270 hours, the associated labor cost is $2,537,214.

Compliance Training: Staff believes that annual training burdens associated with the Rule are minimal because compliance training is typically included in continuing education for state licensing and voluntary certification programs. Staff estimates that four employees per firm would each require one half-hour, at most, per year, for training attributable to the Rule's requirements.[9] Thus, the total estimated time for required training is 38,272 hours (19,136 providers × 4 employees per firm × 0.5 hours = 38,272 hours).

2017, the most recent year for which final data is available. Staff believes this estimate overstates the number of funeral transactions conducted annually because not all remains go to a funeral provider covered by the Rule (*e.g.,* remains sent directly to a crematory that does not sell urns, remains sent to a non-profit funeral provider, remains donated to a medical school, unclaimed remains handled by a local morgue or local government entity, etc.). NFDA reports its member home handled about 113 calls in 2018, which, if multiplied by the total number of homes (19,136 in 2019) would amount to approximately 2,162,368 funerals.

[3] Bureau of Labor Statistics, ''May 2015 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 812200—Death Care Services,'' *available at https://www.bls.gov/oes/current/naics4_812200.htm#11-0000.* Clerical estimates are based on the mean hourly wage data for ''receptionists and information clerks.''

[4] *Id.* Managerial or professional estimates are based on the mean hourly wage data for ''funeral service managers.''

[5] *See* 87 FR 12602 (2017). In a 2002 public comment, the National Funeral Directors Association asserted that nearly every funeral home had been providing consumers with some kind of final statement in writing even before the Rule took effect. Nonetheless, Staff retains its estimate that 13% of funeral providers may provide written disclosures solely due to the Rule's requirements based on the original rulemaking record.

[6] 82 FR at 12603.

[7] Although consumers who pre-plan their own arrangements may comparison shop and call more than one funeral home for pricing and other information, consumers making ''at need'' arrangements after a death are less likely to take the time to seek pricing information from more than one home. Many do not seek pricing information by telephone. Staff therefore believes that an average of one call per funeral is an appropriate estimate.

[8] Although some funeral providers may permit staff who are not funeral directors to provide price information by telephone, the great majority reserve that task to a licensed funeral director. Since funeral home managers are also licensed funeral directors in most cases, Staff has used the mean hourly wage for ''funeral service managers,'' rather than ''funeral directors,'' for this calculation.

[9] Funeral homes, depending on size and other factors, may be run by as few as one owner, manager, or other funeral director or multiple directors at various compensation levels. Extrapolating from past NFDA survey input, staff has estimated that the average funeral home employs approximately four employees (a funeral services manager, funeral director, funeral service worker, and a clerical receptionist) that may require training associated with Funeral Rule compliance. Compliance training for other employees (*e.g.,* drivers, maintenance personnel, attendants) would not be necessary.

Based on past consultations with funeral directors, FTC staff estimates that funeral homes will require no more than two hours of training per year of licensed and non-licensed funeral home staff to comply with the Funeral Rule,[10] with four employees of varying types each spending one half-hour on training. FTC staff further estimates labor costs for employee time required for compliance training as follows: (a) Funeral service manager ($45.09 per hour); (b) non-manager funeral director ($27.61); (c) funeral service workers ($19.70 per hour); and (d) a clerical receptionist or administrative staff member ($12.58).[11] This amounts to $1,004,640, cumulatively, for all funeral homes:

Hourly wage and labor category	Hours per respondent	Total hourly labor cost	Number of respondents	Approx. total annual labor costs
$45.09 Management Employees	0.5	$22.55	19,136	$431,517
$27.61 Non-manager Funeral Directors	0.5	13.81	.....	264,268
$19.70 Funeral Service Workers	0.5	9.85	.....	188,490
$12.58 Clerical Workers	0.5	6.29	.....	120,365
	.....	.....	.....	1,004,640

Capital and other non-labor costs: Staff estimates that the Rule imposes minimal capital costs and no current start-up costs. Funeral homes already have access, for ordinary business purposes, to the ordinary office equipment needed for compliance, so the Rule likely imposes minimal additional capital expense.

Compliance with the Rule, nonetheless, does entail some expense to funeral providers for printing and duplication of required disclosures. Assuming, as required by the Rule, that one copy of the general price list is provided to consumers for each funeral or cremation conducted, at a cost of 25¢ per copy,[12] this would amount to 2,813,503 copies per year at a cumulative industry cost of $703,376 (2,813,503 funerals per year × 25¢ per copy). In addition, small funeral providers that furnish consumers with a statement of funeral goods and services solely because of the Rule's mandate will incur printing and copying costs. Assuming that those 2,488 providers (19,136 funeral providers × 13%) use the standard two-page form shown in the compliance guide, at 25 cents per copy, at an average of twenty funerals per year, the added cost burden would be $12,440 (2,488 providers × 20 funerals per year × 25¢). Thus, estimated non-labor costs total $715,816 ($703,376 + 12,440).

Request for Comment

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before April 6, 2020. Write ''Funeral Rule PRA Comment: FTC File No. P084401'' on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it through the *https://www.regulations.gov* website by following the instructions on the web-based form provided.

If you file your comment on paper, write ''Funeral Rule PRA Comment: FTC File No. P084401'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies

[10] Rule compliance is generally included in continuing education requirements for licensing and voluntary certification programs. Moreover, as noted above, the FTC provides its compliance guide to all funeral providers at no cost, and it is available on the FTC website. Additionally, the NFDA provides online guidance for compliance with the Rule: *http://www.nfda.org/onlinelearning-ftc.html.*

[11] Bureau of Labor Statistics, ''May 2015 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 812200—Death Care Services,'' *available at http://www.bls.gov/oes/current/naics4_812200.htm#11-0000 (mean hourly wages for funeral service managers, funeral directors, funeral service workers, and receptionists and information clerks).*

[12] Although copies of the casket price list and outer burial container price list must be shown to consumers, the Rule does not require that they be given to consumers. Thus, the cost of printing a single copy of these two disclosures to show consumers is *de minimis,* and is not included in this estimate of printing costs.

the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 6, 2020. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Heather Hippsley,

Deputy General Counsel.

[FR Doc. 2020–02111 Filed 2–3–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Cervical Ripening in the Outpatient Setting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Cervical Ripening in the Outpatient Setting,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before 30 days after date of publication in the **Federal Register**.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for Cervical Ripening in the Outpatient Setting. AHRQ is conducting this systematic review pursuant to Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Cervical Ripening in the Outpatient Setting,* including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/cervical-ripening/protocol.*

This is to notify the public that the EPC Program would find the following information on *Cervical Ripening in the Outpatient Setting* helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please indicate whether results are available on *ClinicalTrials.gov* along with the *ClinicalTrials.gov* trial number.
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

KQ1: How do the effectiveness and harms of cervical ripening (CR) using prostaglandins compare in the outpatient *vs.* inpatient setting?

1a: How do effectiveness and harms vary by choice of prostaglandin?

1b: Do effectiveness and harms vary by important patient characteristics (such as gestational age, parity, uncomplicated pregnancy, prior cesarean delivery, etc.)?

KQ2: How do the effectiveness and harms of CR using mechanical methods (*e.g.,* balloon catheters) compare in the outpatient *vs.* inpatient setting?

2a: How do effectiveness and harms vary by choice of mechanical method in the inpatient versus the outpatient setting?

2b: Do effectiveness and harms vary by important patient characteristics (such as gestational age, parity, uncomplicated pregnancy, prior cesarean delivery, etc.)?

KQ3: How do the effectiveness and harms of CR in the *outpatient setting* vary by method of CR compared with each other?

3a: Do effectiveness and harms vary by important patient characteristics (such as gestational age, parity, uncomplicated pregnancy, prior cesarean delivery, etc.)?

KQ4: How do the effectiveness and harms of different methods and protocols for fetal surveillance compare with each other or with no monitoring in pregnant women undergoing CR with prostaglandins?

4a. Do effectiveness and harms vary by important patient characteristics (such as gestational age, parity, uncomplicated pregnancy, prior cesarean delivery, etc.)?

Contextual Question: What evidence informs preference for or tolerability of different methods of CR in the outpatient setting or outpatient compared to the inpatient setting?

PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, Settings)

PICOTS	Inclusion key question 1: Prostaglandin inpatient vs. outpatient	Inclusion key question 2: Mechanical method inpatient vs outpatient	Inclusion key question 3: Outpatient comparison of methods	Inclusion key question 4: Fetal surveillance	Exclusion
Population	• Pregnant women ≥37 weeks undergoing CR in the outpatient setting. • Important maternal subgroups: parity, maternal age, GBS status, diabetes (pregestational, gestational), hypertension (chronic, preeclampsia without severe features, gestational). • Important fetal subgroups: fetal growth restriction, gestational age (<39 weeks, 39 to 41 weeks, >41 weeks).	• Pregnant women ≥37 weeks undergoing CR in the outpatient setting. • Important maternal subgroups: parity, maternal age, GBS status, diabetes (pregestational, gestational), hypertension (chronic, preeclampsia without severe features, gestational). • Important fetal subgroups: fetal growth restriction, gestational age (<39 weeks, 39 to 41 weeks, >41 weeks).	• Pregnant women ≥37 weeks undergoing CR in the outpatient setting. • Important maternal subgroups: parity, maternal age, GBS status, diabetes (pregestational, gestational), hypertension (chronic, preeclampsia without severe features, gestational). • Important fetal subgroups: fetal growth restriction, gestational age (<39 weeks, 39 to 41 weeks, >41 weeks).	• Pregnant women ≥37 weeks undergoing CR with a prostaglandin. • Important maternal subgroups: parity, maternal age, GBS status, diabetes (pregestational, gestational), hypertension (chronic, preeclampsia without severe features, gestational). • Important fetal subgroups: fetal growth restriction, gestational age (<39 weeks, 39 to 41 weeks, >41 weeks).	Women with contraindications to CR in the outpatient setting: a multiple pregnancy, prior uterine rupture and breech presentation of the fetus.
Intervention	• Pharmacologic agents (prostaglandins) given in outpatient setting.	• Mechanical methods (balloon catheters, laminaria tents) used in outpatient setting.	Mechanical methods (balloon catheters, laminaria tents) or pharmacologic agents (prostaglandins).	• Any method of fetal surveillance.	• Catheters not available in the U.S. • Pharmacy-compounded prostaglandin products. • Other CR methods: Castor oil, nipple stimulation, membrane stripping, sexual intercourse, acupuncture/pressure, transcutaneous nerve stimulation, herbal compounds.
Comparator	• Mechanical (i.e., balloon catheters, luminaria tents) and/or pharmacologic (i.e., prostaglandins) methods in the inpatient setting.	• Mechanical (i.e., balloon catheters, luminaria tents) and/or pharmacologic (i.e., prostaglandins) methods in the inpatient setting.	• Any comparator including alternative mechanical device or protocol, alternative pharmacologic agent or dose, combination mechanical and pharmacologic, placebo, and other CR methods excluded as intervention (e.g., Castor oil, acupuncture).	• Another method of fetal surveillance. • Another protocol for fetal surveillance with the same method. • No monitoring.	• Catheters not available in the U.S. • Pharmacy-compounded prostaglandin products.
Outcomes Effectiveness (birth-related).	• Total time admission to vaginal delivery; total L&D length of stay[c]. • Cesarean delivery rate overall[c]. • Vaginal delivery within 24 hours. Failed induction rate, defined as: ○ CD in patient at <6cm dilation excluding fetal distress (labor dystocia, failure to progress, etc.). ○ CD in patient at <6 cm dilation for fetal distress. • Cervical assessment at time of admission (e.g., latent vs. active phase, Bishop score, cervical dilation). • Time from ROM to delivery	• Total time admission to vaginal delivery; total L&D length of stay[c]. • Cesarean delivery rate overall[c]. • Vaginal delivery within 24 hours. Failed induction rate, defined as: ○ CD in patient at <6cm dilation excluding fetal distress (labor dystocia, failure to progress, etc.). ○ CD in patient at <6 cm dilation for fetal distress. • Cervical assessment at time of admission (e.g., latent vs. active phase, Bishop score, cervical dilation). • Time from ROM to delivery	• Total time admission to vaginal delivery; total L&D length of stay[c]. • Cesarean delivery rate overall[c]. • Vaginal delivery within 24 hours. Failed induction rate, defined as: ○ CD in patient at <6cm dilation excluding fetal distress (labor dystocia, failure to progress, etc.). ○ CD in patient at <6 cm dilation for fetal distress. • Cervical assessment at time of admission (e.g., latent vs. active phase, Bishop score, cervical dilation). • Time from ROM to delivery • Breastfeeding[b]. • Maternal mood[b]. • Mother-baby attachment[b].	• Total time admission to vaginal delivery; total L&D length of stay[c]. • Cesarean delivery rate overall[c]. • Vaginal delivery within 24 hours. Failed induction rate, defined as: ○ CD in patient at <6cm dilation excluding fetal distress (labor dystocia, failure to progress, etc.). ○ CD in patient at <6 cm dilation for fetal distress. • Cervical assessment at time of admission (e.g., latent vs. active phase, Bishop score, cervical dilation). • Time from ROM to delivery.	Outcomes not listed in inclusion criteria.
Outcomes Fetal Harms	• Perinatal Mortality[c] • Hypoxic-ischemic[c] encephalopathy[c]. • Seizure[c] • Infection (confirmed sepsis or pneumonia)[c]. • Meconium aspiration syndrome[c]. • Birth trauma (e.g., bone fracture, neurologic injury, or retinal hemorrhage)[c]. • Intracranial or subgaleal hemorrhage[c]. • Need for respiratory support within 72 hours after birth. • Apgar score ≤3 at 5 minutes[a]. • Hypotension requiring vasopressor support. • Umbilical cord gas <pH 7.0 or 7.10.	• Perinatal Mortality[c] • Hypoxic-ischemic[c] encephalopathy[c]. • Seizure[c] • Infection (confirmed sepsis or pneumonia)[c]. • Meconium aspiration syndrome[c]. • Birth trauma (e.g., bone fracture, neurologic injury, or retinal hemorrhage)[c]. • Intracranial or subgaleal hemorrhage[c]. • Need for respiratory support within 72 hours after birth. • Apgar score ≤3 at 5 minutes[a]. • Hypotension requiring vasopressor support. • Umbilical cord gas <pH 7.0 or 7.10.	• Perinatal Mortality[c] • Hypoxic-ischemic[c] encephalopathy[c]. • Seizure[c] • Infection (confirmed sepsis or pneumonia)[c]. • Meconium aspiration syndrome[c]. • Birth trauma (e.g., bone fracture, neurologic injury, or retinal hemorrhage)[c]. • Intracranial or subgaleal hemorrhage[c]. • Need for respiratory support within 72 hours after birth. • Apgar score ≤3 at 5 minutes[a]. • Hypotension requiring vasopressor support. • Umbilical cord gas <pH 7.0 or 7.10.	• Perinatal Mortality[c] • Hypoxic-ischemic[c] encephalopathy[c]. • Seizure[c]. • Infection (confirmed sepsis or pneumonia)[c]. • Meconium aspiration syndrome[c]. • Birth trauma (e.g., bone fracture, neurologic injury, or retinal hemorrhage)[c]. • Intracranial or subgaleal hemorrhage[c]. • Need for respiratory support within 72 hours after birth. • Apgar score ≤3 at 5 minutes[a]. • Hypotension requiring vasopressor support. • Umbilical cord gas <pH 7.0 or 7.10.	Outcomes not listed in inclusion criteria.

PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, Settings)—Continued

PICOTS	Inclusion key question 1: Prostaglandin inpatient vs. outpatient	Inclusion key question 2: Mechanical method inpatient vs outpatient	Inclusion key question 3: Outpatient comparison of methods	Inclusion key question 4: Fetal surveillance	Exclusion
Outcomes Maternal Harms	• Hemorrhage requiring transfusion[c]. • Postpartum hemorrhage by mode (vaginal, cesarean)[c]. • Uterine infection (i.e., choriamnionitis, administration of antibiotics in labor other than GBS prophylaxis)[c]. • Placental abruption, Uterine rupture. • Umbilical cord prolapse • Duration of time between hospital admission to birth that is insufficient to enable complete GBS prophylaxis antibiotics administration per CDC guidelines.	• Hemorrhage requiring transfusion[c]. • Postpartum hemorrhage by mode (vaginal, cesarean)[c]. • Uterine infection (i.e., choriamnionitis, administration of antibiotics in labor other than GBS prophylaxis)[c]. • Placental abruption • Uterine rupture • Umbilical cord prolapse • Duration of time between hospital admission to birth that is insufficient to enable complete GBS prophylaxis antibiotics administration per CDC guidelines.	• Hemorrhage requiring transfusion[c]. • Postpartum hemorrhage by mode (vaginal, cesarean)[c]. • Uterine infection (i.e., choriamnionitis, administration of antibiotics in labor other than GBS prophylaxis)[c]. • Placental abruption, Uterine rupture. • Umbilical cord prolapse • Duration of time between hospital admission to birth that is insufficient to enable complete GBS prophylaxis antibiotics administration per CDC guidelines.	• Hemorrhage requiring transfusion[c]. • Postpartum hemorrhage by mode (vaginal, cesarean)[c]. • Uterine infection (i.e., choriamnionitis, administration of antibiotics in labor other than GBS prophylaxis)[c]. • Placental abruption • Uterine rupture • Umbilical cord prolapse • Duration of time between hospital admission to birth that is insufficient to enable complete GBS prophylaxis antibiotics administration per CDC guidelines.	Outcomes not listed in inclusion criteria.
Timing	Maternal outcomes • From CR initiation to within 1-week following delivery. Infant outcomes • Immediately following delivery.	Maternal outcomes • From CR initiation to within 1-week following delivery. Infant outcomes • Immediately following delivery.	Maternal and additional outcomes (i.e., breastfeeding, maternal mood, mother-baby attachment). • From CR initiation to 1-year postpartum. Infant outcomes • Immediately following delivery.	Maternal outcomes • From CR initiation to within 1-week following delivery. Infant outcomes • Immediately following delivery.	KQ 1,2,4: Outcomes occurring after 1-week post delivery. KQ3: Outcomes for breastfeeding, mother-infant attachment, and maternal mood occurring after 1 year post-delivery.
Setting	• Inpatient versus outpatient settings.	• Inpatient versus outpatient settings.	• Outpatient setting	• Inpatient and outpatient settings.	
Study design	• Randomized Controlled Trials; recent high quality Systematic Reviews; if RCT evidence for benefits is insufficient, include large, high quality cohort studies comparing inpatient and outpatient setting. • Include high quality cohort and case-control studies for harms.	• Randomized Controlled Trials; recent high quality Systematic Reviews; if RCT evidence for benefits is insufficient, include large, high quality cohort studies comparing inpatient and outpatient setting. • Include high quality cohort and case-control studies for harms.	• Randomized Controlled Trials; recent high quality Systematic Reviews; if RCT evidence for benefits is insufficient, include large, high quality cohort studies comparing inpatient and outpatient setting. • Include high quality cohort and case-control studies for harms.	• Randomized Controlled Trials; recent high quality Systematic Reviews; if RCT evidence for benefits is insufficient, include large, high quality cohort studies comparing inpatient and outpatient setting. • Include high quality cohort and case-control studies for harms.	Case series, pre-post studies, case reports.

[c] (Bolded) items indicate Primary Outcomes.

CR = cervical ripening; CD = cesarean delivery; KQ = Key Question; ROM = rupture of membrane; CDC = Centers for Disease Control and Prevention; L&D = labor and delivery; RCTs = randomized controlled trials.

Dated: January 29, 2020.

Virginia L. Mackay-Smith,

Associate Director, Office of the Director, AHRQ.

[FR Doc. 2020–02058 Filed 2–3–20; 8:45 am]

BILLING CODE 4160–90–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: ''*Evaluating the Dissemination and Implementation of PCOR to Increase Referral, Enrollment, and Retention through Automatic Referral to Cardiac Rehabilitation (CR) with Care Coordination.*'' In accordance with the Paperwork Reduction Act, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by 60 days after date of publication.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Evaluating the Dissemination and Implementation of PCOR to Increase Referral, Enrollment, and Retention through Automatic Referral to Cardiac Rehabilitation (CR) With Care Coordination

The aim of AHRQ's TAKEheart project is to (a) raise awareness about the benefits of cardiac rehabilitation (CR) after myocardial infarction or coronary revascularization, then to (b) disseminate knowledge about the best practices to increase referrals to CR, and, finally, (c) to increase CR uptake.

Currently over two-thirds of eligible cardiac patients are not referred to CR despite extensive evidence of its effectiveness in preventing subsequent morbidity; national estimates of referral range from 10–34%. To help improve CR rates, the Million Hearts® Cardiac Rehabilitation Collaborative—an initiative co-led by the Centers for Disease Control and Prevention (CDC) and the Centers for Medicare & Medicaid Services (CMS)—developed a Cardiac Rehabilitation Change Package (CRCP) and established a national goal of 70% participation in CR by 2022 for eligible patients. Recognizing that widespread adoption of the CRCP could help hospitals enhance CR rates, the CDC turned to AHRQ with a request that AHRQ consider disseminating and implementing evidence for CR and practices that promote CR. The CRCP is designed to facilitate this dissemination and implementation process.

AHRQ reviewed this request in the context of its Patient Centered

Outcomes Research Dissemination and Implementation initiative and judged the CDC nomination to have a high level of fit with AHRQ's criteria of having a substantial evidence base, high potential impact, and high feasibility for wide dissemination and implementation Outreach with stakeholders indicates that this initiative aligns well but does not duplicate work by NIH; PCORI; CMS and CDC.

The core recommendations in the CDC package are, first to spread adoption of automatic referral system—where patients after cardiovascular events are referred by the Electronic Health Record to rehabilitation unless the cardiologist actively decides not to refer because of medical ineligibility. The second core recommendation is use of a care coordinator to guide patients through referral has resulted in the most significant increases in referral to CR. TAKEheart will facilitate dissemination and implementation of Automatic Referral with Care Coordination in selected, diverse hospitals nationwide which demonstrate their readiness.

AHRQ will evaluate TAKEheart to assess:

- the extent and effectiveness of the dissemination and implementation efforts
- the uptake and usage of Automatic Referral with Care Coordination and
- levels of referral to CR at the end of the intervention.

Evaluation results will be used to improve the intervention and to provide guidance for future AHRQ Dissemination and Implementation projects. Two cohorts of ''Partner Hospitals,'' up to 125 hospitals in total, will receive training that disseminates the importance of CR and ways to enhance CR referral and then engages them in efforts to implement Automatic Referral with Care Coordination over twelve month periods. The evaluation will ascertain the diversity of hospitals engaged, the activities that contributed to (or hindered) their efforts, and the types of support which they report having been most (and least) useful. This information will be used to improve recruitment, technical assistance, and tools for the second cohort.

In addition, hospitals—including those involved in the dissemination and implementation support for Partner Hospitals—will be invited to attend Affinity Group virtual meetings organized around specific topics of interest which are not intrinsic to Automatic Referral with Care Coordination. Hospital staff engaged in Affinity Groups will create a vibrant Learning Community. The evaluation will determine which Affinity Groups engaged the most participants of the Learning Community, and which resources participants determined the most useful. This information will be used to develop resources which will be available on a new, permanent website dedicated to improving CR.

This study is being conducted by AHRQ through its contractor, Abt Associates Inc., pursuant to AHRQ's statutory authority to disseminate government-funded research relevant to comparative clinical effectiveness research. 42 U.S.C. 299b-37(a).

Method of Data Collection

To collect data on the many facets of the intervention, we will use multiple data collection tools, each of which has a specific purpose and set of respondents.

1. *Partner Hospital Champion Survey.* Each Partner Hospital will designate a ''Champion,'' who will coordinate activities associated with implementing Automatic Referral with Care Coordination at the hospital, and provide the Champion's name and email address. The Champion may have any role in the hospital, although they are expected in relevant positions, such as cardiologists or quality improvement managers. We will conduct online surveys of 125 Champions (one Champion per hospital). We will use the email addresses to send the Champion a survey at two points: Seven months after the start of dissemination and implementation to the Partner Hospitals and at the end of the 12-month dissemination and implementation period. The first survey will focus on four constructs. First, it will capture data about the hospital context, such as whether it had prior experience customizing an electronic medical record (EMR) or is a safety net hospital. Second, it will address the hospital's decision to participate in TAKEheart. Third, it will capture data on the CR programs the hospital refers to, whether the number or type has changed, and why. Fourth, it will collect feedback on the training and technical assistance received. The second survey will focus on three constructs. First, it will collect feedback on the TAKEheart components, including training, technical assistance, and use of the website. Second, we will ask about the hospitals' response to participating in TAKEheart, such as changes to referral workflow or CR programs. Third, we will ask those Partner Hospitals which have not completed the process of implementing Automatic Referral with Care Coordination whether they anticipate continuing to work towards that goal and their confidence in succeeding.

2. *Partner Hospital Interviews.*

a. *Interviews with Partner Hospital Champions.* We will select, from each cohort, eight Partner Hospitals that demonstrated a strong interest in addressing underserved populations or reducing disparities in participation in cardiac rehabilitation. We will conduct a key informant interview with the Champion of each selected Partner Hospital to delve into their response to the information and guidance that was disseminated to them and to describe how they are addressing the needs of underserved populations by implementing Automatic Referral with Care Coordination.

b. *Interviews with Partner Hospital cardiologists.* We will select, from each cohort, eight hospitals based on criteria such as hospitals which serve specific populations, or have the same EMRs, which will inform their experience customizing the EMR. We will conduct semi-structured interviews with one cardiologist at each of the selected hospitals twice. In the second month of the cohort for dissemination and implementation, we will ask about their needs, concerns, and expectations of the program. In the 11th month of the cohort implementation, we will determine whether their concerns were addressed appropriately and adequately.

c. *Interviews with Partner Hospitals that withdraw.* We expect that a small number of Partner Hospitals may withdraw from the cohort. We will identify these hospitals by their lack of participation in training and technical assistance events; technical assistance providers will confirm their withdrawal. We will interview up to nine withdrawing hospitals to better understand the reason for withdrawal (*e.g.,* a merger resulted in a loss of support for the intervention, Champion left), as well as facilitators of, and barriers to, each hospital's approach to implementing Automatic Referral with Care Coordination. If more than nine hospitals withdraw, we will cease interviewing.

3. *Learning Community Participant Survey.* We will conduct online surveys of 250 currently active Learning Community participants at two points in time, in months 18 and 31 of the project. We will administer the survey by sending a link to an online survey to email addresses entered by virtual meeting participants during registration. The email will describe the purpose of the survey.

4. *Learning Community Follow-up Survey.* We will conduct a brief online survey with up to 15 Learning

Community participants following the final virtual meeting for each of 10 Affinity Groups, to ascertain whether the hospitals were able to act on what they learned during the session. The total sample will be 150 Learning Community participants.

Estimated Annual Respondent Burden

Exhibit 1 presents estimates of the reporting burden hours for the data collection efforts. Time estimates are based on prior experiences and what can reasonably be requested of participating health care organizations. The number of respondents listed in column A, Exhibit 1 reflects a projected 90% response rate for data collection effort 1, and an 80% response rate for efforts 3 and 4 below.

1. *Partner Hospital Champion Survey*. We assumed 113 hospital champions will complete the survey based on a 90% response rate. It is expected to take up to 45 minutes to complete for a total of 169.5 hours to complete.

2. *Partner Hospital Interviews*. In-depth interviews will occur with select Partner Hospital staff.

a. *Interviews with Partner Hospital Champions*. We will have a single, 90 minute interview with eight Partner Hospital Champions, in each cohort, from Partner Hospitals that have a common characteristic of particular interest, for a total of 24 hours.

b. *Interviews with Partner Hospital cardiologists*. We will hold individual, up-to-30 minute interviews with eight cardiologists, twice in each cohort, for a total of 16 hours.

c. *Interviews with Partner Hospitals that withdraw*. We will interview up to nine withdrawing hospitals for no more than 20 minutes to better understand the reason for withdrawal as well as facilitators and barriers, for a total of 2.7 hours.

3. *Learning Community Participant Survey*. We assumed 200 Learning Community participants will complete the survey based on an 80% response rate. It is expected to take up to 15 minutes to complete each survey for a total of 100 hours.

4. *Learning Community Follow-up Survey*. We will conduct a brief, up to 10 minute, online survey of participants of each of just ten selected Affinity Groups at two months after the virtual meeting. We assumed 120 Learning Community participants will complete the survey based on an 80% response rate. It is expected to take up to 15 minutes to complete each survey for a total of 20.4 hours.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection method or project activity	A. Number of respondents	B. Number of responses per respondent	C. Hours per response	D. Total burden hours
1. Partner Hospital Champion Survey*	113	2	0.75	169.5
2a. Interviews with Partner Hospital Champions	16	1	1.5	24.0
2b. Interviews with Partner Hospital Cardiologists	16	2	0.5	16.0
2c. Interviews with Partner Hospitals that withdraw	9	1	0.3	2.7
3. Learning Community Survey**	200	2	0.25	100.0
4. Learning Community Follow-up Survey**	120	1	0.17	20.4
Total	474	.....	.....	332.6

* Number of respondents (Column A) reflects a sample size assuming a 90% response rate for this data collection effort.
** Number of respondents (Column A) reflects a sample size assuming an 80% response rate for this data collection effort.

Exhibit 2, below, presents the estimated annualized cost burden associated with the respondents' time to participate in this research. We obtained median hourly wage rates for relevant occupations from the Bureau of Labor & Statistics on ''Occupational Employment Statistics, May 2018 Occupation Profiles'' found at the following URL on October 1, 2019: *https://www.bls.gov/oes/current/oes_stru.htm#15-0000.* We assumed that half the Partner Hospital Champions will be cardiologists and half will be Quality Improvement managers. We calculated the hourly rate of $72.27 by averaging the median hourly wage rate for cardiologists ($96.58, occupation code 29–1069) and medical and health services managers ($47.95, occupation code 11–1141). The occupation of medical and health services managers has been used for quality improvement staff in other AHRQ projects. The total cost burden is estimated to be about $21,497.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection method or project activity	A. Number of respondents	B. Total burden hours	Average hourly wage rate	Total cost burden
1. Partner Hospital Champion Survey*	113	169.5	$72.27	$12,250
2a. Interviews with Partner Hospital Champions	16	24.0	72.27	1,734
2b. Interviews with Partner Hospital Cardiologists	16	16.0	96.58	1,545
2c. Interviews with Partner Hospitals that withdraw	9	2.7	72.27	195
3. Learning Community Survey**	200	100.0	47.95	4,795
4. Learning Community Follow-up Survey**	120	20.4	47.95	978
Total	474	332.6	.....	21,497

* Number of respondents (Column A) reflects a sample size assuming a 90% response rate for this data collection effort.
** Number of respondents (Column A) reflects a sample size assuming an 80% response rate for this data collection effort.

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 health care research and healthcare 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 29, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–02112 Filed 2–3–20; 8:45 am]

BILLING CODE 4160–90–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 the SHARE Approach Model.''

DATES: Comments on this notice must be received by 60 days after date of publication.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by emails at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Evaluation of the SHARE Approach Model

Shared decision making (SDM) occurs when a health care provider and a patient work together to make a health care decision that is best for the patient. Implementing SDM involves effective communication between providers and patients to take into account evidence-based information about available options, the provider's knowledge and experience, and the patient's values and preferences in reaching the best health care decision for a patient. To facilitate SDM in all care delivery settings, AHRQ developed the five-step SHARE Approach, which includes exploring and comparing the benefits, harms, and risks of each option through meaningful dialogue about what matters most to the patient. Using the SHARE Approach also builds a trusting and lasting relationship between health care professionals and patients.

SDM is increasingly included in clinical care guidelines, and in some cases is even mandated. While there is considerable interest in improving SDM across broad health care settings, less is known about how to effectively implement SDM. There is evidence that SDM is often not conducted effectively in practice, and identifying ways to improve SDM has therefore become an imperative. Lack of clinician support and education have been identified as important barriers to SDM.

The SHARE Approach was released in 2015 by AHRQ as a clinician-facing toolkit that teaches clinicians skills to facilitate SDM across a broad range of clinical contexts. While several implementation success stories have been shared with AHRQ, to date there has been no formal evaluation of the effectiveness of the SHARE Approach materials for improving SDM in primary and specialty care settings for which it was designed. As a result, challenges that may be faced by practices who wish to implement the SHARE Approach are currently unknown. Without research to identify and address these issues, practices and organization may be unable to effectively implement the SHARE Approach and may be unwilling to do so absent evidence of its effectiveness at improving SDM outcomes.

The Evaluation of the SHARE Approach Model project aims to revise the SHARE Approach toolkit to remove outdated references and increase applicability for SDM in contexts involving problem solving, evaluate the implementation of the SHARE Approach model in eight primary care and four cardiology clinics, and evaluate the effectiveness of the SHARE Approach model at improving SDM.

Method of Collection

The purpose of this clearance request is to collect the information needed to evaluate the implementation and effectiveness of the modified SHARE Approach materials. Specifically, the data collection activities requested in this clearance are:

1. Brief surveys of physicians, advanced practice providers, other clinicians, nurses and other staff in 12 clinics immediately following the SHARE Approach training in each clinic.
2. A brief survey of physicians, advanced practice providers, other clinicians, nurses and other staff in 12 clinics one month following the SHARE Approach training in each clinic.
3. A short card survey completed by patients in the 12 clinics immediately following a clinic visit with a physician or advanced practice provider.
4. A short card survey completed by physicians or advanced practice providers in the 12 clinics immediately following a clinic visit with a patient.
5. Audio recordings of patient-provider (physician or advanced practice provider) encounters in clinic examination rooms in the 12 clinics.

This study is being conducted by AHRQ through its contractor, the University of Colorado, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to clinical practice, including primary care and practice-oriented research. 42 U.S.C 299a(a)(4).

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated burden hours over the full 3 years of this clearance for the respondents' time to participate in the research activities that will be conducted under this clearance. Brief card surveys will be completed by both patients and clinicians. The physician/advanced practice provider card survey will require a maximum of 60 seconds. The patient card survey will take a maximum of 2 minutes. Number of observations will include a maximum

of 6,000 patient and 6,000 clinician surveys. Audio recordings of up to 260 clinical encounters will be obtained, with burden not to exceed 10 minutes to obtain patient informed consent. Two clinician surveys will be conducted, one immediately following SHARE training and one following the second observation period, one month following SHARE training. These will be conducted with no more than 100 clinicians and will require no more than 10 minutes to complete.

Exhibit 2 shows the estimated cost burden over 3 years, based on the respondents' time to participate in these research activities. The total cost burden is estimated to be $19,688.

EXHIBIT 1—ESTIMATED BURDEN HOURS OVER 3 YEARS

Type of information collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Card survey (patient)	6,000	1	2/60	200
Card survey (clinician)	6,000	1	1/60	100
Audio recorded encounters	260	1	10/60	44
Clinician survey immediately following training	100	1	10/60	17
Clinician survey one month following training	100	1	10/60	17
Totals	12,460	na	na	378

* May include telephone non-response follow-up in which case the burden will not change

EXHIBIT 2—ESTIMATED COST BURDEN OVER 3 YEARS

Type of information collection	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Card survey (patient)	6,000	200	$24.98	$4,996
Card survey (clinician)	6,000	100	101.43	10,143
Audio recorded encounters	260	44	24.98	1,100
Clinician survey immediately following training	100	17	101.43	1,725
Clinician survey one month following training	100	17	101.43	1,725
Totals	12,460	378	na	19,689

* Based upon the average wages for 29–1060 Physicians and Surgeons (broad) and 00–0000 All Occupations, ''National Compensation Survey: Occupational Wages in the United States, May 2018,'' U.S. Department of Labor, Bureau of Labor Statistics *https://www.bls.gov/oes/current/oes_nat.htm#29-0000.*

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 29, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–02116 Filed 2–3–20; 8:45 am]

BILLING CODE 4160–90–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 ''*Evaluating the Implementation of Products by Learning Health Systems to Inform and Encourage Use of AHRQ Evidence Reports.*''

DATES: Comments on this notice must be received by 60 days after date of publication.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Evaluating the Implementation of Products by Learning Health Systems To Inform and Encourage Use of AHRQ Evidence Reports

AHRQ's Evidence-based Practice Center (EPC) Program has 20 years of experience in synthesizing research to inform evidence-based health care practice, delivery, policies, and research. The AHRQ EPC program is committed to partnering with

organizations to make sure its evidence reports can be used in practice. Historically, most of its evidence reports have been used by clinical professional organizations to support the development of clinical practice guidelines or Federal agencies to inform their program planning and research priorities. To improve the uptake and relevance of the AHRQ EPC's evidence reports, specifically for health systems, AHRQ has contracted with the American Institutes for Research (AIR) to obtain feedback from learning health systems (LHSs) to assist the AHRQ EPC program in developing and disseminating evidence reports that can be used to improve the quality and effectiveness of patient care.

Even if an EPC evidence report topic addresses LHS-specific evidence needs, the density of the information in an evidence report may preclude its easy review by busy LHS leaders and decisionmakers. AHRQ understands that to facilitate use by LHSs, complex evidence reports must be translated into a format that promotes LHS evidence-based decision making and can be contextualized within each LHS' own system-generated evidence. Such translational products, for the purposes of this notice, are referred to simply as ''products.''

The purpose of this information collection is to support a process evaluation of use and implementation of two such products into LHS decisionmaking processes, workflows, and clinical care. The evaluation has the following goals:

1. Document how LHSs prioritize filling evidence gaps, make decisions about using evidence, and implement tools to support and promote evidence use in clinical care.

2. Assess the contextual factors that may influence implementation success; associated implementation resources, barriers and facilitators; and satisfaction of LHS leaders and clinical staff.

3. Provide the AHRQ EPC program with necessary insights about the perspectives, needs, and preferences of LHS leaders and clinical staff as related to decisions and implementation of products into practice.

This study is being conducted by AHRQ through its contractor, the American Institutes for Research (AIR), pursuant to AHRQ's statutory authority to conduct and support research on, and disseminate information on, health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services. 42 U.S.C 299a(a)(1).

Method of Collection

To achieve the goals of this project, the following data collection activities will be implemented:

1. Key informant interviews with health system leaders, clinicians and staff; and

2. compilation and coding of notes from ''implementation support'' meetings (''check-ins'') between an implementation facilitator and site champions who are implementing the products.

Brief Background on the Products To Be Implemented by LHSs in This Study

AHRQ is funding the development of two products that are specifically intended to make the findings from EPC evidence reports more accessible and usable by health systems. These are the products that will be offered to LHSs for potential implementation during this project. They include a ''triage tool'' and a ''data visualization tool'' that have been designed to support LHS use of AHRQ evidence reports. The LHS *triage tool* presents high-level results of evidence reports that enable leaders within LHSs to quickly understand the relevance of the reports to their organization, share high-level information with key stakeholders (*e.g.,* healthcare executives), and link to more granular data from the report. The *data visualization tool* presents data from the evidence review and individual studies in a dynamic, interactive website. The evaluation will capture the anticipated variation in how the LHS might use the products and the unique experience of LHSs.

Key Informant Interviews

There will be two rounds of key informant interviews: (1) In-person preliminary interviews will be conducted early in the implementation period (months 1–3) with LHS leaders and clinicians and will focus on health systems' rationale for selecting each product and early experiences with its roll-out into practice; (2) remote follow-up interviews will be conducted via telephone later in the implementation period (months 10–11) with two sets of stakeholders: (a) LHS leaders and (b) clinicians/staff (hereafter, ''clinical staff'') actively implementing the product. These follow-up interviews will focus on health systems' experiences implementing their selected product(s). All interviews (preliminary and follow-up) will be 60 minutes in duration, recorded with permission of the key informants, and transcribed for analysis. Up to 88 total interviews will be conducted across the two rounds of key informant interviews. Assuming the same LHS leaders participate in the preliminary and follow-up interviews, the key informant interviews will involve 4–5 LHS leaders and clinical staff from each of the eleven LHSs implementing the study. Additional detail about the information collection components is provided below.

1. *In-person preliminary interviews.* The preliminary interviews will include 2–3 LHS leaders/decisionmakers at each of eleven implementation sites for a maximum of 33 interviews in the first round of data collection. The interviews will be conducted during implementation site visits that are occurring early in the project to support the health systems' testing and/or roll out of the products into clinical workflows. Specific topics explored in the preliminary interviews include LHSs' decision to participate in implementation, decision considerations for the selected product, experiences leading the implementation, and early experiences and perceptions of the selected product(s). To limit respondent burden, we will use the implementation site visits as an opportunity for conducting the preliminary interviews, thereby limiting the need to schedule additional time with respondents for a phone interview. If a respondent has limited availability during the site visit, however, we may need to do the preliminary interview remotely or substitute the respondent with another qualified staff member who is available during the implementation site visit.

2. *Remote follow-up interviews.* The follow-up interviews will include the 2–3 LHS leaders/decisionmakers from the preliminary interviews (maximim n = 33), along with 2 additional clinical staff (n = 22) at each of eleven implementation sites for a maximum of 55 follow-up interviews. Specific topics explored in the follow-up interviews include LHS leaders' and clinical staff's experiences with each product as well as their perceptions of the relative advantage, acceptability/compatibility, appropriateness, and feasibility of using the product; implementation fidelity (*i.e.,* if the implementation went as planned), reach, barriers and facilitators, and associated costs; any outcomes of implementing the product (*e.g.,* achieved any intended systemic changes); and likely sustainability of continuing to use the product in practice.

The two sets of in-depth qualitative interviews will allow for a nuanced exploration of both what LHSs value about the products and what it takes to successfully implement such tools into practice. The research on implementation and uptake of products to promote use of evidence in LHS settings is sparse, thus it is important to use a data collection strategy for the evaluation that will yield rich information about the experience of health systems, LHS decisionmakers, and the staff implementing the tools into practice. A quantitative survey would not yield the depth of individual

feedback that is needed to capture the experience of implementing these tools and the unique contexts of the health systems. Thus, interviews are the preferred method of systematically collecting these data.

Implementation Support Meetings/ ''Check-ins''

In addition to key informant interviews, which will be conducted only at the beginning and end of implementation, AHRQ will gather information throughout the implementation period by using monthly implementation support meetings between implementation facilitators and site champions as an ongoing opportunity to ask key questions about implementation progress. Although the primary goal of these check-in meetings is to provide technical assistance with implementation and recommendations for handling emergent challenges in the implementation process, they will also be a source of rich information for the evaluation. Because these meetings occur in real time as the implementation unfolds, they will reduce the potential biases (*e.g.,* selective memory, recency effects, forgetting details about key events and their sequence) associated with only collecting data at the beginning or end of the implementation period.

These check-in meetings will occur by telephone and are intended to monitor implementation progress, provide support to health systems, and discuss next steps. AIR implementation facilitators for each site will schedule telephone conference calls with site champions (N = 11), during which structured notes will be taken. These notes will be supplemented with relevant information from other touchpoints between the facilitators and champions (*e.g.,* ad hoc calls, email exchanges, and voluntary participation in monthly shared learning events) as they naturally occur. Notetakers will capture and document information related to key implementation domains as these topics arise in check-in meetings and other facilitator/champion encounters throughout implementation.

Estimated Annual Respondent Burden

Exhibit 1 shows the total estimated annualized burden of 214.5 hours for the two rounds of key informant interviews and implementation ''check-ins'' combined. For the key informant interviews (totaling 154 hours), burden is included for: (1) LHS leaders/ decisionmakers participating in the preliminary interviews (a maximum of 33 hours), (2) LHS leaders/ decisionmakers participating in the follow-up interviews (a maximum of 33 hours), (3) clinical staff participating in the follow-up interviews (a maximum of 22 hours), (4) interviewee review of materials, consent forms, and logistics in advance of their respective interviews (*i.e.,* 16.5 + 5.5 = 22 hours) and (5) time for designated LHS staff (*e.g.,* the LHS member, a designated site liaison, selected interviewees) to recommend key informants, coordinate implementation support, and help with scheduling of in-person preliminary interviews and remote follow-up interviews (44 hours). Also included in Exhibit 1 is the estimated annualized burden hours for monthly check-ins between implementation facilitators and LHS champions for informal technical assistance support and the quick status probes on implementation progress (a maximum of 60.5 hours). These annualized burden estimates for the key informant interviews and the coaching sessions are further explained below.

Key Informant Interviews: Expanded Detail on Burden Estimates

We estimate 1 hour for each key informant interview for: (1) LHS leaders/decisionmakers participating in the preliminary interviews (a maximum of 33 hours), (2) LHS leaders/ decisionmakers participating in the follow-up interviews (a maximum of 33 hours), (3) clinical staff participating in the follow-up interviews (a maximum of 22 hours), *(Total interview burden = 1.00 hour × maximum of 88 interviews = 88 hours).* We estimate an additional 15 minutes (0.25 hours) will be needed for key informants to prepare for their respective interview(s) *(Total interview preparation burden = 0.25 hours × maximum of 88 interviews = 22 hours; of which 16.5 hours is for leaders/ decisionmakers to prepare for both preliminary and follow-up interviews and 5.5 is for clinical staff to prepare for their participation in the follow-up interviews only).* Finally we estimate time for LHS leaders and staff to identify interview candidates, facilitate recruitment, coordinate implementation support, and assist with interview scheduling (4.00 hours per each of 11 LHSs; *Total staff assistance burden = 4.00 hours × 11 sites = 44 hours*). The ''staff assistance'' burden involves the following:

- In each of the eleven LHS organizations implementing the product(s), the LHS member (and/or site liaison/champion) will identify prospective key informants (*i.e.,* other LHS leaders/decisionmakers and appropriate clinical staff), with additional key informants subsequently identified through snowball sampling.
- Designated LHS staff (*i.e.,* LHS member, designee and/or site liaison/ champion) will provide needed contact information to the AIR evaluation team for outreach and recruitment of the prospective key informant interview candidates, assist with interview scheduling, and coordinate implementation support with the AIR team.

We will develop standardized email messages to reach out to interview candidates and a written overview of the project, the evaluation, and the purpose of the interview. We will coordinate scheduling of both the implementation support check-ins and the 60-minute interviews at the most convenient time, considering the needs of the LHS leadership and staff. For the preliminary interviews, if prospective interviewees are not available during our site visit, we will ask for suggestions of other LHS staff who meet our recruitment criteria or arrange a telephone interview, if needed.

Implementation Support Meetings/ Check-Ins: Expanded Detail on Burden Estimates

We estimate 60.5 hours for the monthly check-ins between implementation facilitators and LHS champions. This includes an average of 30 minutes of implementation support/ check-in meetings per each of the 11 LHSs for each month of implementation (11 months). (*11 months × 0.5 hours = 5.5 hours).* Across LHSs, the estimated burden associated with check-ins is approximately 61 hours across the implementation period (*5.5 hours × 11 LHSs = 60.5 hours*).

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents *	Number of responses per respondent	Hours per response	Total burden hours
In-person preliminary interviews with LHS leaders/decisionmakers	** 33	1	1.00	33

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents *	Number of responses per respondent	Hours per response	Total burden hours
Remote follow-up interviews with LHS leaders/decisionmakers	** 33	1	1.00	33
Remote follow-up interviews with clinical staff	22	1	1.00	22
Review of materials prior to BOTH preliminary and follow-up interviews—LHS leaders/decisionmakers	33	2	0.25	16.5
Review of materials prior to interviews—clinical staff	22	1	0.25	5.5
Interview scheduling and other staff assistance	11	1	4.00	44
Implementation check-ins: Brief monthly implementation progress checks, documented for the evaluation as structured notes on implementation topics naturally occurring in coach/champion encounters	11	11	0.5	60.5
Total				*** 214.5

* The numbers in this column give the maximum number of respondents for each listed activity based on a range in the number of recruits per site (*e.g.,* ''2–3 LHS leaders/decisionmakers''). The balance may shift some between LHS leaders/decisionmakers and clinical staff depending on implementation team and leadership composition at each site. In any case, 88 interviews (33+33+22=88) is a maximum possible in the event each of the 11 sites contributes 3 ''LHS leaders/decsionmakers'' (likely the same people for preliminary and follow-up interviews) and 2 additional clinical staff (for follow-up interviews only) as key informants. It is more likely that the total number of interviews will be around 80.

** These are likely to be the same 33 respondents in both preliminary and follow-up interviews.

*** Total maximum burdened hours estimate based on maximum of 88 interviews.

Costs associated with the estimated annualized burden hours are provided in Exhibit 2.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents *	Total burden hours	Average hourly wage rate **	Total cost burden
In-person preliminary interviews with leaders/decisionmakers	33	33	[a] $94.47	$3,117.51
Remote follow-up interviews with leaders/decisionmakers	33	33	[a] 94.47	3,117.51
Remote follow-up interviews with clinical staff	22	22	[b] 52.13	1,146.86
Review of materials prior to BOTH preliminary and follow-up interviews—LHS leaders/decisionmakers	33	16.5	[a] 94.47	1,558.76
Review of materials prior to interviews—clinical staff	22	5.5	[b] 52.13	286.72
Interview scheduling and other staff assistance [c]	11	44	[c] 20.34	894.96
Implementation check-ins (documented for the evaluation as structured notes on implementation progress)	11	60.5	[a] 94.47	5,715.44
Total				15,837.76

* The numbers in this column give the maximum number of respondents for each listed activity based on a range in the number of recruits per site (*e.g.,* ''2–3 LHS leaders/decisionmakers''). As noted in the comment to Exhibit 1, the balance may shift some between LHS leaders/decisionmakers and clinical staff depending on implementation team and leadership composition at each site. In any case, 88 interviews (33+33+22=88) is a maximum possible.

** National Compensation Survey: Occupational wages in the United States May 2018 ''U.S. Department of Labor, Bureau of Labor Statistics.''

[a] Based on the mean wages for *Internists, General. 29–1063; annual salary of $196,490.*

[b] Based on the mean wages for *Physician Assistants, 29–1071; annual salary of $108,430.*

[c] Based on the mean wages for *Secretaries and Administrative Assistants, 43–6010; annual salary of $42,320.*

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 29, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–02057 Filed 2–3–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; National Survey of Child and Adolescent Well-Being-Third Cohort (NSCAW III) (OMB #0970–0202)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), within the U.S. Department of Health and Human Services (HHS), is proposing to collect data on the child welfare workforce as part of the third cohort of children and families for the National Survey of Child and Adolescent Well-Being (NSCAW III). Previous and current data collections for NSCAW have been approved by OMB under OMB #0970–0202. This request is for additional data collection.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: NSCAW is the only source of nationally representative, longitudinal, firsthand information about the functioning and well-being, service needs, and service utilization of children and families who come to the attention of the child welfare system.

OMB previously approved data collection under OMB Control Number 0970–0202 for NSCAW. The Phase I submission, approved November 2016, included recruitment and sampling process data collection activities. The Phase II submission, approved July 2017, included baseline and 18-month follow-up data collection activities.

The proposed new data collection activities will provide national representative data on the characteristics and activities of the workforce in child welfare agencies participating in NSCAW III. Surveys will collect information on workforce characteristics and competencies, training and professional development opportunities, and organizational and agency factors.

Respondents: The respondents are agency directors, supervisors, and caseworkers. All surveys will be conducted in-person.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Agency Director Survey	65	22	1	.42	9
Supervisor Survey	130	43	1	.50	22
Caseworker Survey	390	130	1	.75	98

Estimated Total Annual Burden Hours: 129.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 628b; Continuing Appropriations Act of 2020.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–02075 Filed 2–3–20; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; Traumatic Brain Injury (TBI) State Partnership Program, OMB approval number 0985–NEW

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to Proposed New information collection requirements related to the Traumatic Brain Injury (TBI) State Partnership Program.

DATES: Submit written comments on the collection of information by March 5, 2020.

ADDRESSES: Submit electronic comments on the collection of information by:

(a) Email to: *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL;

(b) fax to 202.395.5806, Attn: OMB Desk Officer for ACL; or

(c) by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Dana Fink, Administration for Community Living, Washington, DC 20201, (202) 795–7604, or *dana.fink@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act, ACL has submitted the following proposed new information collection to OMB for review and clearance.

The purpose of the federal Traumatic Brain Injury (TBI) State Partnership Program is to create and strengthen a system of services and supports that maximizes the independence, well-being, and health of people with TBIs across the lifespan and all other demographics, their family members, and support networks. The TBI State Partnership Program funds the development and implementation of statewide systems that ensure access to TBI related services, including transitional services, rehabilitation, education and employment, and long-term community support. To best monitor, guide, and support TBI State Partnership Program grantees, ACL needs regular information about the grantees' activities and outcomes. The simplest, least burdensome and most useful way to accomplish this goal is to require grantees to submit information as part of their required semiannual reports via the proposed electronic data submission instrument.

In 1996, the Public Health Service Act was amended ''to provide for the conduct of expanded studies and the establishment of innovative programs with respect to traumatic brain injury, and for other purposes'' (Pub. L. 104–166). This legislation allowed for the implementation of ''grants to States for the purpose of carrying out demonstration projects to improve access to health and other services regarding traumatic brain injury.'' The TBI Reauthorization Act of 2014 (Pub. L. 113–196) allowed the Department of Health and Human Services Secretary to review oversight of the federal TBI programs (TBI State Partnership Grant program and the TBI Protection and Advocacy program) and reconsider which operating division should lead them. With avid support from TBI stakeholders, the Secretary found that the goals of the federal TBI programs closely align with ACL's mission to advance policy and implement programs that support the rights of older Americans and people with disabilities to live in their communities. As a result, on Oct. 1, 2015, the federal TBI programs moved from the Health Resources and Services Administration to ACL. These programs were reauthorized again by the Traumatic Brain Injury Reauthorization Act of 2018 (Pub. L. 115–377).

The proposed performance measures assess progress toward surmounting the four commonly recognized barriers to accessing care for people with TBI:

(1) A lack of information about available services and supports with little or no assistance in accessing them (information and referral services);

(2) A shortage of health professionals who may encounter individuals with TBI but lack relevant training to identify or treat the resulting symptoms (professional training);

(3) The absence of a TBI diagnosis or the assignment of an incorrect diagnosis (screening); and (4) Critical TBI services are spread across numerous agencies resulting in services being difficult for individuals and families to identify and navigate (resource facilitation).

The proposed performance measures are designed to account for the varied approaches used across state grantees and are consistent with the TBI State Partnership Program's purpose and ACL's mission.

Comments in Response to the 60–Day Federal Register Notice

ACL published a 60-day **Federal Register** Notice from 11/13/2017–01/12/2018 (Vol. 82, No. 217 pp. 52305–52306). ACL received a large volume of substantive stakeholder comments, causing revisions to the IC based on those public comments. The period in publication between the 60-day FRN and 30-day FRN, allowed ACL to thoughtfully review and apply the significant number of substantive public comments to the proposed new TBI IC.

In response to the original **Federal Register** notice in 2018, twenty-three (23) individuals provided written comments in response to the **Federal Register** notice containing the original proposed TBI Performance Measures, presented in the form of a reporting instrument for future TBI grantees. Commenters provided feedback on specific reporting instrument questions as well as general suggestions and recommendations for ACL about what grantees should report.

- 268 separate comments were made about one or more specific survey questions.
- 102 separate comments asked for a definition, further guidance, or clarification with regard to terminology used.
- 81 comments made a general recommendation, not specific to a particular question.

ACL also received feedback in 2018 through multiple face-to-face interactions with a majority of the current TBI grantees regarding the proposed measures.

ACL revised the instrument in 2019, in order to remain compliant with PRA 5 CFR 1320.8(d), ACL published an abbreviated public comment period prior to publishing the 30-day FRN and submitting to OMB. ACL solicited comments during the abbreviated public comment period regarding: (1) The accuracy of ACL's revised estimate of the burden for the proposed collection of information performance reporting data elements and (2) whether the proposed revisions to the collection of information enhance the quality, utility, and clarity of the information to be collected.

During the abbreviated public comment period published in the 83 FR 53738 received 14 additional comments. These comments have been addressed largely through the addition of definitions and guidance. The tool has been simplified, some questions have been eliminated or simplified because of concern about the burden, and three open-ended narrative questions added. The most prevalent comments and themes emerging from the public comments are summarized below:

Intended scope of the questions: The suggestion that occurred most across all commenters was for ACL to better define the scope of the questions. Many commenters asked whether ACL expected grantees to limit their reporting to their own grant activities, the staff they train with the grant funds, and the people with TBI they interact with using grant funds or if they would be expected to report about activities going on in the state beyond their grant activities. Commenters raised the issue of intended scope in general and specifically about almost all the questions in the instrument. Several commenters noted that the grants were awarded to different types of state agencies in different states and the reporting instrument did not make clear what ACL meant by the term ''TBI System,'' which could be interpreted to mean different things such as: The Medicaid system, the criminal justice system, the educational system, the vocational rehabilitation system, the broader medical system, or all of these together. Many indicated that grantees would have limited or no access to data about activities or people supported outside the grant activities being conducted by their own partnering organizations.

Response and Changes to Instrument: ACL intends for TBI grantees to report only about their own grant activities, the staff they train using grant funds, the partners they work with, and the people affected by TBI they interact with using grant funds. Additional guidance and definitions will be added to the online version of the instrument to clarify this intent and provide more guidance for grantees operating in different systems. For example:

(1) If a grantee is using grant funds to serve people with TBI within the criminal justice system statewide, the

scope of their reporting will be limited to the statewide criminal justice system.

(2) If a grantee is using their grant funds to assist people interacting with the vocational rehabilitation system in one region of the state, the scope of their reporting will be limited to that region's vocational rehabilitation system.

(3) If grant funds are going to several partnering organizations to work with people with TBI, the scope of that grantee's reporting will include the grant-funded activities of all of those partnering organizations (to the extent possible).

In addition, ACL added some new structured and open-ended questions to the instrument to allow grantees to identify their main areas of focus and describe report full or partial data from across their partners depending on what they can access.

Purpose of performance measures and accounting for state and grantee differences: Several commenters indicated they thought the instrument did not adequately account for the differences in how state systems are structured and the different focus areas of different grantees. Several commenters expressed concern that individual grantees would be negatively evaluated. Specific questions were edited to allow for grantees that are not able to provide data about activities and people outside of the scope of their grants or are otherwise not able to respond to every question.

Response and Changes to Instrument: ACL does not intend to use this reporting instrument to score grantees' individual performance or to compare grantees' performance with one another. ACL's intent is to gather a standard set of information from all grantee states, so that it can be aggregated to provide a better picture of the national impact of the grant program. However, ACL understands that states are working within different systems and focusing on different activities and that states' current capacity to collect and report data varies. ACL anticipates that some grantees will not be able to respond to every question on the instrument and this will not negatively affect those grantees. ACL hopes that every question will be applicable and feasible to answer for at least a subset of grantees, therefore providing a more complete (although not perfect) picture of grant activities than is currently available.

ACL revised the instrument questions to account more for state and grantee differences. For example, new structured and open-ended questions have been added at the beginning of the instrument to allow grantees to identify their main areas of focus and describe where the data they report are coming from so that ACL can interpret it appropriately. Using skip patterns programmed into the online tool, additional questions related to these areas of focus will only appear to grantees who indicate they are working in those areas. ACL will program the instrument into the online system so that some grantees may be directed to answer or not to answer some questions depending on how they answer initial questions about their grant activities and scope. Finally, an additional field has been added to most questions to allow grantees who do not respond or who can only respond partially to provide some descriptive notes about the data they submit.

Estimating prevalence and unmet need: Several commenters noted that reporting the prevalence of TBI and estimating the needs of people living with a TBI and their families would be very challenging for many grantees. Some noted that many states do not have registries or good/recent epidemiology data. Others indicated grantees would have no way of estimating the number of people who might need supports but are not accessing them. Several suggested that grantees might be able to respond to these questions if additional funding and/or technical assistance to carry out further study are provided.

Response and Changes to Instrument: These questions have been eliminated from the proposed instrument.

Defining services and supports: Several commenters expressed concern that the instrument asked questions about ''services and supports'' and wondered what ACL means by that term. Noting that grantees are currently focusing on system change work and are not allowed to use grant funds to provide direct in-home hands-on services and supports, some asked whether the funding announcement for new grants will include a different set of objectives and scope than they have in the past. Finally, several commenters interpreted the term to mean Medicaid home and community-based services and noted that not all states have a TBI Medicaid waiver. Those that do not are not likely to be able to access information about participants in other Medicaid waivers who are living with a TBI, so they would not be able to report about people with TBI receiving Medicaid services and supports.

Response and Changes to Instrument: ACL does not intend for grantees to use grant funds to provide direct in-home hands-on services and supports, such as those provided through Medicaid HCBS programs. The instrument's questions were revised to ask more clearly about the specific types of ways grantees may be assisting or supporting people with TBI and their families, such as with information and referral, screening, resource facilitation, service coordination/case management, outreach and education, building stronger partnerships, and other systems change work.

The remaining questions about utilization of home and community-based services and supports are intended to capture information about the extent to which people with TBI who are eligible for these types of services are accessing them, which may be an indicator of long-term systems change that grantees are working towards. These questions will only be applicable to grantees specifically working to increase access to and utilization of home and community-based services in their states.

Medically oriented questions: Several commenters expressed confusion about the instrument including questions they interpreted to be medically oriented, such as questions about technological tools, diagnosis, and treatment. They noted that grant activities might include screening people to identify a history of TBI and/or to better support people with TBI to live more fully in the community—but not diagnosis or medical treatment. They noted these questions would not be applicable to many grantees nor would grantees have access to data about diagnoses and treatment.

Response and Changes to Instrument: The instrument questions have been revised to ask more clearly about the specific ways grantees may be assisting people with TBI and their families, such as by screening for a lifetime history of TBI and facilitating access to community-based services. Questions about diagnosis and treatment have been removed.

Estimated Program Burden: These revisions based on public comments caused a change in the annual reporting burden estimates; there is a program change decrease of −1,008 annual burden hours from the 60-day FRN. In addition, the 60-day FRN respondent estimate was based on the highest number of possible awards anticipated; there is an adjustment decrease of −18 respondents.

Adjusted number of respondents	Number of responses (per respondent)	Average burden hours (per response)	Total burden hours
27	2	8	432

60-day FRN number of respondents	Number of responses (per respondent)	Average burden hours (per response)	Total burden hours
45	2	16	1,440

Dated: January 22, 2020.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2020–02091 Filed 2–3–20; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–5473]

Promotional Labeling and Advertising Considerations for Prescription Biological Reference and Biosimilar Products—Questions and Answers; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Promotional Labeling and Advertising Considerations for Prescription Biological Reference and Biosimilar Products—Questions and Answers.'' FDA is issuing this guidance to provide manufacturers, packers, distributors, and their representatives (firms) with information to consider when developing FDA-regulated promotional labeling and advertisements (promotional materials) for prescription reference and biosimilar products licensed under the Public Health Service Act (PHS Act). Although the guidance covers promotional issues involving both reference and biosimilar products, some questions and answers are focused on only biosimilar product promotional materials. The guidance does not discuss considerations unique to promotional materials for interchangeable biosimilars.

DATES: Submit either electronic or written comments on the draft guidance by April 6, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–5473 for ''Promotional Labeling and Advertising Considerations for Prescription Biological Reference and Biosimilar Products—Questions and Answers.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the

heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Pepinsky, Office of Prescription Drug Promotion, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3248, Silver Spring, MD 20993–0002, 301–796–1200, email *CDER–OPDP–RPM@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Promotional Labeling and Advertising Considerations for Prescription Biological Reference and Biosimilar Products—Questions and Answers.'' The draft guidance addresses questions firms may have when developing FDA-regulated promotional materials for prescription reference products [1] licensed under section 351(a) of the PHS Act (42 U.S.C. 262(a)) and prescription biosimilar products [2] licensed under section 351(k) of the PHS Act.

The Biologics Price Competition and Innovation Act of 2009 created an abbreviated licensure pathway for biological products shown to be biosimilar to or interchangeable [3] with an FDA-licensed reference product. Specifically, section 351(k) of the PHS Act outlines (among other things) the requirements for demonstrating biosimilarity and defines a biosimilar as a biological product that is highly similar to the reference product notwithstanding minor differences in clinically inactive components and for which there are no clinically meaningful differences between the biological product and the reference product in terms of safety, purity, or potency. As the number of licensed biosimilar products increases, FDA expects an increase in promotion involving reference products and biosimilar products. FDA is providing this guidance to address questions firms may have when developing FDA-regulated promotional materials for their reference products or biosimilar products. The guidance discusses considerations for presenting data and information about reference or biosimilar products in these promotional materials to help ensure they are truthful and non-misleading as required under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and FDA's implementing regulations.[4]

The draft guidance includes the following considerations for developing promotional materials for reference products and biosimilar products:

- Identifying reference products and biosimilar products;
- Presenting information from the studies conducted to support licensure of the reference product in biosimilar product promotional materials when the information is included in the FDA-approved labeling of both the reference and the biosimilar products;
- Presenting data or information from the studies conducted to support a demonstration of biosimilarity in biosimilar product promotional materials when the data or information is not included in the FDA-approved labeling for the biosimilar product;
- Presenting comparisons between a reference product and a biosimilar product; and
- Submitting promotional materials to FDA.

The guidance also provides examples to illustrate some of the considerations outlined in the guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Promotional Labeling and Advertising Considerations for Prescription Biological Reference and Biosimilar Products—Questions and Answers.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved FDA collections of information. 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. 3501–3521). The collections of information in 21 CFR 202.1 have been approved under OMB control number 0910–0686; the collections of information in the guidance for industry ''Medical Product Communications That Are Consistent With the Food and Drug Administration Required Labeling—Questions and Answers'' have been approved under OMB control number 0910–0856; the collections of information in 21 CFR 601.12 related to submissions of labeling changes and of advertisements and promotional labeling have been approved under OMB control number 0910–0338; and the collection of information resulting from the submission of Form FDA 2253 has been approved under OMB control number 0910–0001.

III. Request for Comment on Other Issues for Consideration

FDA is interested in additional issues related to the promotion of biological products licensed under section 351(k) of the PHS Act and their reference products licensed under section 351(a) of the PHS Act. One area of interest focuses on considerations about what firms may want to convey in promotional materials regarding products licensed as interchangeable to a reference product. FDA is specifically seeking input on the following:

(1) What promotional considerations unique to interchangeable biosimilars exist, if any?

(2) What other considerations can help promotional materials convey truthful and non-misleading information about interchangeable

[1] The term *reference product* means the single biological product licensed under section 351(a) of the PHS Act against which a biological product is evaluated in an application submitted under section 351(k) of the PHS Act (42 U.S.C. 262(i)(4)).

[2] In the guidance, the terms *biosimilar* and *biosimilar product* refer to a product that FDA has determined to be biosimilar to the reference product (see section 351(i)(2) and (k)(2) of the PHS Act) (42 U.S.C. 262(i)(2) and (k)(2))).

[3] In the guidance, the terms *interchangeable biosimilar* and *interchangeable product* refer to a biosimilar product that FDA has determined to be interchangeable with the reference product (see section 351(i)(3) and (k)(4) of the PHS Act).

[4] See sections 201(n) and 502(a) and (n) of the FD&C Act (21 U.S.C. 321(n) and 352(a) and (n)); 21 CFR 1.21(a) and 202.1(e)(5)).

products to various audiences (*e.g.,* patients, healthcare providers)?

IV. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: January 29, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–02100 Filed 2–3–20; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–6050]

Food and Drug Administration/Federal Trade Commission Workshop on a Competitive Marketplace for Biosimilars; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we), in collaboration with the Federal Trade Commission (FTC), is announcing a public workshop on March 9, 2020, ''FDA/FTC Workshop on a Competitive Marketplace for Biosimilars.'' The purpose of the public workshop is to discuss FDA and FTC's collaborative efforts to support appropriate adoption of biosimilars, discourage false or misleading communications about biosimilars, and deter anticompetitive behaviors in the biologic product marketplace.

DATES: The public workshop will be held on March 9, 2020, from 9 a.m. to 5 p.m. Persons seeking to speak at the public workshop must register by February 24, 2020. Persons seeking to attend but not speak at the public workshop must register by March 4, 2020. Section III provides attendance and registration information. Electronic or written comments will be accepted until April 9, 2020.

ADDRESSES: The public workshop will be held at FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503A), Silver Spring, MD 20993–0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 9, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end April 9, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–6050 for ''FDA/FTC Workshop on a Competitive Marketplace for Biosimilars.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments and will share it with FTC. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sandra Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New

Hampshire Ave., Bldg. 75, Rm. 6522, Silver Spring, MD 20993–0002, 301–796–1042, email: *sandra.benton@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA, in collaboration with FTC, is announcing the following public workshop entitled ''FDA/FTC Workshop on a Competitive Marketplace for Biosimilars.'' The purpose of the public workshop is to discuss FDA and FTC's collaborative efforts to support appropriate adoption of biosimilars, discourage false or misleading communications about biosimilars, and deter anticompetitive behaviors in the biologic product marketplace.

FDA, an agency within the U.S. Department of Health and Human Services, protects the public health by assuring the safety, effectiveness, and security of human and veterinary drugs, vaccines, and other biological products for human use, and medical devices. The Agency is also responsible for the safety and security of our nation's food supply, cosmetics, dietary supplements, and products that emit electronic radiation, and for regulating tobacco products. Congress has given FDA, as part of the Agency's mission to promote and protect the public health, responsibility for implementing laws intended to strike a balance between encouraging and rewarding innovation in drug and biological product development and facilitating robust and timely market competition for drugs and biological products.

FDA regulates biological products under the Public Health Service Act (PHS Act) (see 42 U.S.C. 262) and the Food, Drug, and Cosmetic Act (21 U.S.C. 355). This includes review and approval of biosimilar and interchangeable products pursuant to an abbreviated licensure pathway added to the PHS Act in the Biologics Price Competition and Innovation Act of 2009 (BPCI Act),[1] which allows an applicant seeking licensure of a proposed biosimilar or interchangeable product to leverage FDA's previous determination of safety and effectiveness for a reference product licensed under section 351(a) of the PHS Act provided the sponsor can demonstrate that the biosimilar or interchangeable product meets the statutory standards for approval. The BPCI Act was enacted with the intent to balance innovation and consumer interests.[2] FDA has and will continue to play a critical role in facilitating increased access to biosimilars, by supporting robust and timely competition through, among other things, the efficient review of applications for biosimilar and interchangeable products, which in turn may help enhance patient access and reduce cost burdens on patients and our healthcare system, in addition to helping to ensure the United States remains a driving force in medical innovation. Part of that role includes helping to ensure communication of truthful, nonmisleading, and balanced information about biological products, through FDA's oversight of prescription drug labeling and advertisements by drug manufacturers, packers and distributors and those acting on their behalf, and through FDA's own communications. This workshop will help to advance these important FDA priorities.

FTC is an independent agency charged by Congress with protecting the interests of consumers by enforcing competition and consumer protection laws. (See Federal Trade Commission Act, 15 U.S.C. 41–58.) It exercises primary responsibility for civil antitrust enforcement in the pharmaceutical industry. (For a summary of FTC's antitrust actions in the pharmaceutical industry, see *https://www.ftc.gov/system/files/attachments/competition-policy-guidance/overview_pharma_june_2019.pdf.*) FTC also protects consumers by enforcing laws and rules that promote truth in advertising and fair business practices. FTC has substantial experience evaluating the generic drug and biosimilar marketplaces.

FTC vigorously promotes competition in the healthcare industry through enforcement, study, and advocacy. Competition in healthcare markets benefits consumers by helping to: (1) Control costs and prices; (2) improve quality of care; (3) promote innovative products, services, and delivery models; and (4) expand access to healthcare goods and services. One of the FTC's long-standing core missions is to ensure advertising is truthful and not misleading. This allows consumers to make well-informed decisions about how best to use their resources and promotes the efficient functioning of market forces by encouraging the dissemination of accurate information. As addressed below, this proposed workshop is consistent with these FTC priorities.

As the marketplace of biological products continues to expand and evolve, FDA and FTC expect an increase in promotional activities involving reference products and biosimilar and interchangeable products. FDA, in collaboration with FTC, supports and encourages competitive markets for biological products. Supporting a competitive marketplace for biological products including biosimilar and interchangeable products, is essential for patient access to medicines and reducing healthcare costs. Biological products play a critical role in the treatment of many serious illnesses, including rare genetic disorders, autoimmune diseases, and cancer. For many of these conditions, there are no treatment alternatives other than biological products.

Both FDA and FTC have serious concerns about false or misleading communications regarding reference products and biosimilar or interchangeable products, and the potential negative effects of such communications on public health and competition. False or misleading comparisons of reference products and biosimilar or interchangeable products may constitute unfair or deceptive practices that undermine confidence in biosimilar and interchangeable products. Both agencies want to ensure that healthcare professionals and patients receive truthful and nonmisleading information about biological products.

This public workshop is a component of FDA's broader effort to facilitate the growth of a competitive market for biological products. In July 2018, FDA issued its *Biosimilars Action Plan* (see *https://www.fda.gov/media/114574/download),* which focuses on four areas of FDA activities: (1) Improving the efficiency of the biosimilar and interchangeable product development and approval process; (2) maximizing scientific and regulatory clarity for the biosimilar product development community; (3) developing effective communications to improve understanding of biosimilars among patients, clinicians, and payors; and (4) supporting market competition by reducing gaming of FDA requirements or other attempts to unfairly delay competition. This joint FDA and FTC workshop furthers the activities set forth in the Biosimilars Action Plan.

II. Topics for Discussion at the Public Workshop

FDA and FTC are holding this public workshop to engage with stakeholders about certain aspects of a competitive market for biological products,

[1] Sections 7001 through 7003 of the Patient Protection and Affordable Care Act (ACA) (Pub. L. 111–148). See also Biosimilars Action Plan, *https://www.fda.gov/media/114574/download.*

[2] *Id., section 7001(b) of the ACA.*

including biosimilars and interchangeable products, and to discuss the important impact these products have on public health. This includes:

- U.S. Biosimilar Markets and FDA Approval Process;
- Enforcement Activities by FDA and FTC;
- The Benefits of Competition; and
- Improving Stakeholder Engagement: Education and Access.

FDA and FTC also encourage comments from stakeholders and the public relating to steps FDA and FTC can take to facilitate a competitive market for biological products.

III. Participating in the Public Workshop

The FDA Conference Center at the White Oak location is a Federal facility with security procedures and limited seating. Attendance will be free and on a first-come, first-served basis. An agenda for the workshop and any other background materials will be made available 5 days before the workshop at *https://www.fda.gov/drugs/news-events-human-drugs/public-workshop-fdaftc-workshop-competitive-marketplace-biosimilars-03092020-03092020.* If you need special accommodations because of a disability, please contact Sandra Benton (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the workshop.

Registration and Requests for Open Public Workshop Speaker Slots. For those interested in participating as an Open Public Workshop speaker, please register at *https://www.eventbrite.com/e/86931096249* as ''In-person Open Public Workshop presenter.'' Open Public Workshop registrations are due by February 24, 2020; however, if time is available, you may sign up as an Open Public Workshop speaker the day of the meeting. Time and space are limited and available on a first-come, first-served basis. Open Public Workshop speakers may be assigned no more than 5 minutes for their presentation and will deliver oral testimony only (no accompanying slide deck).

We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and request time for a joint presentation. All requests to make oral presentations must be received by February 24, 2020. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

In-Person Attendance: For those who would like to attend in person, but who are not participating in the Open Public Workshop, please register at *https://www.eventbrite.com/e/86931096249* as ''In-person attendee—no participation.'' You may choose not to register; however, seating is limited, and space will be available on a first-come, first-served basis.

Persons attending FDA's workshops are advised that FDA is not responsible for providing access to electrical outlets.

Streaming Webcast of the Public Workshop: For those unable to attend in person, FDA will provide a live webcast of the workshop. To join the workshop via the webcast, please go to *https://www.fda.gov/drugs/news-events-human-drugs/public-workshop-fdaftc-workshop-competitive-marketplace-biosimilars-03092020-03092020* for the webcast address. Please register at *https://www.eventbrite.com/e/86931096249* as ''online (webcast only).''

Media: Please register at *https://www.eventbrite.com/e/86931096249* as ''Media'' by March 4, 2020.

Transcripts: Please be advised that when a transcript of the public workshop is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**).

Dated: January 29, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–02101 Filed 2–3–20; 8:45 am]

BILLING CODE 4164–01–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 meetings of the Board of Scientific Counselors for Basic Sciences National Cancer Institute.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Basic Sciences; National Cancer Institute.

Date: March 9, 2020.

Time: 9:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, 35 Convent Drive, Building 35A, Bethesda, MD 20892.

Contact Person: Mehrdad M. Tondravi, Ph.D., Chief Institute Review Office, NCI, National Institutes of Health, 9609 Medical Center Drive, ROOM 2W–464 MSC 9711, Rockville, MD 20852, 240–276–5664, *tondravim@mail.nih.gov.*

Name of Committee: Board of Scientific Counselors for Clinical Sciences and Epidemiology; National Cancer Institute.

Date: March 10, 2020.

Time: 9:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, 35 Convent Drive, Building 35A, Bethesda, MD 20892.

Contact Person: Brian E. Wojcik, Ph.D., Institute Review Office, Office of The Director, National Cancer Institute, 6116 Executive Blvd., Room 2201, Bethesda, MD 20892, 301–496–7628, *wojcikb@mail.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 29, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02068 Filed 2–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

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 materials,

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 Library of Medicine Special Emphasis Panel; Digital Curation.

Date: May 21, 2020.

Time: 11:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine/Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yanli Wang, Ph.D., Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–827–7092, *yawang@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 30, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02088 Filed 2–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Early Phase Clinical Trials of Natural Products (NP).

Date: April 3, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Martina Schmidt, Ph.D., Chief, Office of Scientific Review, National Center for Complementary & Integrative Health, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–594–3456, *schmidma@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: January 29, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02061 Filed 2–3–20; 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: Genes, Genomes, and Genetics Integrated Review Group; Genetic Variation and Evolution Study Section.

Date: February 27–28, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guoqin Yu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1276, *guoqin.yu@nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Immunopathology and Immunotherapy Study Section.

Date: February 27–28, 2020.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Denise R. Shaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, (301) 435–0198, *shawdeni@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Language and Communication Study Section.

Date: February 27–28, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Spero, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7770 Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov*.

Name of Committee: Biology of Development and Aging Integrated Review Group; International and Cooperative Projects—1 Study Section.

Date: February 28, 2020.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR19–362: Global Infectious Disease Planning Grants.

Date: February 28, 2020.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tamara Lyn McNealy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, Bethesda, MD 20892, (301) 827–2372, *tamara.mcnealy@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR NS 18–08: Brain Initiative Biology and Biophysics of Neural Stimulation.

Date: February 28, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, (301) 435–3009, *elliotro@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 29, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02060 Filed 2–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

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 materials, 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 Library of Medicine Special Emphasis Panel; COI/Career Award.

Date: July 9, 2020.

Time: 11:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine/Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yanli Wang, Ph.D., Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–827–7092, *@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 30, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02089 Filed 2–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel RFA–HD–20–008: Epidemiologic Approaches for Understanding Health Outcomes of HIV-Exposed Populations.

Date: February 28, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shalanda A Bynum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, Bethesda, MD 20892, 301–755–4355, *bynumsa@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Medical Imaging Investigations.

Date: March 4, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Guo Feng Xu, Ph.D. Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870 *xuguofen@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Bone and Cartilage Biology.

Date: March 4, 2020.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, Bethesda, MD 20892, (301) 435–1222, *nurminskayam@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: Peripheral Pathology in the Lewy Body Dementias.

Date: March 4, 2020.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, *cinquej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Brain Disorders and Related Neurosciences.

Date: March 5–6, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Vilen A. Movsesyan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group Innate Immunity and Inflammation Study Section.

Date: March 5–6, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: AC Hotel National Harbor Washington DC Area, 156 Waterfront Street, National Harbor, MD 20745.

Contact Person: Tina McIntyre, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuroscience AREA Grant Applications.

Date: March 5–6, 2020.

Time: 8:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Capitol, 550 C Street SW, Washington, DC 20024.

Contact Person: Richard D. Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, 301–694–7084, *crosland@nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Diseases and Pathophysiology of the Visual System Study Section.

Date: March 5–6, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Nataliya Gordiyenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301.435.1265, *gordiyenkon@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR 17–190: Maximizing Investigators' Research Award for Early Stage Investigators (R35).

Date: March 5–6, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar, 2121 P Street NW, Washington, DC 20037.
Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group Cellular and Molecular Immunology—A Study Section.
Date: March 5–6, 2020.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Handlery Union Square Hotel, 351 Geary Street, San Francisco, CA 94102.
Contact Person: David B. Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@mail.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Cellular and Molecular Biology of Neurodegeneration Study Section.
Date: March 5–6, 2020.
Time: 8:30 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7850, Bethesda, MD 20892 301–435–1203, *laurent.taupenot@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member conflict: Cardiovascular Sciences.
Date: March 5, 2020.
Time: 9:00 a.m. to 2:00 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: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Program Project: Structure Guided Discovery of Opioid Receptor Ligands.
Date: March 5, 2020.
Time: 11:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Interventions and Mechanisms for Addiction.
Date: March 5, 2020.
Time: 12:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: 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*.

(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 29, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02070 Filed 2–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the 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 materials, 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: Biomedical Informatics, Library and Data Sciences Review Committee.
Date: June 18–19, 2020.
Time: June 18, 2020, 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Hyatt, 1 Metro Center, Bethesda, MD 20814.
Time: June 19, 2020, 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Contact Person: Zoe E. Huang, MD, Chief Scientific Review Officer, Scientific Review Office, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 29, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02066 Filed 2–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIMH Secondary Data Analysis of Preventive Interventions.
Date: March 3, 2020.
Time: 12:30 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Computationally-Defined Behaviors in Psychiatry (R21).
Date: March 25, 2020.
Time: 12:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: January 29, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02064 Filed 2–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: June 11–12, 2020.

Open: June 11, 2020, 8:30 a.m. to 10:45 a.m.

Agenda: Administrative.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: June 11, 2020, 10:45 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: June 12, 2020, 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Dianne Babski, Acting Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W04A, Bethesda, MD 20894, 301–827–4729, *babskid@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has stringent procedures for entrance into NIH federal property. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: January 29, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02069 Filed 2–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

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 materials, 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 Library of Medicine Special Emphasis Panel; Scholarly Works (G13).

Date: June 4, 2020.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine/Center for Scientific Review, 6701 Rockledge Drive, Conference Room, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Zoe E. Huang, MD, Chief Scientific Review Officer, Scientific Review Office, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 29, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02065 Filed 2–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Library of Medicine Board of Scientific Counselors.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Library of Medicine Board of Scientific Counselors.

Date: April 23, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: Review of research and development programs and preparation of reports.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Karen Steely, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7S707, Bethesda, MD 20892, 301–827–4385, *ksteely@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has stringent procedures for entrance into NIH

federal property. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 29, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02063 Filed 2–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

Date: May 12, 2020.

Closed: 7:45 a.m. to 8:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, 301–594–4929, *irelanc@mail.nih.gov*.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: May 12–13, 2020.

Open: May 12, 2020, 9:00 a.m. to 4:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: May 12, 2020, 4:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: May 13, 2020, 9:00 a.m. to 12:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, 301–594–4929, *irelanc@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has stringent procedures for entrance into NIH federal property. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available. This meeting will be broadcast to the public, and available for at viewing at *http://videocast.nih.gov* on May 12–13, 2020.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: January 29, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02062 Filed 2–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genetics of Health and Disease.

Date: February 25, 2020.

Time: 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, (301) 357–9112, *smirnove@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Risks, Prevention and Health Behavior.

Date: March 2–3, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Martha M Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 435–3575, *faradaym@csr.nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Nursing and Related Clinical Sciences Study Section.

Date: March 2–3, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW, Washington, DC 20037.

Contact Person: Preethy Nayar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, Bethesda, MD 20892, (301) 402–4469, *nayarp2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Musculoskeletal, Rehabilitation and Skin Sciences.

Date: March 2–3, 2020.

Time: 8:00 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton BWI (Baltimore), 1100 Old Elkridge Landing Road, Baltimore, MD 21090.

Contact Person: Chi-Wing Chow, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, Bethesda, MD 20892, (301) 402 3912, *chowc2@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cancer Immunology and Immunotherapy.

Date: March 2–3, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Sarita Kandula Sastry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20782, (301) 402–4788, *sarita.sastry@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Learning, Memory, Language, Communication and Related Neuroscience.

Date: March 2–3, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Union Square, San Francisco, 480 Sutter Street, San Francisco, CA 94108.

Contact Person: Susan Gillmor, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 762–3076, *susan.gillmor@nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Services Organization and Delivery Study Section.

Date: March 2–3, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806–0009, *brontetinkewjm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Psychosocial Risks and Disease Prevention.

Date: March 2, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, (301) 594–3292, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuroengineering and Neurorepair.

Date: March 2, 2020.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sussan Paydar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 5222, Bethesda, MD 20892, (301) 827–4994, *spaydar@niaid.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Training in Comparative and Veterinary Medicine.

Date: March 2, 2020

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046B, MSC 7892, Bethesda, MD 20892, (301) 408–9655, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; R15 AREA and REAP: Musculoskeletal, Oral, Skin, Rheumatology and Rehabilitation Sciences.

Date: March 3, 2020.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton BWI (Baltimore), 1100 Old Elkridge Landing Road, Baltimore, MD 21090.

Contact Person: Chi-Wing Chow, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, Bethesda, MD 20892, (301) 402–3912, *chowc2@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cellular Signaling, Development, Intercellular Interactions; Membrane Biology and Signal Transduction.

Date: March 3, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jessica Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–3717, *jessica.smith6@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 29, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02067 Filed 2–3–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee management; notice of open Federal Advisory Committee Meeting.

SUMMARY: The Board of Visitors for the National Fire Academy (Board) will meet via teleconference on Thursday, March 5, 2020. The meeting will be open to the public.

DATES: The meeting will take place on Thursday, March 5, 2020, 1:00 to 3:00 p.m. EDT. Please note that the meeting may close early if the Board has completed its business.

ADDRESSES: Members of the public who wish to participate in the teleconference should contact Deborah Gartrell-Kemp as listed in the **FOR FURTHER INFORMATION CONTACT** section by close of business February 28, 2020, to obtain the call-in number and access code for the March 5th teleconference meeting. For more information on services for individuals with disabilities or to request special assistance, contact Deborah Gartrell-Kemp as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Board as listed in the **SUPPLEMENTARY INFORMATION** section. Participants seeking to have their comments considered during the meeting should submit them in advance or during the public comment segment. Comments submitted up to 30 days after the meeting will be included in the public record and may be considered at the next meeting. Comments submitted in advance must be identified by Docket ID FEMA–2008–0010 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery:* Deborah Gartrell-Kemp, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, post-marked no later than February 15, 2020 for consideration at the March 5, 2020 meeting.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and

the Docket ID for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to *http://www.regulations.gov,* click on ''Advanced Search,'' then enter ''FEMA–2008–0010'' in the ''By Docket ID'' box, then select ''FEMA'' under ''By Agency,'' and then click ''Search.''

FOR FURTHER INFORMATION CONTACT: *Alternate Designated Federal Officer:* Kirby E. Kiefer, telephone (301) 447–1117, email *Kirby.Kiefer@fema.dhs.gov.*

Logistical Information: Deborah Gartrell-Kemp, telephone (301) 447–7230, email *Deborah.GartrellKemp@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Board will meet via teleconference on Thursday, March 5, 2020. The meeting will be open to the public. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

Purpose of the Board

The purpose of the Board is to review annually the programs of the National Fire Academy (Academy) and advise the Administrator of the Federal Emergency Management Agency (FEMA), through the United States Fire Administrator, on the operation of the Academy and any improvements therein that the Board deems appropriate. In carrying out its responsibilities, the Board examines Academy programs to determine whether these programs further the basic missions that are approved by the Administrator of FEMA, examines the physical plant of the Academy to determine the adequacy of the Academy's facilities, and examines the funding levels for Academy programs. The Board submits a written annual report through the United States Fire Administrator to the Administrator of FEMA. The report provides detailed comments and recommendations regarding the operation of the Academy.

Agenda

On Thursday, March 5, 2020, there will be four sessions, with deliberations and voting at the end of each session as necessary:

1. The Board will discuss USFA Data, Research, Prevention and Response.

2. The Board will discuss deferred maintenance and capital improvements on the National Emergency Training Center campus and Fiscal Year 2020 Budget Request/Budget Planning.

3. The Board will deliberate and vote on recommendations on Academy program activities to include developments, deliveries, staffing, and admissions.

4. There will also be an update on the Board of Visitors Subcommittee Groups for the Professional Development Initiative Update and the National Fire Incident Report System.

There will be a 10-minute comment period after each agenda item and each speaker will be given no more than 2 minutes to speak. Please note that the public comment period may end before the time indicated following the last call for comments. Contact Deborah Gartrell-Kemp to register as a speaker. Meeting materials will be posted at *https://www.usfa.fema.gov/training/nfa/about/bov.html* by March 2, 2020.

Tonya L. Hoover,

Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2020–02132 Filed 2–3–20; 8:45 am]

BILLING CODE 9111–74–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2019–N175; FXES11130900000–201–FF09E32000; OMB Control Number 1018–0095]

Agency Information Collection Activities; Endangered and Threatened Wildlife, Experimental Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 6, 2020.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO/1N), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0095 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed information collection request (ICR) that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Section 10(j) of the Endangered Species Act of 1973, as amended (ESA, 16 U.S.C. 1531 *et seq.*), authorizes the Secretary of the Interior to establish experimental populations of endangered or threatened species. Because the ESA protects individuals of experimental populations, the information we collect is important for monitoring the success of reintroduction and recovery efforts. This is a nonform collection (meaning there is no designated form associated with this collection). Regulations at 50 CFR 17.84 contain information collection requirements for experimental populations of vertebrate endangered and threatened species. These

regulations identify and describe the three categories of information we collect, which includes:

(1) *General take or removal.* ''Take'' is defined by the ESA as ''[to] harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' In this information collection, take most commonly is considered to be in the form of human-related mortality, including:

a. Unintentional taking incidental to otherwise lawful activities (*e.g.,* highway mortalities);

b. Animal husbandry actions authorized to manage the population (*e.g.,* translocation or providing aid to sick, injured, or orphaned individuals);

c. Take in defense of human life;

d. Take related to defense of property (if authorized); or

e. Take in the form of authorized harassment.

(2) *Depredation-related take.* Involves take for management purposes of documented livestock depredation, and may include authorized harassment or authorized lethal take of experimental population animals in the act of attacking livestock. See 50 CFR 17.84 for specific provisions of harassment for each species within this section.

The information that we collect includes:

- Name, address, and phone number of reporting party,
- Species involved,
- Type of incident,
- Quantity of take,
- Location and time of the reported incident, and
- Description of the circumstances related to the incident.

(3) *Specimen collection, recovery, or reporting of dead individuals.* This information documents incidental or authorized scientific collection. Most of the information collected addresses the reporting of sightings of experimental population animals or the inadvertent discovery of an injured or dead individual.

Service recovery specialists use this information to determine the success of reintroductions in relation to established recovery plan goals for the experimental populations of vertebrate endangered and threatened species involved. In addition, this information helps us to assess the effectiveness of control activities in order to develop better means to reduce problems with livestock for those species where depredation is a problem.

Title of Collection: Endangered and Threatened Wildlife, Experimental Populations, 50 CFR 17.84.

OMB Control Number: 1018–0095.

Form Numbers: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals and households, private sector, and State/local/Tribal governments.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Annual number of respondents	Total annual responses	Completion time per response	Total annual burden hours*
Notification—General Take or Removal				
Individuals	12	12	.5	6
Private Sector	7	7	.5	4
Government	29	29	.5	15
Notification—Depredation-Related Take				
Individuals	25	25	.5	13
Private Sector	2	2	.5	1
Government	9	9	.5	5
Notification—Specimen Collection				
Individuals	3	3	.5	2
Private Sector	2	2	.5	1
Government	16	16	.5	8
Totals	105	105	.....	55

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: January 20, 2020.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020–02084 Filed 2–3–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[120 A2100DD/AAKC001030/ A0A501010.999900]

Shoshone-Bannock Tribes of the Fort Hall Reservation Alcohol Beverage Control Ordinance; Repeal and Replace

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Shoshone-Bannock Tribes of the Fort Hall Reservation Alcohol Beverage Control Ordinance. The Ordinance certifies the Shoshone-Bannock Tribes of the Fort Hall Reservation's liquor licensing laws to regulate and control the possession, sale and consumption of liquor within the jurisdiction of the Shoshone-Bannock Tribes of the Fort Hall Reservation. The Ordinance repeals and replaces the previous alcohol beverage control ordinance.

DATES: The Ordinance takes effect March 5, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Norton, Tribal Government Specialist, Northwest Regional Office,

Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232, telephone: (503) 231–6702; fax: (503) 231–2201.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary–Indian Affairs. I certify that the Shoshone-Bannock Tribes of the Fort Hall Reservation adopted Ordinance LWOR–2019–S4 (Alcohol Beverage Control Ordinance) on October 8, 2019. The statute repeals and replaces the previous alcohol beverage control ordinance published in the **Federal Register** on April 10, 1984 (49 FR 14198).

Dated: December 23, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[Ordinance LWOR–2019–S4]

Whereas, the Shoshone-Bannock Tribes (Tribes) through the Fort Hall Business Council (Council) is authorized to enact laws and ordinances for the benefit of the Tribes, and

Whereas, the Council wishes to update and amend the Shoshone-Bannock Tribes Alcohol Beverage Control Ordinance; now

Therefore, be it enacted by the business council of the Shoshone-Bannock Tribes; the attached Shoshone-Bannock Tribes' Alcohol Beverage Control Ordinance is hereby adopted and made effective as set forth in the Ordinance.

Be it further enacted, Ordinances Nos. LWOR–84–S1 dated January 6, 1984, LWOR–2013–S3 dated February 7, 2013, LWOR–2013–S6 dated May 7, 2013, and LWOR–2019–S1 are hereby rescinded in their entirety upon this Ordinance becoming effective.

Be it further enacted, this Ordinance is to be certified and published in **Federal Register** by the Bureau of Indian Affairs as provided in 18 U.S.C. 1161.

Be it further enacted, Council requests the Bureau of Indian Affairs take any and all action required by law to make this Ordinance effective as soon as possible.

Authority for the foregoing Ordinance includes but is not limited the Indian Reorganization Act of June 18, 1934 (48 Stat., 984) as amended and under Article VI, Section I of the Shoshone-Bannock Tribes Constitution and Bylaws of the Fort Hall Reservation.

Dated this 08th day of October, 2019

Ladd R. Edmo,

Chairman, Fort Hall Business Council

Certification

I hereby certify, that the foregoing resolution was passed while a quorum of the Business Council was present by a vote of 3 in favor, 1 opposed (KC), 2 absent (NS, LJT), and 1 not voting (LRE) on the date this bears.

Donna K. Thompson,

Secretary, Fort Hall Business Council

Shoshone–Bannock Tribes Alcohol Beverage Control Ordinance

Section 1. General Provisions and Purposes

A. Title. This Ordinance shall be known as the ''Shoshone-Bannock Tribal Alcohol Beverage Control Ordinance.''

B. Effective Date. This Ordinance shall be effective thirty (30) days after publication in the **Federal Register** and certification by the Secretary of the Interior.

C. Declaration of Public Policy and Purpose. The introduction, distribution, sale, possession, and consumption of alcohol beverages within ''Indian Country'' have historically been a matter of special concern to Indian tribes and the United States of America. The Shoshone-Bannock have deep-rooted feelings against liberal sale and consumption of alcohol beverages within the Fort Hall Reservation. The Tribes' concern is due to the detrimental impact which alcohol misuse and abuse has caused to vital Tribal interests. Despite these strong feelings, the Fort Hall Business Council of the Shoshone-Bannock Tribes realizes that a total ban on alcohol beverages within the Reservation is ineffective and unrealistic in view of changing times and circumstances. Nevertheless, the Business Council recognizes a need for strict regulation and control over all transactions involving alcohol beverages within the Reservation because of many potential problems associated with unregulated and inadequately regulated distribution, sale, possession, and consumption of alcohol beverages. The Business Council believes that Tribal control is necessary to protect the health, safety, and welfare of Tribal members and other persons residing on the Reservation, and to address specific Tribal concerns relating to alcohol use on the Reservation. The Business Council also believes that enactment of a Tribal ordinance governing alcohol beverages on the Reservation will help provide revenue for the continued operation of Tribal government and the delivery of vital Tribal social services. Therefore, this Ordinance is enacted for the protection of the health, safety, welfare, morals, and peace of the people residing on the Fort Hall Reservation, and all its provisions shall be liberally construed for the accomplishment of that purpose. It is hereby declared to be the public policy that all trafficking of alcohol beverages is prohibited, except as expressly authorized in this Ordinance.

D. Jurisdictional Statement. To the extent required by federal law, all persons, businesses, lands, transactions, and activities occurring within the exterior boundaries of the Fort Hall Reservation shall be subject to the provisions of this Ordinance and shall, as required by 18 U.S.C. 1161 comply with the alcohol, beer, and wine licensing laws of the State of Idaho.

E. Rescission of Prior Inconsistent Enactments. All prior enactments of the Fort Hall Business Council of the Shoshone-Bannock Tribes that are inconsistent with or contrary to provisions of this Ordinance are hereby rescinded, and in case of any conflict, then the provisions of this Ordinance will control.

Section 2. Definitions

A. Terms Defined. As used in this Ordinance the following words shall have the following meanings unless the context clearly indicates otherwise:

(1) ''Alcohol'' means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances, including all dilutions and mixtures of such substances.

(2) ''Alcohol Beverage'' as used in this ordinance, includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of 1 percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

(3) ''Application'' shall mean a formal written request for the issuance of a license supported by a verified statement of facts.

(4) ''Beer'' means any beverage obtained by the alcohol fermentation of an infusion or decoction of barley, malt, hops, and/or other ingredients in drinking water, containing not more than nine percent (9.0%) of alcohol by volume.

(5) ''Commission'' means the ''Shoshone-Bannock Tribal Alcohol Beverage Control Commission'' as constituted in this Ordinance.

(6) ''Council'' or ''Business Council'' means the Fort Hall Business Council of the Shoshone-Bannock Tribes.

(7) ''Election Days'' means the general, primary, and special elections as defined in the Tribal Election Code.

(8) ''Indian'' means a person who is either enrolled in a federally recognized Indian tribe, or who possesses one-fourth (1/4) or more degree of Indian blood in a federally recognized tribe(s) and is identified in the community as being Indian.

(9) ''Person'' means natural person and any entity including, but not limited to, a partnership, association, enterprise, company or corporation, or other association of natural persons.

(10) ''Premises'' shall mean the area from which the licensee or permittee is authorized to sell, dispense, or serve alcohol beverages under provisions of the license or special permit.

(11) ''Reservation'' means within the exterior boundaries of the Fort Hall Reservation.

(12) ''Sale'' or ''Sell'' including exchange, barter, and traffic; and also include the selling, supplying or distributing, by any means whatsoever of spirits or alcohol beverage.

(13) ''Special Event(s)'' as determined by the Shoshone-Bannock Tribal Alcohol Beverage Control Commission.

(14) ''Spirits'' means any beverage that contains alcohol obtained by distillation mixed with drinking water and other substances in solution including, among other things, brandy, rum, whiskey, and gin.

(15) ''Substantial Evidence'' shall mean evidence that a reasonable mind might accept as adequate to support a conclusion.

(16) ''Tribal Court'' means the Shoshone-Bannock Tribal Court.

(17) ''Tribes'' means the Shoshone-Bannock Tribes.

(18) ''Wine'' means any beverage which contains alcohol obtained by fermentation of the natural sugar content of fruits or other agricultural products containing sugar, and which contains not more than fourteen percent (14%) of alcohol by volume.

B. Other Words. All other words and phrases used in this Ordinance, the definition of which is not herein given, shall be given the ordinary and commonly understood and accepted meaning.

Section 3. Tribal Alcohol Beverage Control Commission

A. Creation of Alcohol Beverage Control Commission. There is hereby established a Shoshone-Bannock Tribal Alcohol Beverage Control Commission. The Commission shall be composed of three-members who shall perform the duties specified in this Ordinance.

B. Appointment. Members of the Commission shall be appointed by the Business Council.

C. Term of Office. Members of the Commission shall initially hold office for periods of one, two and three years, respectively. After the original terms of office have expired, each member shall hold office for three years. The Council may reappoint any member to an additional term or terms of office.

D. Removal from Office. A commissioner may only be removed prior to the normal expiration of his or her term by the Business Council for good cause shown after notice and hearing by the Council. The Council's decision to remove a member of the Commission shall be final.

E. Vacancy and Interim appointment. If a member of the Commission shall die, resign, be incapacitated, permanently leave the Reservation, or be removed from office, a vacancy on the Commission shall be automatically created and the unexpired term shall be filled via appointment by the Business Council.

F. Chair. A Chair of the Commission shall be elected by the Commission on an annual basis. The Chair shall preside at all formal and informal meetings of the Commission. The Chair shall exercise only such powers as are delegated to him/her by the Commission, and such powers as are expressly set forth in this Ordinance.

G. Powers and Duties. In addition to all specific powers and duties conferred upon it by other sections of this Ordinance, the Commission, and its duly authorized representatives, shall have the following powers and duties:

(1) To administer this Ordinance by exercising general control, management, and supervision of all alcohol beverage sales, places of sale, and sales outlets.

(2) To establish administrative procedures as are necessary to govern the operation of the Tribal Alcohol Beverage Control Commission.

(3) To make, promulgate and publish such rules and regulations as the Commission may deem necessary for carrying out the provisions of this Ordinance and for the orderly and efficient administration hereof.

(4) To permit, license, inspect, and regulate the sale, transportation, delivery, storage, importation, and manufacture of alcohol beverages within the exterior boundaries of the Fort Hall Reservation.

(5) To prescribe specific conditions and qualifications, consistent with the general requirements set forth in this Ordinance, necessary for obtaining licenses and permits, and the conditions of use of privileges under them, provide for the inspection of the records, and monitor the conduct of licensees and permittees.

(6) To regulate the issuance, suspension, and revocation of licenses and permits to sell, manufacture, handle, or traffic of alcohol beverages in accordance with specific provisions of this Ordinance.

(7) To prescribe the kind, quality, and character of alcohol beverages that may be sold under all licenses and permits, including the quantity that may be sold at any one time or within a specified period of time.

(8) To collect licenses fees, taxes, fines, and penalties that may be assessed by authority of the Commission or the Tribes relating to alcohol beverage sales.

(9) To make at any time an examination of the premises of any licensee or special permit holder to determine whether the provisions of this Ordinance, and any rules and regulations promulgated hereunder, are being complied with. This right of inspection shall include all financial records relating to purchase or sale of alcohol beverages.

(10) To enforce rules and regulations adopted in furtherance of the purposes of this Ordinance and the performance of its administrative functions.

(11) To sue in an appropriate court to enforce the provisions of this Ordinance with the consent of the Business Council. The Commission shall not, without the express written consent of the Business Council, waive the Commission's or the Tribes' immunity from suit, and any such unconsented waiver will be null and void and otherwise without any legal effect.

(12) To exercise all other powers which are necessary and reasonable in order to accomplish the purposes of this Ordinance.

H. Meetings. The Commission shall meet on the first Tuesday of January, April, July and October of each year and at such other times as the Chair and/or Commission may prescribe. The Commission will have quorum and able to conduct its business if at least two members are present.

I. Method of Decision Making. The Commission shall attempt whenever possible to administer this Ordinance and execute its powers hereunder by consensus approach. If a consensus cannot be achieved, the affirmative vote of at least two members of the

Commission shall control the decision or action of the Commission. The Chair shall be entitled to vote on any decision or action.

J. Compensation of Commission Members. The Business Council shall, by resolution, set the compensation for members of the Commission.

K. Prohibited Conduct of Commission Members. Members of the Commission may not accept any gratuity related to their authorizing alcohol beverage sales, and may not have a personal business interest in such sales on the Reservation.

L. Liability of Commission Members. Commission members, and employees or agents of the Commission, shall not be liable for damages sustained by any person because of any act or inaction done in the performance of their respective duties under this Ordinance.

M. Reporting Requirement. The Commission shall submit an annual written report and accounting to the Business Council regarding sales of alcohol beverages on the Reservation and the activities of the Commission and its financial status. The annual report shall be submitted to the Business Council by April 1 of each year and shall address activities of concern in the preceding calendar year. The Business Council may require the Commission to report more frequently if it deems necessary.

Section 4. Retail Alcohol Sales Licenses and Special Events Permits

A. License Requirement. All sales and dispensing of alcohol beverages within the

Reservation must be made pursuant to express authorization of the Tribes given in the form of a retail alcohol sales license or special events permit issued by the Commission.

B. Commission Empowered to Issue Licenses and Permits. The Commission is authorized to issue licenses to qualified applicants, as herein provided, whereby the licensee shall be authorized to sell and dispense alcohol beverages on a retail basis for on-premises consumption only, in accordance with rules and regulations promulgated by the Commission and the provisions of this Ordinance.

C. Nature of License. A license shall be considered a personal privilege extended by the Tribal government, subject to denial, revocation, or suspension for abuse. It shall not constitute property; nor shall it be subject to attachment or execution; nor shall it be alienable or assignable. Every license shall be issued in the name of the applicant and no person holding such license shall allow any other person to use the same. A ''Beer License'' will allow the licensee to sell beer for on-premises consumption. A ''Wine License'' will allow a licensee to sell wine for on-premises consumption. A ''Spirits License'' will allow a licensee to sell spirits for on-premises consumption.

D. License Fees for Retail Sales and Fees for Special Event Permits.

(1) Each person or business licensed for regular retail sales under the provisions of this section shall pay an annual license fee of $1,500 to the Commission, plus the license amount specified below for each type of license:

a. Beer License: $ 1,500 per annum

b. Wine License: $1,500 per annum

c. Spirits License: $2,000 per annum

d. The fees set forth in a, b, and c of subsection D.1) above will be exclusive of each other and will be paid separately.

(2) Special Event Permit $200 per event (includes beer, wine, and spirits for each event, if such alcohol is permitted by the Commission).

E. License Fees in Addition to Other Tribal License Fees, Assessments, or Taxes.

License fees provided for in this and other sections of this Ordinance are exclusive and in addition to any other fee, assessment, or tax charged by the Tribes.

F. Restrictions on Retail Alcohol Licenses and Special Event Permittees:

1. Licenses shall only be issued to the operators of the Shoshone-Bannock Hotel and Events Center and the Shoshone-Bannock Gaming Operations for use in conjunction with the Shoshone-Bannock Hotel restaurants, bars, Event Center, Spa business and Gaming Operations for its legitimate business purposes.

2. Special Event Permits may only be issued by the Alcohol Beverage Commission for private individuals and groups.

G. Bond Requirement. The Commission is empowered to require retail alcohol license applicants (but not special event permit applicants) to post a reasonable cash bond or other appropriate security such as liability insurance to assure compliance with Tribal laws, rules and regulations. Such bond or security shall not be less than $1,000,000. Such bonds or other security shall be required at the discretion of the Commission.

H. Expiration of License. Every regular license issued by the Commission shall expire on December 31st of the year in which issued, unless an earlier expiration date is established by the Commission.

I. Unauthorized Sale Prohibited. It shall be unlawful for any licensee or permittee under this section to sell, keep for sale, dispense, give away, or otherwise dispose of any alcohol beverage other than for on-premises consumption. Each license or permit shall be at a specific location and may not be transferred or used for any location other than that identified on the face of the license or permit.

Section 5. Application Procedures for Retail Alcohol Licenses and Special Events Permits

A. Applicant Eligibility. No license or special permit shall be issued to:

(1) An individual who is not a citizen of the United States; or to a partnership unless all members thereof are citizens of the United States; or to a corporation or association unless the same is organized under the laws of the Tribes, laws of any state, or the United States and unless the principal officers and the members of the governing board are citizens of the United States.

(2) Any person, or any one (1) of the members, officers, governing board of business, corporation, or association, who has, within five (5) years prior to the date of making application, been convicted of any violation of the laws of the United States, or any Indian Tribal government or any state of the United States, or the resolution or ordinances of any county of city of a state, relating to the importation, transportation, manufacture or sale of alcohol beverages; or who was convicted or, paid any fine, been placed on probation, received a deferred sentence, received a withheld judgment or completed any sentence of confinement for any felony within ten (10) years prior to the date of making application for any license or permit.

(3) A person who has been convicted of any felony at any time.

(4) A person whose license or permit issued under this Ordinance has been revoked, or who was associated in any manner whatsoever with the business affairs of a partnership, association or corporation whose license or permit has been revoked.

B. Filing of Application. Prior to the issuance of any license or permit provided for herein, the applicant shall file with the Commission a sworn application upon forms to be furnished by the commission, in writing, signed by the applicant under oath, and attested to by a person authorized to administer oaths, verifying the truth of the information and statements contained in the application. The full amount of the license fee, in the form of a money order or cashier's check, must

accompany the application at the time of filing.

C. Application Contents. In addition to setting forth the qualifications required by other provisions of this Ordinance, the application must show:

(1) A detailed description of the premises for which a license or permit is sought and its location.

(2) A detailed statement of the assets and liabilities of the applicant.

(3) The names and addresses of all persons who will have any financial interest in any business to be carried on in or upon the licensed or permitted premises, whether such interest results from open loans, mortgages, conditional sales contracts, silent partnerships, trusts or any other basis than open trade accounts incurred in the ordinary course of business, and the amounts of such interests.

(4) If the premises to be licensed or permitted are not owned by the applicant, a certified copy of the lease by which the applicant will occupy the premises showing that the owner consents to the sale of alcohol beverages on such premises.

(5) The name and address of the applicant, which shall include all members of a partnership or other business association, and the officers, boards of directors or principal stockholders of a corporation.

(6) A copy of the articles of incorporation and bylaws of any corporation, the articles of association and by laws of any association, or the partnership agreement of any partnership.

(7) If during the period of any license or permit issued hereunder any change shall occur in any of the requirements of paragraphs 1 through 6 of this section, the licensee or permittee shall forthwith make a verified report of such change to the Commission.

D. False Statements. If any false statement is made in any part of an application for a license or special permit, or in any report required to be filed, the applicant, or applicants, shall be deemed to have violated this Ordinance and shall be subject to the penalties and sanctions set forth in this ordinance.

E. Investigation and Fact Finding. Upon receipt of an application for license or special permit under this Ordinance, accompanied by the necessary fee, the Commission, within sixty (60) days thereafter, shall cause to be made a thorough investigation. The Commission may require the applicant to provide relevant books and records relating to the business affairs of the applicant to be submitted to the Commission for examination as a condition precedent to issuing any license or permit. If the Commission shall determine that the contents of the application are true, that such applicant is qualified under provisions of this Ordinance to receive a license or permit, that the subject premises are suitable for carrying on the business, and that all requirements of this Ordinance and the rules and regulations promulgated by the Commission are met and complied with, including an optional public hearing process, a license or permit shall be issued; otherwise the application shall be denied and the fee, less the costs and expenses of investigation, shall be returned to the applicant.

F. Public Hearing Procedures. The Commission at its discretion conduct public hearings for purposes of ascertaining the views of the general public as to whether applications for a regular license or special permits shall be issued. Comments from the general public may be received either in the form of in-person testimony or by written statement. The Commission shall give notice of such public hearings at least 10 days in advance by publishing a notice in the Sho-Ban News or other local newspaper. The Commission shall give due consideration to the comments submitted at a public hearing, but shall be free to exercise its independent judgment as to whether a license or permit shall be issued.

G. Rendering of Decision. Within ninety (90) days after the date of filing an application the Commission shall render a decision as to whether a license or permit shall be issued. The decision shall be set forth in writing and shall contain the factual findings upon which it is based. A copy of Commission's decision shall be immediately sent by certified mail to the applicant.

H. Appeal Procedure.

(1) An applicant may appeal a decision of the Commission by filing a Notice of Appeal with the Commission within ten (10) days after receipt of notice of the Commission's decision. Upon receiving a Notice of Appeal the Commission shall transfer a complete record of its administrative proceedings relating to the application to the Chairman of the Business Council. Within twenty (20) days after receiving the record from the Commission the Business Council shall fully consider the record, grant the applicant an opportunity to present oral and written arguments in support of his or her position, and issue a decision. However, the Business Council shall consider only factual information contained in the record developed in the proceedings before the Commission. In reviewing the decision of the Commission the Business Council shall, after reviewing all the evidence presented before the Commission, uphold the Commission's decision if it finds that the decision was supported by substantial evidence. If substantial evidence does not support the decision of the Commission, then the Business Council shall overrule the Commission and remand the matter to the Commission for appropriate action. A copy of Business Council's decision shall be immediately sent by certified mail to the applicant and the Commission.

(2) In the event that either the applicant or the Commission is dissatisfied with the appeal decision of the Business Council, then the matter may be further appealed to the Appellate Division of the Shoshone-Bannock Tribal Court within twenty (20) days after receipt of notice of the Business Council's decision. However, the jurisdiction of the Tribal Court shall be limited to questions of jurisdiction, interpretation of the Ordinance provisions, fair procedure and substantial evidence as contrasted to de novo consideration of all the facts and the substitution of its judgment for that of the Commission. In all other respects, the rules of appellate procedure of the Tribal court shall govern.

I. Upon approval of the permit the commission shall record it and issue a permit to the licensee.

J. Permit to be displayed in plain view. Every licensee or permittee shall cause his permit or duplicate to be displayed in plain view in a conspicuous place where the sales so permitted are to be carried on.

Section 6. Revocation and Suspension of Licenses and Permits

A. Complaints and Investigations. The Commission may upon its own motion, and shall upon a written verified complaint of any other person, investigate the action and operation of any licensee or permittee hereunder to determine whether there is compliance with the provisions of this Ordinance.

B. Grounds for Revocation and Suspension. If the Commission shall have reasonable cause to believe that any licensee or permittee has violated any of the provisions of this Ordinance, or any of the rules or regulations of the Commission promulgated hereunder, any violation of the laws of the United States, or of any State relating to the sale, transport, distribution of alcohol beverages, it may, at its discretion, and in addition to other penalties and sanctions herein prescribed, revoke the license or permit of any such licensee or

permittee or it may suspend the same for a period not to exceed six (6) months.

C. Notice and Hearing Requirement. Prior to issuing any order of revocation or suspension of a license or permit the Commission shall give reasonable written notice to the licensee or permittee via certified mail that such action is being considered by the Commission. A licensee or permittee will then have 15 days from receipt of such notice to submit a written request to the Commission for a fair hearing before the Commission as to whether a revocation or suspension is justified under the circumstances. If such a hearing is requested, then the Commission must give at least 10 days' written notice of such hearing to the licensee or permittee. If a license or permit under this ordinance has been obtained by fraud or misrepresentation, the Commission, upon proof that such license or permit was so obtained, revoke the license or permit, and all monies paid shall be forfeited.

D. Rendering of Decision. The Commission shall render a decision based upon a ''preponderance of the evidence'' as the standard of proof. Only that evidence that is adduced at the hearing or which is incorporated in the official administrative record, shall be considered in rendering a decision. If the commission decides to revoke or suspend any license or permit previously granted, it shall give such licensee or permittee, as the case may be, fifteen (15) day notice of its intended action in writing by certified mail addressed to the licensee or permittee at the address listed in the application on file with the Commission, stating generally the basis for its intended action.

E. Tribal Court Review.

(1) Within fifteen (15) days of receiving a notice of revocation or suspension, a licensee or permittee may institute a proceeding for injunctive relief in the Shoshone-Bannock Tribal Court to have the intended action of the Commission reviewed.

(2) If the Tribal Court in such proceedings determines that the licensee or permittee has violated the provisions of this Ordinance, said proceedings shall be dismissed.

(3) Pending a determination of said cause on the merits the Tribal Court may, based upon a showing of undue hardship to the licensee or permittee and upon posting a proper bond, stay the effective date of the intended action of the Commission for such time as the Tribal Court may deem proper. If no stay is issued, or has expired, the Commission shall issue its order of revocation or suspension.

(4) If the Tribal Court shall determine that cause did not exist for the intended action of the Commission it shall issue a decree accordingly and the Commission shall comply therewith.

(5) Under this section, the Tribal Court's review shall be limited to consideration of jurisdiction, ordinance interpretation, fair procedure and evidence and the Court shall not conduct a trial de novo. The Court shall instead serve to function of determining whether the Commission abused the discretion delegated to it. In this regard, the standard of review shall be whether the decision of the Commission is supported by substantial evidence.

(6) In all judicial proceedings under this section, the Tribal Rules of Civil Procedure and General Rules of Court shall apply unless otherwise specified in this Ordinance.

F. Restrictions after Revocation. The Commission shall notify all licensees and permittees of revocations and suspensions. Whenever a license or permit shall have been revoked or suspended the holder thereof shall forthwith deliver the same to the Commission. No license or permit shall be issued to a person whose license or permit has been revoked within a period of six (6) months from the date of revocation of his former license or permit.

G. Bond Option. In response to a violation of this Ordinance, the Commission or Tribal Court may, as a condition precedent to a continuance of his license or permit, as a condition precedent to a continuance of his license or permit, in any case where the licensee or permittee has not theretofore given bond, exact from him a bond, written by surety company authorized to do business in Idaho, in the sum of $1,000.00 conditioned on the observance of the provisions of this Ordinance and any regulations of the Commission promulgated thereunder. For the violation of the conditions thereof, said bond shall be forfeited to the Tribes, and any recovery thereon shall be distributed in accordance with Section 15 herein.

H. Automatic Revocation. Whenever a licensee or permittee has been found guilty of any crime in any jurisdiction in which the illegal handling of alcohol beverages was involved, such conviction shall automatically operate to revoke the license or permit of such person and any and all privileges thereunder.

Section 7. Tribal Court Jurisdiction and Enforcement Procedure

Proceedings to enforce provisions of this Ordinance, whether they be criminal or civil, shall be initiated by the filing an appropriate complaint in the Shoshone-Bannock Tribal Court. The interest of the Commission shall be represented by the Tribal Prosecutor. Rules of the Tribal Court relating to criminal and civil proceedings shall govern the manner in which the judicial proceedings are conducted. However, judicial review of decisions of the Commission concerning issuance, revocation and suspension of licenses and permits shall be conducted strictly in accordance with the provisions of Sections 6 and 7 herein.

Section 8. Criminal Penalties

A. Application only to Indians. Indians, be they members or non-members of the Shoshone-Bannock Tribes, who commit a violation of any provisions of this Ordinance shall be subject to criminal prosecution and penalties set forth hereunder. However, nothing in this Ordinance shall be construed to authorize or require the criminal trial and punishment of non-Indians.

B. Maximum Criminal Penalty. Anyone adjudged to be in violation of any provision of this Ordinance shall be subject to a criminal penalty not to exceed (1) year in jail, a fine not to exceed five thousand ($5,000) dollars fine, or both, for each separate violation.

Section 9. Civil Fines

Any person, adjudged to be in violation of this Ordinance shall be subject to a civil fine of not more than five thousand dollars ($5,000.00) for each such violation. Imposition of all such civil fines shall be under the jurisdiction of the Shoshone-Bannock Tribal Court. The Tribal Court may impose a civil fine only upon a petition filed by the Commission, represented by the Tribal Prosecutor, setting forth specific allegations amounting to a violation of the Ordinance. Notice and hearing on such petition shall be provided in accordance with the rules of civil procedure generally applicable in Tribal Court. The Tribal Court shall exercise discretion as to the appropriate fine amount, taking into account its seriousness and the threat it may pose to the general health and welfare of the residents of the Reservation. A decision of the Tribal Court may be appealed in accordance with Rules of Appellate Procedure applicable in Tribal Court.

Section 10. Abatement of Nuisance

A. Declaration of Nuisance. Any room, house, building, boat, vessel, vehicle, structure, or other place where an alcohol beverage is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance or of any other Tribal law relating to the manufacture, transportation, possession, distribution, and sale of alcohol beverage, and all property keep in and used in maintaining such place, are hereby declared to be a common nuisance.

B. Institution of Action. The Commission, represented by the Tribal Prosecutor, shall institute and maintain an action in the Tribal Court in the name of the Tribes to abate and perpetually enjoin any nuisance declared under this section. The plaintiff shall not be required to give bond in the action, but restraining orders, temporary injunctions, and permanent injunctions may be granted the same as in other injunction proceedings, and upon final judgment against the defendant, the Court may also order the room, house, building, boat vessel, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient surety to be approved by the Court in the sum of not less than One-Thousand Dollars ($1,000.00), payable to the Tribes and conditioned that alcohol beverages will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provisions of this Ordinance or of any other applicable Tribal law, and that he will pay all fines, costs, and damages assessed against him for any violation of this Ordinance. If any conditions of the bond are violated, the whole amount may be recovered as a penalty for the use of the Tribes. Any action taken under this section shall be in addition to any other penalties provided for in this Ordinance.

C. Abatement. In all cases where any person has been adjudged to be in violation of this Ordinance or other Tribal laws relating to the manufacture, importation, transportation, possession, distribution or sale of an alcohol beverage, an action may be brought in Tribal Court to abate as a nuisance any real estate or other property involved in the commission of the offense, and in any such action, a certified copy of the record of such judgment shall be admissible in evidence as prima facie evidence that the room, house, vessel, boat, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Section 11. Contraband-Seizure and Forfeiture

A. Contraband Defined. All alcohol beverages within the Reservation held, owned, or possessed by any person or business outlet operating in violation of this Ordinance are hereby declared to be contraband and subject to forfeiture to the Tribes.

B. Application of Seizure. Upon proper application by official representatives of the Tribes and/or the Commission, a tribal judge shall issue an order directing tribal law enforcement officers to seize contraband alcohol beverages within the Reservation and to deliver them to or hold them on behalf of the Commission.

C. Temporary Storage of Contraband. Any Tribal law enforcement officer seizing the contraband shall preserve the contraband by placing it in a secured area provided for storage of impounding property and shall promptly prepare and file an inventory list with the Tribal Court.

D. Tribal Court Hearing. Within two weeks following the seizure of the contraband, a hearing shall be held in Tribal Court, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities. The interest of the Tribes shall be represented at such hearing by the Tribal Prosecutor on behalf of the Commission.

E. Forfeiture. If upon hearing the evidence warrants, or if no person appears as claimant, the Tribal Court shall thereupon enter judgment of forfeiture and the person adjudged be in violation of this Ordinance shall forfeit all right, title, and interest in the items seized. The forfeited items shall be sold for the Benefit of the Tribes and proceeds distributed in accordance with Section 15 herein; provided that the forfeited items shall not be sold to any person not entitled to possess them under applicable law.

Section 12. Exclusion From Reservation

In addition to other sanctions contained in this Ordinance, Tribal law enforcement officers shall be authorized to exclude violators of this Ordinance from the Fort Hall Reservation under procedures set forth in the Tribes' Law and Order Code, following hearing before Business Council.

Section 13. Prohibitions and Limitations Concerning Sale and Distribution of Alcohol Beverages

A. Manufacture, Sale, Possession, Consumption, and Transport. It shall be unlawful to manufacture for sale, sell, offer, or keep for sale, possess, consume, or transport any intoxicating liquor or alcohol beverage within the exterior boundaries of the Reservation except on the terms, conditions, limitations, and restrictions specified in this Ordinance.

B. Unauthorized Purchase. It shall be a violation of this Ordinance for any person to purchase any alcohol beverage from any person or business within the boundaries of the Reservation other than at business, outlet, or location that has been properly authorized by the Commission.

C. Illegal Dispensing of Licensees and Permittees. It shall be unlawful for any licensee or permittee to sell, give away, dispense, vend, or deliver any alcohol beverage in any manner or by any means, except upon licensed premises or within a permit area.

D. Serving Persons under Age or Serving Intoxicated Persons. No licensee or permittee or his or its employed agents, servants, or bartenders shall sell, deliver or give away, or cause or permit to be sold, delivered, or given away, any alcohol beverage to any person under the age of twenty one (21), intoxicated person, or to any habitual drunkard, except as provided in subsections E, F, G, and H, herein.

E. Identification. Any one of the following that shows the person's current age and bears his signature and photograph shall be suitable for identification purposes, if valid:

(1) Liquor Control Authority Card of any state;

(2) Driver's license of any state or ''Identification Card'' issued by any state department of motor vehicles;

(3) United States active duty military identification;

(4) Passport; work visa or

(5) Tribal Identification or enrollment card.

F. Misrepresentation of Age. Any person under the age of twenty one (21) years, or other person, who knowingly misrepresents his or her qualifications for the purpose of obtaining an alcohol beverage from a licensee or permittee shall be in violation of this Ordinance.

G. Transfer of Identification. It shall be a violation of this Ordinance for any person to transfer in any manner an identification of age to a person under the age of twenty one (21) years for the purpose of permitting such minor to obtain an alcohol beverage.

H. Refusal to Present Identification. It shall be a violation of this Ordinance for

any person to refuse to present identification indicating age, when requested by a Gaming/Hotel Security Officer, tribal law enforcement officer or any other authorized person when: (a) He or she shall possess, purchase, attempt to purchase or consume an alcohol beverage; or (b) he or she is on a premise licensed to sell alcohol beverages for consumption on the premises.

I. Illegal Employment of Under Age Persons. It shall be a violation of this Ordinance for any licensee or permittee or their agent(s) to employ a person under the age of nineteen (19) years to serve, sell, dispense, or dispose alcohol beverages.

J. Designation on Diagram for each type of License. As part of the application, the licensee will designate on a diagram of the licensed premises the specific areas in which each of the following will be sold and permitted to be consumed, to the extent the licensee is granted a license for each: beer, wine, and spirits. Thereafter, beer may only be sold to, consumed by, and possessed by patrons in the area designated for beer on the floor plans. Wine may only be sold to, consumed by, and possessed by patrons in the area designated for wine on the floor plans. With respect to the areas designated for beer and wine on the floor plans, persons of all ages will be permitted to enter and/or remain. Spirits may only be sold to, consumed by, and possessed by patrons in the area designated for spirits on the floor plans. Only those persons 21 years of age and older are permitted to enter and/or remain in the area designated for spirits on the floor plan, except for those employees nineteen (19) years of age and older while working in their employment capacity, and musicians and singers eighteen (18) years of age and older while performing as employed musicians and singers, and/or employees of the Event Center. A licensee may amend this diagram of the licensed premises after the issuance of the license without further approval by the Commission, but such amended diagram will only become effective once received by the Commission.

K. Intoxication and Drunkenness. Section 116 of the Shoshone Bannock Criminal Code's prohibition on Intoxicated Persons will apply to all areas of a licensed premise and as otherwise set forth in the Criminal Code.

L. Selling or Dispensing Alcohol to Intoxicated Persons. Any person who sells, gives, or dispenses any alcohol beverage to another person who is an ''Intoxicated Person'' as that term is defined in Title 8 of the Law and Order Code shall be in violation of this Ordinance.

M. Refusal to Sell. All vendors of alcohol beverages within the Reservation shall refuse to sell alcohol to persons under the following circumstances:

(1) When that person does not provide satisfactory proof that he is at least twenty one (21) years of age;

(2) When that person is apparently intoxicated.

N. Holidays and Hours of Sale. No alcohol beverage shall be sold, offered for sale, or given away upon any licensed premises during the following hours:

(1) Between the hours of 2 o'clock a.m. and 10 o'clock a.m. and

(2) On any election day until after the time when the polls are closed.

Provided, however, any patron present on the licensed premises after the sale of alcohol beverages has stopped in accordance with the provisions above shall have a reasonable time to consume any beverage already served.

O. Bringing alcohol beverages onto Premises. No licensee or permittee shall allow any person to bring any alcohol beverages for personal consumption into any location.

P. Open Containers Prohibited. No person shall have an open container of any alcohol beverages in any automobile, whether moving or standing still, or in a public place, other than premises designated in a license.

Section 14. Distribution of Review

All fees collected from assessments made by the Commission for licenses, permits and penalties shall be transferred to the Financial Management Division of the Tribes and shall be placed in a special account designated as the Liquor Fund.

Section 15. Application of Federal Laws

Federal law currently prohibits the introduction of alcohol beverages into Indian country (18 U.S.C. 1154), and expressly delegates to the tribes the decision regarding when and to what extent liquor transactions shall be permitted (18 U.S.C. 1161). Persons involved in acts and transactions not authorized by this Ordinance shall be subject to federal criminal prosecution, as well as civil legal action in the courts of the United States.

Section 16. Applicability of Other Tribal Law

Nothing contained in this Ordinance shall be interpreted to limit the application of other Tribal laws or Ordinances.

Section 17. Powers Reserved by Business Coucil

All powers relating to regulation and control over alcohol beverages which are not expressly delegated to the Commission by this Ordinance shall be retained by the Business Council. In addition, the Business Council expressly reserves authority to set the fiscal year budget of the Commission. The Commission shall also be subject to other general Tribal administrative laws, procedures, and practices adopted by the Business Council unless expressly exempted.

Section 18. Sovereign Immunity

A. Immunity Preserved. Nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Shoshone-Bannock Tribes, except for the limited Tribal Court review provisions of Sections 6 and 7 of this Ordinance.

B. Method of Waiver. No commissioner or employee of the Commission shall be authorized to waive the sovereign immunity of the Tribes. Waiver of sovereign immunity shall only be authorized by specific written resolution of the Fort Hall Business Council.

Section 19. Severability

Should any section, clause, sentence, or provision of this Ordinance, be held invalid for any reason, such holding or decree shall not be construed as affecting the validity of any of the remaining portions hereof, it being declared that the Business Council would have adopted the remainder of this Ordinance, notwithstanding the invalidity of any such section, clause, sentence, or provision.

Section 20. Amendment

Amendments to this Ordinance may be made only by the Fort Hall Business Council.

[FR Doc. 2020–01709 Filed 2–3–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWRO–TUSK–29492; PPPWTUSK00, PPMPSPD1Z.YM0000]

Tule Springs Fossil Beds National Monument Advisory Council Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of

1972, the National Park Service is hereby giving notice that the Tule Springs Fossil Beds National Monument Advisory Council (Council) will meet as indicated below.

DATES: The meeting will be held on Monday, March 2, 2020, at 5:00 p.m. until 7:00 p.m. (Pacific).

ADDRESSES: The meeting will be held at the Federal Interagency Office Building, 4701 N Torrey Pines Road, Las Vegas, Nevada 89130–2301.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from Christie Vanover, Public Affairs Officer, Lake Mead National Recreation Area, 601 Nevada Way, Boulder City, Nevada 89005, via telephone at (702) 293–8691, or email at *christie_vanover@nps.gov.*

SUPPLEMENTARY INFORMATION: The Council was established pursuant to Section 3092(a)(6) of Public Law 113–291 and in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16). The purpose of the Council is to advise the Secretary of the Interior with respect to the preparation and implementation of the management plan.

Purpose of the Meeting: The Council agenda will include the introduction of the Acting Superintendent, the status of the monument's preliminary planning process, an update on interpretive kiosks and the NPS brochure, an update on resource projects including the Working Together Against Weeds workshop, an update on the Comprehensive Environmental Response, Compensation, and Liability Act, as well as subcommittee reports and election of the Council chairperson.

The meeting is open to the public. Interested persons may present, either orally or through written comments, information for the Council to consider during the public meeting. Members of the public may submit written comments by mailing them to Christie Vanover, Public Affairs Officer, Lake Mead National Recreation Area, 601 Nevada Way, Boulder City, NV 89005, or by email *Christie_vanover@nps.gov.* All written comments will be provided to members of the Council.

Due to time constraints during the meeting, the Council is not able to read written public comments submitted into the record. Individuals requesting to make oral comments at the public Council meeting should be made to the Acting Superintendent prior to the meeting. Depending on the number of people who wish to speak and the time available, the time for individual comments may be limited.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2020–02074 Filed 2–3–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–29511; PPNEGATEB0, PPMVSCS1Z.Y00000]

Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee; Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the National Park Service (NPS) is hereby giving notice that the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee (Committee) will meet as indicated below.

DATES: The meeting will take place on Friday, February 28, 2020. The meeting will begin at 9:00 a.m. until 2:00 p.m. (Eastern).

ADDRESSES: The meeting will be held at the Thompson Park Visitor Center, 805 Newman Springs, Lincroft, New Jersey 07738.

FOR FURTHER INFORMATION CONTACT: Daphne Yun, Acting Public Affairs Officer, Gateway National Recreation Area, 210 New York Avenue, Staten Island, New York 10305, or by telephone (718) 815–3651, or by email *daphne_yun@nps.gov.*

SUPPLEMENTARY INFORMATION: The Committee was established on April 18, 2012, by authority of the Secretary of the Interior (Secretary) under 54 U.S.C. 100906, and is regulated by the Federal Advisory Committee Act. The Committee provides advice to the Secretary, through the Director of the NPS, on matters relating to the Fort Hancock Historic District of Gateway National Recreation Area. All meetings are open to the public.

Purpose of the Meeting: The agenda will include signage as it pertains to lessees, ongoing lease updates (new leases, letters of intent, and building proposals), and general park updates. The final agenda will be posted on the Committee's website at *https://www.forthancock21.org.* The website includes meeting minutes from all prior meetings.

Interested persons may present, either orally or through written comments, information for the Committee to consider during the public meeting. Written comments will be accepted prior to, during, or after the meeting. Members of the public may submit written comments by mailing them to Daphne Yun, Acting Public Affairs Officer, Gateway National Recreation Area, 210 New York Avenue, Staten Island, New York 10305, or by email *daphne_yun@nps.gov.* All written comments will be provided to members of the Committee.

Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record. Individuals or groups requesting to make oral comments at the public Committee meeting will be limited to no more than five minutes per speaker. All comments will be made part of the public record and will be electronically distributed to all Committee members. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your written comments, you should be aware that your entire comment including your personal identifying information will be publicly available. 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: 5 U.S.C. Appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2020–02073 Filed 2–3–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Antitrust Division

[OMB Number: 1105–New]

Agency Information Collection Activities: New Information Collection; Comment Request

AGENCY: Antitrust Division, Department of Justice.

ACTION: 30-Day notice of new information collection and request for comments; Procurement Collusion Strike Force complaint form.

SUMMARY: The Department of Justice, Antitrust 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 5, 2020.

Written comments on the proposed information collection should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs. Comments should be addressed to the OMB Desk Officer for the Department of Justice, and sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 Department of Justice, Antitrust Division, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; 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:* New information collection.

(2) *The Title of the Form/Collection:* Procurement Collusion Strike Force Complaint Form.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The applicable component within the Department of Justice is the Antitrust Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary respondents will be individuals or households. The Procurement Collusion Strike Force (PCSF) complaint form facilitates reporting by the public of complaints, concerns, and tips regarding potential antitrust crimes affecting government procurement, grants, and program funding. Respondents will be able to complete and submit information electronically through the PCSF complaint form on the Antitrust Division's website.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 500 respondents annually and 30 minutes for an individual to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 250 annual burden 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 30, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–02142 Filed 2–3–20; 8:45 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical CBRN Defense

Notice is hereby given that, on January 16, 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''), Medical CBRN Defense Consortium (''MCDC'') 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, CFD Research Corporation; Huntsville, AL; GattaCo, Inc.; Murrieta, CA; George Mason University; Fairfax, VA; Nutra Pharma Corporation; Coral Springs, FL, have been added as a party to this venture.

Also, Achaogen, Inc.; San Francisco, CA; Adapt Pharma, Inc.; Radnor, PA; Certara USA; Princeton, NJ; Colorado State University; Fort Collins, CO; Creare, LLC; Hanover, NH; GigaGen, Inc.; San Francisco, CA; Inflammatix, Inc.; Burlingame, CA; Lynntech; College Station, TX; Nano Terra, Inc.; Cambridge, MA; Prosolia, Inc.; Indianapolis, IN; Southern Research Institute; Birmingham, AL; and Spero Therapeutics, Inc.; Cambridge, MA have withdrawn as parties from 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 MCDC intends to file additional written notifications disclosing all changes in membership.

On November 13, 2015, MCDC 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 January 6, 2016 (81 FR 513).

The last notification was filed with the Department on October 24, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 25, 2019 (84 FR 64923).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–02087 Filed 2–3–20; 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—Open Source Imaging

Notice is hereby given that, on January 14, 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''), Open Source Imaging Consortium, Inc. (''OSI'') 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, Athens University Medical School, Athens, GREECE, 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 OSI intends to file additional written notifications disclosing all changes in membership.

On March 20, 2019, OSI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 12, 2019 (84 FR 14973).

The last notification was filed with the Department on July 30, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 16, 2019 (84 FR 42012).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–02090 Filed 2–3–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before March 5, 2020.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: 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: Roslyn B. Fontaine, Deputy 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 copies of the petition 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: Roslyn B. Fontaine, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *fontaine.roslyn@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 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. Petition for Modification

Docket Number: M–2020–001–C.

Petitioner: Warrior Met Coal Mining, LLC.

Mines: Mine No. 4, MSHA I.D. No. 01–01247 and Mine No. 7, MSHA I.D. No. 01–01401, located in Tuscaloosa County, AL.

Regulation Affected: 30 CFR 75.1911 (Fire suppression systems for diesel-powered equipment and fuel transportation units).

Modification Request: The petitioner requests a modification of the existing standard to allow use of a water-based chemical fire suppression system (instead of a dry chemical system) and a fire monitoring system. The petitioner proposes to use the Fogmaker High-Pressure Water Mist Fire Suppression System (''Fogmaker System'') manufactured by Fogmaker International AB for a variety of diesel equipment including track locomotives, track personnel carriers, outby forklifts, and outby shield haulers.

The petitioner states that:

(1) The two listed mines are both longwall mines that are geographically close, and use similar mining methods and equipment.

(2) Both mines operate in the Blue Creek coal seam located in Tuscaloosa County, Alabama, to produce coal.

The petitioner asserts that a water-based fire suppression system is to be used because it is as effective as a dry chemical system. In support of this view, the petitioner notes that the Fogmaker System has been certified by the Underwriters Laboratories (UL) and Factory Mutual (FM) standards. It has also received the following approvals: P-Mark SPCR 183, SP Test Method 4912—SP Technical Research Institute of Sweden; American Public Transportation Association Compliant (APTA–BTS–BS–RP–003, APTA BTS–BS–RP–001–05); US Department of Transportation Compliant (DOT 3AL 2216/DOT 173.306(f)); Transport Canada, Certificate #11140; AS5062, Australian Certification for Fire Suppression System on Transportable Machinery.

The petitioner asserts that the Fogmaker System meets all of the requirements specified under 30 CFR 75.1911, as follow:

(a) As an alternative to 30 CFR 75.1911(a), the water-based fire suppression Fogmaker System will be: (1) Engineered and installed to end fires at an early stage; (2) approved by an independent laboratory, using strict testing standards; (3) able to meet engineering, construction, and operational requirements to cover water-based automatic extinguisher units made for total flooding applications; and (4) tested for its capability to detect and suppress fires, and monitor operational systems. The Fogmaker System is made up of: Piston accumulator(s), release valve, connector for detection tube, detection bottle, safety valve, outlet for suppression fluid with protective plug, refilling connection for suppression fluid, bracket, clamp, gauge, safety screw, and 2G approved or braided stainless hoses.

(b) The Fogmaker System will achieve at least the same measure of protection afforded to the miners by mandatory standard 30 CFR 75.1911. The Fogmaker System meets the mandatory standard in the following manner: (1) The system

creates cold-water fog that cools down the temperature and reduces the oxygen content, the effectiveness increases when fluid is vaporized due to contact with heated surfaces; (2) The piston accumulator and detection bottle are positioned in protective containers and in such a way so as to prevent damage; (3) The piston accumulator containing an Aqueous Film-Forming Foam Concentrate (AFFF) agent is pressurized with nitrogen to approximately 938 psi and then drops slowly to 218 psi when activated (pressure is maintained to ensure the entire contents are discharged); (4) The fire suppression fluid is based on frost-protected water additives of a film-forming AFFF chemical that prevents the re-ignition of leaking fuel and improve suppression methods; (5) An engineering and safety risk assessment will determine the size of the piston accumulator, the lengths of houses and stainless tubes, and the number of nozzles; (6) The chemical is discharged through nozzles, atomizing the water to approximately 80 µm under high-pressure to blanket the fire, fuel source, and to prevent other fires from occurring; (7) The release valve is a hydro pneumatic, fully automotive valve, activated by fire detection.

(c) As an alternative to 30 CFR 75.1911(a)(1), the Fogmaker System will be engineered for the diesel equipment that it will be installed in. The systems will be specifically designed to follow the engine components as required by 30 CFR 75.1911(b): Starter, hydraulic pumps and tanks, fuel tanks, and exposed brake units, air compressors, and battery areas. The Fogmaker System will comply with component specifications identified in the FM 5970 required standard to apply a total flooding approach. In addition, an engineering and safety risk assessment will be completed for each piece of diesel-powered equipment, prior to installation and deployment; this assessment will determine, for example, the protected volume required, the volume of the suppressant and size of the piston accumulator, the number and location of nozzles, and stainless tube lengths.

(d) As an alternative to 30 CFR 75.1911(a)(2), the following four components will be be installed according to the FM-approved installation manual—piston accumulator, detection cylinder, detection tube, and distribution tubing. For example, the piston accumulator and protection container will be installed to ensure a minimum of 6 inches of clearance at the end of the container so that there is enough space for approved hoses, braided stainless hoses, or any other approved cables/hoses.

(e) As an alternative to 30 CFR 75.1911(a)(3), the petitioner will use detailed instructions in the FM-approved installation manual to install the correct type and length of detection tubing and stainless distribution tubing for the distribution assembly. The instructions dictate the type and length of approved or braided stainless hoses, stainless tubing, the maximum distance between mounting points, the minimum bend radius, and other requirements to ensure the proper and secure mounting of hoses and tubing.

(f) As an alternative to 30 CFR 75.1911(a)(4), the petitioner will take into account the direct hazard and volume filling needs for total flooding in determining proper locations of nozzles. The design of the equipment specific instillation will be based on these engineering and safety assessments. The total flooding calculation will address the engine compartment, and other related and specific components that are covered by the FM standard.

(g) As an alternative to 30 CFR 75.1911(b), the Fogmaker System will address the requirements that are dictated by the FM 5970 standard. The Fogmaker System will utilize a total flooding analysis to determine the required volume of suppressant needed for the engine compartment and associated components, components required by the standard, the number of nozzles, and the minimum discharge time. A worksheet will be completed to determine the total flooding application of the engine compartment and specific components to determine: (1) The protected volume, (2) the piston accumulator volume, (3) the required quantity and position of the nozzles, and (4) the discharge time. For the Brookeville locomotive, the petitioner will (1) determine that the hazardous area in question is at least 75% enclosed before calculating the protected volume; (2) take into account that the estimated protected volume is $3m^3$ and is estimated to be at least 75% enclosed, which means a 6.0L piston accumulator meets the FM 5970 suppressant standard; (3) give consideration to local applications of the nozzles; (4) note that 14 nozzles can be deployed for this application. The Fogmaker System uses a hydropneumatics detection system for automatic fire detection. The system will be activated by a lowering of pressure in the pressurized tubing, which is connected to the piston accumulator valve. The pressure inside the piston accumulator will engage a piston against an arm that holds a smaller piston in place to prevent the release of the suppressant. When a fire releases heat, the tubing is weakened, which allows the pressurized fluid to be released the loss of pressure opens the pathway and engages the suppressant.

(h) As an alternative to 30 CFR 75.1911(c), the Fogmaker System will have audio and visual alarms, which comply with the mandatory standard.

(i) As an alternative to 30 CFR 75.1911(d), the Fogmaker System will have the capability to cause a shutdown delay. The factory setting is 15 seconds but this can be changed. But the petitioner will have the Fogmaker System activated immediately with no delay in engine shutdown.

(j) As an alternative to 30 CFR 75.1911(e), the Fogmaker System will have the capability to install manual actuators. The petitioner will ensure that one will be located in the operator compartment and the other on the offside of the equipment.

(k) As an alternative to 30 CFR 75.1911(f), the Fogmaker System will remain operational for detection and activation due to the suppression system's mechanical nature. Additionally, the two manual systems are always operational and will have a battery backup that lasts at least 4 hours, in addition to being tied into the equipment's diesel battery.

(l) As an alternative to 30 CFR 75.1911(g), the Fogmaker System is currently designed for outby mobile diesel equipment.

(m) 30 CFR 75.1911(h) does not apply to the Fogmaker System because it is not electrically operated.

(n) As an alternative to 30 CFR 75.1911(i), the Fogmaker System will require a Final Installation Inspection Checklist, which requires daily inspection confirming that the piston accumulator is charged. Such an inspection is done by verifying that the indicator for the pressure gauge is in the green swept area. A weekly visual inspection is also required to ensure that it is not leaking or damaged. The Fogmaker System will be serviced at least annually by qualified, trained, and authorized personnel. UL requires that the Fogmaker System be serviced at least semi-annually. The piston accumulator will be serviced every 5 years, and the suppression fluid replaced. The piston accumulator will be re-built and the hydrostatic pressure tested every 10 years.

(o) The petitioner is not requesting modification to 30 CFR 75.1911(j) and will perform the required recordkeeping set out by 30 CFR 75.1911(j)(1) through (j)(3).

(p) The petitioner is not requesting modification to 30 CFR 30 CFR

75.1911(k). The petitioner will ensure that all miners are aware of the Fogmaker System when it is installed, and they will be trained how to use it according to Part 48. Task training will also be conducted for miners responsible for examinations.

Sheila McConnell,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2020–02117 Filed 2–3–20; 8:45 am]

BILLING CODE 4520–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2020–017]

Freedom of Information Act (FOIA) Advisory Committee; Meeting

AGENCY: Office of Government Information Services (OGIS), National Archives and Records Administration (NARA).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: We are announcing an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting in accordance with the Federal Advisory Committee Act and the second United States Open Government National Action Plan.

DATES: The meeting will be on March 5, 2020, from 10:00 a.m. to 1:00 p.m. EST. You must register to attend the meeting in person by midnight EST March 2, 2020.

ADDRESSES: National Archives and Records Administration (NARA), 700 Pennsylvania Avenue NW, William G. McGowan Theater, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell, Designated Federal Officer for this committee, by mail at National Archives and Records Administration, Office of Government Information Services, 8601 Adelphi Road—OGIS, College Park, MD 20740–6001, by telephone at 202.741.5770, or by email at *foia-advisory-committee@nara.gov.*

SUPPLEMENTARY INFORMATION:

Agenda and meeting materials: This is the seventh meeting of the third committee term. The Committee will consider proposed recommendations from the FOIA Advisory Committee's three subcommittees, focusing on records management, FOIA vision, and time/volume. We will post meeting materials online at *https://www.archives.gov/ogis/foia-advisory-committee/2018-2020-term/meetings.*

Procedures: The meeting is open to the public. Due to building access restrictions, you must register through Eventbrite in advance if you wish to attend. You will go through security screening when you enter the building. To register, use this link: *https://foia-advisory-committee-meeting.eventbrite.com.* We will also live-stream the meeting on the National Archives' YouTube channel at *https://www.youtube.com/user/usnationalarchives,* and include a captioning option. To request additional accommodations (*e.g.,* a transcript), email *foia-advisory-committee@nara.gov* or call 202.741.5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Kirsten Mitchell (contact information listed above).

Miranda J. Andreacchio,

Committee Management Officer.

[FR Doc. 2020–02072 Filed 2–3–20; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0041]

Survey of NRC's Materials Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Information Collection; Licensee Survey.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is conducting a survey of its materials licensees to gather data to inform its decision on a future rulemaking action. The NRC established a nuclear-industry-specific size standard for categorizing the size of small business entities. The responses to this survey will provide the information necessary for the NRC to reassess, and potentially revise, its small entity size standards.

DATES: Submit your response to the survey by April 30, 2020. Survey responses received after this date will be used if it is practical to do so, but the NRC is able to ensure use only for responses received on or before this date.

ADDRESSES: You may submit a response to the survey by any of the following methods:

- *Complete the Survey electronically through the internet:* This Survey can be accessed, and responses entered, on the NRC public website at *www.NRC.gov.* At the bottom of the first screen under the section titled, ABOUT US, click on LICENSE FEES. Next screen, click in the box titled RELATED INFORMATION, click on the item Small Entity Classification Survey. Proceed to complete the survey.
- *Mail completed Survey response:* Responses can be submitted through the regular U.S. mail. Licensees will be mailed a paper Survey with an NRC-addressed, business reply return envelop included. All U.S. mail replies should be addressed to: U.S. Nuclear Regulatory Commission, LFPT/OCFO Mail Stop: T–9B50, 11555 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Anthony Rossi, Office of the Chief Financial Officer, telephone: 301–415–7341; email: *Anthony.Rossi@nrc.gov;* or, Jo Jacobs, Office of the Chief Financial Officer, telephone: 301–415–8388; email: *Jo.Jacobs@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

I. Discussion

The NRC has established its own standards for categorizing the size of small business entities in section 2.810 of title 10 of the *Code of Federal Regulations (CFR),* ''NRC Size Standards.'' The agency's standards differ from those of the Small Business Administration (SBA) because NRC licensees do not align with SBA size standard classifications. The NRC has established its standards in consultation with the administrator of SBA in accordance with their regulations in 13 CFR 121.903.

The Omnibus Budget and Reconciliation Act of 1990 (OBRA–90), as amended, requires the NRC to recover 90 percent of the annual budget through fees. Since the agency has not surveyed its materials licensees since 1993, the NRC is conducting this survey to gather financial data to determine if a change is needed to the size standards. Without conducting a survey, the NRC does not have the data needed to determine the impact of changing the current nuclear industry-specific size standards. The results of the analysis will be used to provide a recommendation to the Commission that is backed with sound factual data.

II. Additional Information

Licensees may complete the survey online or submit in hard copy by U.S. mail in accordance with the instructions in the **ADDRESSES** section of this document. For questions regarding the survey, contact staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

III. Plain Writing

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

IV. Paperwork Reduction Act

This survey is an information collection that has been approved by the Office of Management and Budget under OMB Control No. 3150–0242. The estimated burden to respond to this voluntary information collection is 20 minutes. This collection is a voluntary effort to gather financial data to determine if a change is needed for 10 CFR 2.810, ''NRC Size Standards.'' Send comments regarding the burden estimate to the Information Services Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by email to *infocollects.resource@nrc.gov,* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0242), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

Dated at Rockville, Maryland, this 30th day of January, 2020.

For the Nuclear Regulatory Commission.

L. Benedict Ficks,

Acting Chief Financial Officer.

The Survey is attached.

BILLING CODE 7590–01–P

Survey of the Nuclear Regulatory Commission Materials Licensees To Measure The Impact of Changing the NRC Small Entity Size Standards [OMB NO. 3150-0242; Expires 11/30/2022]

NOTE: THE QUESTIONAIRE SHOULD BE COMPLETED BY NRC LICENSEES.

INSTRUCTIONS:

Please answer the questions that apply to your situation as accurately as possible. Licensees operating independently (e.g. not as a subsidiary, division or part of a group medical practice) should, except when a question indicates otherwise, answer the questions as they apply to the location(s) listed in the license, including any temporary job sites supervised from this location.

1. Please provide the following information:

Name of the Licensee (as it appears on the license): _____

Company Name: _____

Street Address: _____

City:_____State:_____

Zip: _____

License Number (as it appears on your mailing label):

_____

Docket Number (as it appears on your invoice):

_____

2. If the organization listed above is a subsidiary or division of another company, please provide the following information for the parent company:

   Company Name: _____ Street Address:____

   Country (if non-US address) _____

3. Is the license held by a governmental entity that is non-federal?

   □ Yes (PLEASE CONTINUE WITH Q4)

   □ No (PLEASE SKIP TO Q5)

4. What is the size of the supporting population in the licensee's jurisdiction? (e.g., for state supported schools the supporting population is the state's population; for a county it is the county's population; for a city it is the population residing in the city limits) (Please place an "X" by the appropriate range.)

   □ Less than 20,000

   □ 20,001 – 50,000

   □ 50,001 and higher

*****GOVERNMENTAL LICENSEES SHOULD SKIP QUESTIONS #5 AND #6*****

5. What was the average number of persons employed by your (the licensee's) organization during your previous fiscal year? Any person on the payroll must be included as one employee regardless of the number of hours worked or temporary status. Licensees operating as a subsidiary of a larger company or a group medical practice should provide employment figures for the larger organization's entire operations, including the parent company and all other affiliates. Affiliation with another business concern is based on the power to

control, whether exercised or not. Such factors as common ownership, common management and identity of interest, among others, are indicators of affiliation. The affiliated business concerns need not be in the same line of business listed in the NRC license.

Please place an "X" by the range which corresponds to the average number of employees over the 12 months of the organization's 2019 fiscal year.

□ 1 – 34

□ 35 – 500

□ 501 – 750

□ 751 and up

6. What were your (the licensee's) total average annual receipts for the last three years?

For purposes of this question, receipts include all revenue, in whatever form received or accrued from any sources (e.g. sales, interest income, income from dividends, etc.), and not solely receipts from licensed activities. Receipts should exclude returns and allowances, sales tax collected and remitted to a governmental sales tax authority, and sales of capital assets (such as selling the firm's building or its production machinery). Please do not deduct income taxes, property taxes and cost of materials or funds paid to subcontractors. Licensees operating as a subsidiary of a larger company or a group medical practice should provide receipt information for the larger organization's entire operations, including the parent company and all other affiliates. Affiliation with another business concern is based on the power to control, whether exercised

or not. Such factors as common ownership, common management and identity of interest, among others, are indicators of affiliation. The affiliated business concerns need not be in the same line of business listed in the NRC license.

Please place an "X" next to the appropriate range which corresponds to the organization's annual receipts for the 2019 fiscal year.

□ Less than $485,000

□ $485,000 – 7,000,000

□ $700,000,001 – 15,000,000

□ $15,000,001 – 27,500,000

□ $27,500,001 – 38,500,000

□ $38,500,001 – and up

7. Do you know your organization's primary 6-digit NAICS Code(s)?

□ Yes – IF YES, PLEASE ANSWER QUESTION 8.

□ No – IF NO, PLEASE SKIP QUESTION 8 AND ANSWER QUESTION 9.

8. Please provide your organization's primary 6-digit North American Industry Classification System (NAICS) business Code(s). Note: Some organizations have more than one NAICS Code. If your organization has several NAICS codes, please provide only the top of the Column. (The most predominant NAICS code will be the one with the highest production value associated with it.)

Licensees operating as a subsidiary or division of a larger company should provide NAICS codes for the parent company.

NAICS Codes

1. _____

2. _____

3. _____

4. _____

5. _____

******ALL RESPONDENTS SHOULD ANSWER THE FOLLOWING QUESTION******

9. Which of the following best describes your organization?

□ Construction

□ Government

□ Medical/Dental

□ Manufacturing

□ Other (Please Explain: _____

[FR Doc. 2020–02135 Filed 2–3–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0020]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of one amendment request. The amendment request is for Joseph M. Farley Nuclear Plant, Units 1 and 2. For this amendment request, the NRC proposes to determine that it involves no significant hazards consideration. Because the amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: Comments must be filed by March 5, 2020. A request for a hearing must be filed by April 6, 2020. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by February 14, 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–2020–0020. 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: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1384, email: *Janet.Burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0020, facility name, unit number(s), plant docket number, application date, and subject 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–2020–0020.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *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–2020–0020, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment request involves no significant hazards consideration. Under the Commission'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. The basis for this proposed determination for the amendment request is shown below.

The Commission is seeking public comments on this proposed determination. 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 period provided that its final determination is that 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 if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR

2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing 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 the 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 no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff.

Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''Cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant (Farley), Units 1 and 2, Houston County, Alabama

Date of amendment request: October 30, 2019, as supplemented by letter dated November 25, 2019. Publicly-available versions are in ADAMS under Package Accession No. ML19308A761 and Accession No. ML19331A099, respectively.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise the Renewed Facility Operating Licenses and Technical Specifications (TS) to allow for a measurement uncertainty recovery power uprate (MUR–PU) from 2775 megawatts thermal (MWt) to 2821 MWt.

Basis for proposed no significant hazards consideration determination: 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 proposed amendment changes the rated thermal power (RTP) for Farley Units 1 and 2 from 2775 to 2821 MWt—an increase of approximately 1.7 percent RTP. Evaluations have shown that all structures, systems, and components are capable of performing their design function at the uprated power of 2821 MWt. A review of station accident analyses found that all acceptance criteria are still met at the uprated power of 2821 MWt.

The PAD5 methodology used for evaluating the proposed change to the fuel centerline melt temperature limit has been reviewed by the NRC and found to be appropriately conservative per the NRC's Final Safety Evaluation for WCAP–17642–P–A, Revision 1.

The proposed use of the LEFM [leading edge flow meter], the PAD5 methodology, the fluence calculations in the extended beltline region, and the increase in required reactor coolant system (RCS) flow serve to facilitate operations at the uprated power level and have no impact on the probability or consequences of any accident previously evaluated.

The radiological consequences of operation at the uprated power conditions have been assessed. The proposed power uprate does not affect release paths, frequency of release, or the analyzed reactor core fission product inventory for any accidents previously evaluated in the Farley updated Final Safety Analysis Report (FSAR). As discussed in Attachment 4, Sections 11.1.D.iii, (items 22 and 23), and 111.1 (items 7, 9, 24 and 26), the current analyses of record included sufficient margin in the secondary steam mass environmental releases to bound the increased values applicable for MUR–PU operation. The acceptance criteria for radiological consequences continue to be met at the uprated power level.

The proposed change does not involve any change to the design or functional requirements of the safety and support systems. That is, the increased power level neither degrades the performance of, nor increases the challenges to any safety systems assumed to function in the plant safety analysis. While power level is an input to accident analyses, it is not an initiator of accidents. The proposed change does not affect any accident precursors and does not introduce any accident initiators. The proposed change does not impact the usefulness of the surveillance requirements in evaluating the operability of required systems and components.

Additionally, evaluation of the proposed TS changes demonstrates that the availability of equipment and systems required to prevent or mitigate the radiological consequences of an accident is not significantly affected. The impact on the systems is minimal, and the overall impact on the plant safety analysis is negligible.

Therefore, the proposed change 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.

No new accident scenarios, failure mechanisms, or single failures are introduced because of the proposed change. The use of the LEFM measurement system has been analyzed for Farley and failures of the system will have no adverse effect on any safety-related system or any systems, structures, or components (SSCs) required for transient mitigation. Similarly, projections of fluence for reactor vessel material in the extended beltline region will have no adverse effect on any safety-related system or any SSCs required for transient mitigation. SSCs previously required for the mitigation of a transient continue to be capable of fulfilling their intended design functions. The proposed change has no adverse effect on any safety-related system or component and does not change the performance or integrity of any safety-related system.

The proposed change does not adversely affect any current system interfaces or create any new interfaces that could result in an accident or malfunction of a different kind than previously evaluated. Operation at the uprated power level does not create any new accident initiators or precursors. Credible malfunctions are bounded by existing accident AORs [analyses of record] or new evaluations demonstrating that applicable criteria are still met with the proposed changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margins of safety associated with the power uprate are those pertaining to core thermal power. These include fuel cladding, RCS pressure boundary, and containment barriers. Although the proposed amendment increases the Farley operating power level, the units retains the margin of safety because it is only increasing power by the amount equal to the reduction in uncertainty in the heat balance calculation.

Analyses demonstrate that the current design basis continues to be met after the measurement uncertainty recapture power uprate. Components associated with the RCS pressure boundary structural integrity, including pressure-temperature limits and pressurized thermal shock, are bounded by the current analyses. Systems will continue to operate within their design parameters and remain capable of performing their intended safety functions.

The current Farley safety analyses, including the design basis radiological accident dose calculations, bound the proposed power uprate.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.

NRC Branch Chief: Michael T. Markley.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served

Continued

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 15th day of January 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2020–00931 Filed 2–3–20; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from September 1, 2019 to September 30, 2019.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

16. Department of Health and Human Services (Sch. A, 213.3116)

(f)(1) Reserved.

Schedule B

No Schedule B Authorities to report during September 2019.

Schedule C

The following Schedule C appointing authorities were approved during September 2019.

on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Agency name	Organization name	Position title	Authorization number	Effective date
DEPARTMENT OF AGRICULTURE.	Office of the Secretary	Advance Lead	DA190187	09/04/2019
		Special Assistant	DA190200	09/12/2019
		Deputy Director of Scheduling	DA190208	09/16/2019
	Office of the Assistant Secretary for Administration.	Senior Advisor	DA190203	09/13/2019
	Office of the Assistant Secretary for Congressional Relations.	Chief of Staff	DA190207	09/17/2019
	Rural Housing Service	State Director—Hawaii	DA190214	09/25/2019
	Rural Utilities Service	Confidential Assistant	DA190201	09/12/2019
DEPARTMENT OF COMMERCE.	Office of International Trade Administration.	Chief of Staff	DC190125	09/05/2019
	Office of the Advocacy Center	Policy Advisor	DC190137	09/05/2019
	Office of Under Secretary	Senior Advisor	DC190138	09/05/2019
DEPARTMENT OF DEFENSE ..	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD190188	09/09/2019
	Office of the Secretary	Protocol Officer	DD190179	09/06/2019
		Defense Fellow	DD190207	09/27/2019
	Office of the Under Secretary of Defense (Acquisition and Sustainment).	Special Assistant	DD190196	09/18/2019
	Office of the Under Secretary of Defense (Comptroller).	Special Assistant	DD190183	09/09/2019
	Office of the Under Secretary of Defense (Policy).	Special Assistant (3)	DD190155	09/03/2019
			DD190195	09/13/2019
			DD190198	09/20/2019
DEPARTMENT OF THE ARMY	Office of the Assistant Secretary of the Army (Civil Works).	Special Assistant (Civil Works)	DW190051	09/03/2019
	Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).	Special Assistant (Manpower and Reserve Affairs).	DW190050	09/19/2019
DEPARTMENT OF EDUCATION.	Office for Civil Rights	Attorney Advisor (Senior Counsel).	DB190124	09/03/2019
	Office of Communications and Outreach	Confidential Assistant	DB190126	09/05/2019
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Electricity Delivery and Energy Reliability.	Special Advisor	DE190199	09/17/2019
	Office of the Assistant Secretary for Environmental Management.	Chief of Staff	DE190200	09/24/2019
	Office of General Counsel	Senior Advisor	DE190201	09/23/2019
	Office of Public Affairs	Content Creator	DE190172	09/09/2019
		Deputy Press Secretary	DE190191	09/18/2019
	Office of Science	Senior Advisor	DE190192	09/26/2019
	Office of the Secretary	Special Assistant	DE190202	09/23/2019
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Assistant Administrator for Air and Radiation.	Policy and Communications Advisor for the Office of Air and Radiation.	EP190133	09/03/2019
	Region VIII—Denver, Colorado	Chief of Staff for Region VIII	EP190129	09/09/2019
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.	Office of the General Counsel	Executive Staff Assistant	EE190006	09/12/2019
EXPORT–IMPORT BANK	Office of External Engagement	Deputy for External Engagement.	EB190017	09/04/2019
		Principal Deputy	EB190018	09/12/2019
GENERAL SERVICES ADMINISTRATION.	Office of Strategic Communication	Senior Communications Advisor.	GS190039	09/13/2019
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Intergovernmental and External Affairs.	External Affairs Specialist (2)	DH190252	09/04/2019
			DH190240	09/09/2019
	Office of the Administration for Children and Families.	Communications Advisor	DH190245	09/09/2019
	Office of Refugee Resettlement/Office of the Director.	Policy Advisor	DH190256	09/17/2019
DEPARTMENT OF HOMELAND SECURITY.	Federal Emergency Management Agency	Advisor	DM190316	09/27/2019
	Office of Assistant Secretary for Legislative Affairs.	Chief of Staff in the Office of Legislative Affairs.	DM190293	09/06/2019
	Office of the Chief of Staff	Deputy Director of Advance	DM190308	09/19/2019
	Office of the United States Citizenship and Immigration Services.	Advisor	DM190302	09/20/2019
	Office of the United States Customs and Border Protection.	Executive Director for Policy and Planning.	DM190303	09/19/2019
		Executive Director for Policy and Planning.	DM190310	09/24/2019

Agency name	Organization name	Position title	Authorization number	Effective date
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Community Planning and Development.	Special Assistant	DU190114	09/04/2019
	Office of Public Affairs	Assistant Press Secretary	DU190122	09/06/2019
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office	Deputy Director, Office of Intergovernmental and External Affairs.	DI190092	09/13/2019
	Bureau of Reclamation	Advisor	DI190093	09/13/2019
DEPARTMENT OF JUSTICE	Office of the Environment and Natural Resources Division.	Senior Counsel	DJ190176	09/12/2019
		Counsel	DJ190182	09/20/2019
	Office of Justice Programs	Staff Assistant	DJ190230	09/12/2019
		Senior Advisor	DJ190203	09/23/2019
	Office of the Attorney General	Special Assistant	DJ190237	09/24/2019
	Office of the Deputy Attorney General	Senior Counsel	DJ190219	09/09/2019
DEPARTMENT OF LABOR	Office of Employee Benefits Security Administration.	Policy Advisor	DL190148	09/13/2019
		Chief of Staff	DL190183	09/26/2019
	Office of Employment and Training Administration.	Policy Advisor	DL190176	09/18/2019
	Office of Occupational Safety and Health Administration.	Special Assistant	DL190179	09/24/2019
	Office of Congressional and Intergovernmental Affairs.	Regional Representative	DL190178	09/24/2019
	Office of Public Affairs	Special Assistant	DL190168	09/12/2019
	Office of the Deputy Secretary	Counselor	DL190177	09/18/2019
	Office of the Secretary	Deputy Director, Office of Faith-Based and Community Initiatives.	DL190167	09/12/2019
		Executive Assistant	DL190191	09/27/2019
	Office of the Solicitor	Senior Counsel	DL190172	09/04/2019
NATIONAL ENDOWMENT FOR THE ARTS.	National Endowment for the Arts	Special Assistant for Events and Development.	NA190013	09/13/2019
NATIONAL LABOR RELATIONS BOARD.	Office of the Board Members	Congressional Liaison Specialist.	NL190014	09/25/2019
OFFICE OF MANAGEMENT AND BUDGET.	Office of the General Counsel	Confidential Assistant	BO190048	09/18/2019
OFFICE OF PERSONNEL MANAGEMENT.	Office of the Congressional, Legislative, and Intergovernmental Affairs.	Congressional Relations Officer.	PM190054	09/24/2019
DEPARTMENT OF STATE	Bureau of Global Public Affairs	Deputy Spokesperson	DS190141	09/10/2019
	Bureau of Political and Military Affairs	Deputy Assistant Secretary	DS190145	09/20/2019
		Senior Advisor	DS190146	09/20/2019
	Office of the Director of United States Foreign Assistance.	Special Advisor	DS190144	09/24/2019
	Office of the Under Secretary for Civilian Security, Democracy, and Human Rights.	Special Assistant	DS190142	09/10/2019
	Office of the Under Secretary for Economic Growth, Energy, and the Environment.	Deputy Chief Economist	DS190140	09/04/2019
		Senior Economist	DS190143	09/20/2019
	Office of the Under Secretary for Management.	Deputy White House Liaison	DS190151	09/25/2019
DEPARTMENT OF TRANSPORTATION.	Office of the Secretary	Deputy Director for Scheduling and Advance Operations.	DT190124	09/23/2019

The following Schedule C appointing authorities were revoked during September 2019.

Agency name	Organization name	Position title	Request number	Date vacated
DEPARTMENT OF COMMERCE.	Advocacy Center	Policy Assistant	DC180009	09/14/2019
	Office of General Counsel	Special Advisor	DC190088	09/14/2019
	Office of Under Secretary	Special Advisor	DC180055	09/14/2019
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Under Secretary of Defense (Personnel and Readiness).	Special Assistant to the Assistant Secretary of Defense for Health Affairs.	DD170168	09/01/2019

Agency name	Organization name	Position title	Request number	Date vacated
	Office of the Under Secretary of Defense (Policy).	Special Assistant	DD180124	09/14/2019
		Special Assistant to the Director, Defeat ISIS Task Force.	DD180013	09/16/2019
DEPARTMENT OF THE AIR FORCE.	Office of Assistant Secretary of the Air Force for Manpower and Reserve Affairs.	Special Assistant	DF180003	09/01/2019
DEPARTMENT OF EDUCATION.	Office for Civil Rights	Attorney Advisor	DB190069	09/14/2019
	Office of Communications and Outreach	Confidential Assistant	DB170141	09/27/2019
	Office of Planning, Evaluation and Policy Development.	Special Assistant	DB180060	09/14/2019
	Office of the General Counsel	Attorney Advisor (2)	DB190009	09/07/2019
			DB190001	09/14/2019
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Senior Advisor for External Affairs.	DE180158	09/30/2019
	Office of the Assistant Secretary for Electricity Delivery and Energy Reliability.	Special Assistant	DE190179	09/29/2019
	Office of the Assistant Secretary for International Affairs.	Senior Advisor	DE190146	09/01/2019
		Chief of Staff	DE190019	09/14/2019
	Office of Cybersecurity, Energy Security and Emergency Response.	Special Assistant	DE190112	09/28/2019
	Office of Public Affairs	Deputy Creative Director	DE190069	09/14/2019
	Office of the Deputy Secretary	Policy Advisor to the Deputy Secretary (2).	DE180153	09/06/2019
			DE180152	09/06/2019
	Office of the Secretary of Energy Advisory Board.	Director, Office of Secretarial Boards and Councils.	DE180006	09/20/2019
	Office of the Under Secretary of Energy	Scheduler to the Under Secretary.	DE180032	09/01/2019
		Special Assistant to the Under Secretary of Energy.	DE180103	09/01/2019
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Intergovernmental and External Affairs.	Special Assistant	DH190187	09/14/2019
	Office of the Assistant Secretary for Financial Resources.	Policy Advisor	DH190073	09/27/2019
	Office of the Assistant Secretary for Public Affairs.	Deputy Press Secretary	DH190226	09/27/2019
	Office of the Secretary	Special Assistant	DH190170	09/30/2019
DEPARTMENT OF HOMELAND SECURITY.	Office of the Chief of Staff	Special Assistant	DM190209	09/07/2019
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Administration	Senior Advisor	DU190075	09/30/2019
DEPARTMENT OF JUSTICE	Office of the Attorney General	Director of Scheduling	DJ170024	09/28/2019
DEPARTMENT OF LABOR	Bureau of the International Labor Affairs	Special Assistant	DL170122	09/14/2019
DEPARTMENT OF THE INTERIOR.	Bureau of Reclamation	Special Assistant	DI180007	09/14/2019
DEPARTMENT OF TRANSPORTATION.	Office of the Secretary	Deputy Director for Scheduling and Advance.	DT180074	09/28/2019
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Secretary and Deputy	Special Assistant	DV190014	09/05/2019
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Assistant Administrator for Water.	Attorney-Advisor (General)	EP190015	09/14/2019
	Office of the Administrator	Director of Advance	EP180081	09/28/2019
OFFICE OF PERSONNEL MANAGEMENT.	Office of the Director	Special Assistant	PM190005	09/14/2019
		Confidential Assistant	PM180052	09/28/2019
	Office of the General Counsel	Assistant General Counsel	PM180047	09/14/2019

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–02033 Filed 2–3–20; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88075; File No. SR–CboeBZX–2020–010]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide an Exemption to Certain Governance Requirements for Series of Managed Portfolio Shares Listed on the Exchange Pursuant to Rule 14.11(k)

January 29, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 22, 2020, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to provide an exemption to certain governance requirements for series of Managed Portfolio Shares listed on the Exchange pursuant to Rule 14.11(k).

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 16, 2019, the Commission approved an Exchange proposal to adopt BZX Rule 14.11(k) related to the listing and trading of Managed Portfolio Shares[5] on the Exchange.[6] Currently, Rule 14.10(e)(1)(E) provides an exemption to certain audit committee requirements provided under Rule 14.10(c)(3) for funds listed on the Exchange that are Index Fund Shares and Managed Fund Shares. Specifically, Rule 14.10(e)(1)(E) provides that ''management investment companies that are Index Fund Shares and Managed Fund Shares, as defined in Rules 14.11(c) and 14.11(i), are exempt from the Audit Committee requirements set forth in Rule 14.10(c)(3), except for the applicable requirements of SEC Rule 10A–3.''

Managed Fund Shares and Index Fund Shares are exempted from the requirements of Rule 14.10(c)(3) because they are otherwise subject to the accounting and auditing requirements of the Investment Company Act of 1940 (the ''1940 Act''), including Section 32(a).[7] Because Managed Portfolio Shares are also subject to the accounting and auditing requirements under the 1940 Act and are so similarly situated to Managed Fund Shares and only to a slightly lesser extent Index Fund Shares,[8] the Exchange believes that Managed Portfolio Shares should be subject to and exempt from the same corporate governance requirements associated with listing on the Exchange. As such, the Exchange is proposing to make a change to amend Rule 14.10(e)(1)(E) in order to add Managed Portfolio Shares to the list of product types listed on the Exchange that are exempted from the Audit Committee requirements set forth in Rule 14.10(c)(3), except for the applicable requirements of SEC Rule 10A–3.[9]

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[10] in general and Section 6(b)(5) of the Act[11] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that this change to amend Rule 14.10(e)(1)(E) in order to add Managed Portfolio Shares to a list of product types listed on the Exchange, including Index Fund Shares and Managed Fund Shares, that are exempted from the Audit Committee requirements set forth in Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The term ''Managed Portfolio Share'' means a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit (as defined in Rule 14.11(k)(3)(F)), or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N–1A filed with the Commission) through a Confidential Account (as defined in Rule 14.11(k)(3)(D)); (c) when aggregated into a Redemption Unit (as defined in Rule 14.11(k)(3)(G)), or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

[6] *See* Securities Exchange Act Release No. 87759 (December 16, 2019), 84 FR 70223 (December 20, 2019) (SR–CboeBZX–2019–047) (the ''MPS Approval Order''). The Exchange notes that it does not currently list any series of Managed Portfolio Shares, so the proposed change would only have an impact if the Exchange listed Managed Portfolio Shares in the future.

[7] 15 U.S.C. 80a–31.

[8] For each of Managed Fund Shares and Managed Portfolio Shares a share represents an interest in an Investment Company organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies. *See* MPS Approval Order at 70224 for additional information. For Index Fund Shares, the primary difference is that the Investment Company seeks to provide investment results that correspond generally to the price and yield performance or total return performance of a specified index, rather than simply a portfolio selected by the Investment Company's investment adviser.

[9] 17 CFR 240.10A–3.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

14.10(c)(3), except for the applicable requirements of SEC Rule 10A–3 is consistent with the Act because it is meant only to subject Managed Portfolio Shares to the same corporate governance requirements currently applicable to the very similar product structures of Managed Fund Shares and Index Fund Shares.[12]

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. To the contrary, the Exchange believes that the proposed rule change would better allow issuers of Managed Portfolio Shares to comply with the Exchange's governance requirements in a manner generally consistent with other product types, which the Exchange believes will help promote competition among products listed on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange stated that it believes that waiving the operative delay will allow any series of Managed Portfolio Shares that lists on the Exchange in the near future to take advantage of this exemption to certain audit committee requirements and not have to either delay launch or take short-term remedial measures to comply with all requirements of Rule 14.10(c)(3).

The Commission believes that waiver of the operative delay is appropriate because, as the Exchange stated, the rule proposal is requesting an exemption to certain audit committee requirements that is currently granted to Managed Fund Shares and Index Fund Shares, and there are no unique issues associated with proving such an exemption to Managed Portfolio Shares that have not already been considered by the Commission or that would warrant disparate treatment. Accordingly, the Commission designates the proposed rule change to be operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings 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–CboeBZX–2020–010 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–CboeBZX–2020–010. 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–CboeBZX–2020–010 and should be submitted on or before February 25, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02048 Filed 2–3–20; 8:45 am]

BILLING CODE 8011–01–P

[12] *See* supra note 7.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33794; 812–14383]

FS Energy and Power Fund and FS/EIG Advisor, LLC

January 29, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under Section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from Sections 18(a)(2), 18(c), 18(i) and Section 61(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end management investment companies that have elected to be regulated as business development companies (''BDCs'') to issue multiple classes of shares with varying sales loads and asset-based service and/or distribution fees.

APPLICANTS: FS Energy and Power Fund (the ''Current Fund'') and FS/EIG Advisor, LLC (the ''Investment Adviser'').

FILING DATES: The application was filed on October 24, 2014 and amended on August 17, 2018, February 1, 2019, June 28, 2019, and January 29, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail.

Hearing requests should be received by the Commission by 5:30 p.m. on February 24, 2020, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: c/o Michael C. Forman, CEO, Stephen S. Sypherd, General Counsel and Secretary, FS Energy and Power Fund, 201 Rouse Boulevard, Philadelphia, PA 19112.

FOR FURTHER INFORMATION CONTACT: Asen Parachkevov, Senior Counsel, or David Joire, Senior Special Counsel, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Current Fund is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a BDC under the Act.[1] The Current Fund's investment objective is to generate current income and long-term capital appreciation.

2. The Investment Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the Current Fund.

3. Applicants seek an order to permit the Funds (defined below) to offer investors multiple classes of shares of beneficial interest (''Shares'') with varying sales loads and asset-based service and/or distribution fees.

4. Applicants request that the order also apply to any continuously offered registered closed-end management investment company that elects to be regulated as a BDC that has been previously organized or that may be organized in the future for which the Investment Adviser or any entity controlling, controlled by, or under common control with the Investment Adviser, or any successor in interest to any such entity,[2] acts as investment adviser which periodically offers to repurchase its Shares pursuant to Rule 13e–4 under the Securities Exchange Act of 1934 (''Exchange Act'') and Section 23(c)(2) of the Act (each, a ''Future Fund'' and together with the Current Fund, the ''Funds'').[3]

5. As a BDC, the Current Fund is organized as a closed-end investment company, but offers its Shares continuously, similar to an open-end management investment company. On November 17, 2016, the Current Fund ceased the public offering of Shares to new investors. The Current Fund has only issued one class of Shares, but anticipates, if it recommences the public offering, that it will offer additional classes of Shares. Shares of the Funds will not be offered or traded in a secondary market and will not be listed on any securities exchange and do not trade on an over-the–counter system.[4]

6. Each Fund is seeking the ability to offer multiple classes of Shares that may charge differing front-end sales loads, contingent deferred sales charges (''CDSCs''), an early withdrawal charge (''Repurchase Fee''), and/or annual asset-based service and/or distribution fees. Each class of Shares will comply with the provisions of Rule 2310 of the Financial Industry Regulatory Authority, Inc. (''FINRA'') Manual (''FINRA Rule 2310'').[5]

7. Any Share of a Fund that is subject to asset-based service or distribution fees shall convert to a class with no asset based service or distribution fees upon such Share reaching the applicable sales charge cap determined in accordance with FINRA Rule 2310. Further, if a class of Shares were to be listed on an exchange in the future, all other then-existing classes of Shares of the listing Fund will be converted into the listed class, without the imposition of any sales load, fee or other charge.

8. In order to provide a limited degree of liquidity to shareholders, Applicants state that each Fund may from time to time offer to repurchase Shares in accordance with Rule 13e–4 under the Exchange Act and Section 23(c)(2) of the Act. Applicants state further that repurchases of each Fund's Shares will be made at such times, in such amounts and on such terms as may be determined by the applicable Fund's board of trustees in its sole discretion.

9. Each Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of Shares offered for sale by the prospectus, as is required for open-end, multiple-class funds under Form N–1A. As if it were an open-end management investment company, each Fund will disclose fund expenses in shareholder reports,[6] and

[1] Section 2(a)(48) of the Act defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in Sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] For purposes of the requested order, ''successor'' is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of a business organization.

[3] Any Fund relying on this relief in the future will do so in compliance with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

[4] Applicants are not requesting relief with respect to any Fund listed on a securities exchange. Any Fund which relies on the relief requested herein will cease relying on such relief upon the listing of any class of its Shares on a securities exchange.

[5] Any reference to FINRA Rule 2310 includes any successor or replacement rule that may be adopted by FINRA.

[6] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment

disclose in its prospectus any arrangements that result in breakpoints in, or elimination of, sales loads.[7] Each Fund will also comply with any requirements the Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end management investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements as if those requirements applied to the Fund.[8] Each Fund will contractually require that any distributor of a Fund's Shares comply with such requirements in connection with the distribution of such Fund's shares.

10. Distribution fees will be paid pursuant to a plan of distribution adopted by each Fund in compliance with Rules 12b–1 and 17d–3 under the Act, as if those rules applied to closed–end funds electing to be regulated as BDCs, with respect to a class (a ''Distribution Plan'').

11. Each Fund will allocate all expenses incurred by it among the various classes of Shares based on the respective net assets of the Fund attributable to each such class, except that the net asset value and expenses of each class will reflect the expenses associated with the Distribution Plan of that class (if any), shareholder servicing fees attributable to a particular class (including transfer agency fees, if any) and any other incremental expenses of that class. Expenses of the Fund allocated to a particular class of the Fund's Shares will be borne on a pro rata basis by each outstanding Share of that class. Applicants state that each Fund will comply with the provisions of Rule 18f–3 under the Act as if it were an open-end management investment company.

12. Any Fund that imposes a CDSC will comply with the provisions of Rule 6c–10 (except to the extent a Fund will comply with FINRA Rule 2310 rather than FINRA Rule 2341, as such rule may be amended (''FINRA Rule 2341'')), as if that rule applied to BDCs. With respect to any waiver of, scheduled variation in, or elimination of the CDSC, a Fund will comply with the requirements of Rule 22d–1 under the Act as if the Fund were an open-end management investment company. Each Fund also will disclose CDSCs in accordance with the requirements of Form N–1A concerning CDSCs as if the Fund were an open-end management investment company.

13. Funds may impose a Repurchase Fee at a rate no greater than 2% of the shareholder's repurchase proceeds if the interval between the date of purchase of the Shares and the valuation date with respect to the repurchase of such Shares is less than a specified period. Any Repurchase Fee will apply equally to all shareholders of the applicable Fund, regardless of class, consistent with Section 18 of the Act and Rule 18f–3 under the Act. To the extent a Fund determines to waive, impose scheduled variations of, or eliminate any Repurchase Fees, it will do so consistently with the requirements of Rule 22d–1 under the Act as if the Repurchase Fee were a CDSC and as if the Fund were an open-end investment company and the Fund's waiver of, scheduled variation in, or elimination of, the Repurchase Fee will apply uniformly to all shareholders of the Fund.

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(a)(2) of the Act provides that a closed-end investment company may not issue or sell a senior security that is a stock unless certain requirements are met. Applicants state that the creation of multiple classes of shares of the Funds may violate Section 18(a)(2), which is made applicable to BDCs through Section 61(a) of the Act, because the Funds may not meet such requirements with respect to a class of shares that may be a senior security.

2. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of Shares of the Funds may be prohibited by Section 18(c), which is made applicable to BDCs through Section 61(a) of the Act, as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

3. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate Section 18(i) of the Act, which is made applicable to BDCs through Section 61(a) of the Act, because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under Section 6(c) from Sections 18(a)(2), 18(c) and 18(i) (which are made applicable to BDCs by Section 61(a) of the Act) to permit the Funds to issue multiple classes of Shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its Shares and provide investors with a broader choice of fee options. Applicants assert that the proposed BDC multiple class structure does not raise the concerns underlying Section 18 of the Act to any greater degree than open-end management investment companies' multiple class structures that are permitted by Rule 18f–3 under the Act.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

1. Each Fund will comply with the provisions of Rules 6c–10 (except to the extent a Fund will comply with FINRA Rule 2310 rather than FINRA Rule 2341), 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the 1940 Act, as amended from time to time, or any successor rules thereto, as if those rules applied to BDCs. In addition, each Fund will comply with FINRA Rule 2310, as amended from time to time, or any successor rule thereto, and will make available to any distributor of a Fund's shares all of the information necessary to permit the distributor to prepare client account statements in compliance with FINRA Rule 2231.

Companies, Investment Co. Act Rel. No. 26372 (Feb. 27, 2004) (adopting release).

[7] *See* Disclosure of Breakpoint Discounts by Mutual Funds, Investment Co. Act Rel. No. 26464 (June 7, 2004) (adopting release).

[8] *See* Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Investment Co. Act Rel. No. 26341 (Jan. 29, 2004) (proposing release).

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02032 Filed 2–3–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88078; File No. SR–NASDAQ–2019–060]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Amend Rules 4120 and 4753

January 29, 2020.

I. Introduction

On July 18, 2019, The Nasdaq Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 4120 and 4753 to permit the Exchange to declare a regulatory halt in a security that traded in the over-the-counter (''OTC'') market prior to its initial pricing on the Exchange, allow for the initial pricing of such a security through the IPO Cross, and establish a new tie-breaker for determining the Current Reference Price and the Cross price for such a security. The proposed rule change was published for comment in the **Federal Register** on August 6, 2019.[3] On September 19, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 19, 2019, the Exchange also filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed.[6] On November 1, 2019, the Commission published notice of Amendment No. 1 and instituted proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] The Commission received no comment letters on the proposal. On January 10, 2020, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and superseded the proposed rule change, as modified by Amendment No. 1.[9] The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposal

Currently, a security that traded in the OTC market immediately prior to listing on the Exchange is released for initial trading on the Exchange by utilizing the Opening Cross pursuant to Rule 4752(d).[10] The Exchange proposes to amend Rule 4120 to permit the Exchange to declare a regulatory halt [11] in a security that traded in the OTC market prior to its initial pricing on the Exchange.[12] The Exchange also proposes to amend Rules 4120 and 4753 to allow for the initial pricing on the Exchange of such a security through the IPO Cross (described in Rules 4120(c)(8) and 4753) if a broker-dealer serving in the role of financial advisor to the issuer is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter in an initial public offering.[13] If the issuer does not retain a financial advisor, the initial pricing on the Exchange of such a security will continue to be effected through the Opening Cross.[14] Moreover, the Exchange proposes to adopt Rules 4753(a)(3)(A)(iv)(e) and 4753(b)(2)(D)(v) to provide that, in the case of the initial pricing of a security that traded in the OTC market pursuant to FINRA Form 211 immediately prior to its initial pricing, the fourth tie-breaker used in calculating each of the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator for purposes of the IPO Cross and the price at which the IPO Cross will occur will be the price that is closest to the most recent transaction price in the OTC market.[15]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86537 (July 31, 2019), 84 FR 38321.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 87012, 84 FR 50490 (September 25, 2019). The Commission designated November 4, 2019 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] In Amendment No. 1, the Exchange revised the proposal to: (1) clarify that when a security previously traded in the OTC market is initially priced using the IPO Cross, the fourth tie-breaker for each of the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Cross will occur will be the price that is closest to the most recent transaction price in the OTC market; (2) specify that, for purposes of this proposed rule change, the use of the term ''regulatory halt'' refers to Nasdaq's authority to halt trading in a security under Rule 4120(a)(7); (3) clarify that, currently, a security that traded in the OTC market immediately prior to listing on Nasdaq is released for initial trading on Nasdaq through the Opening Cross under Rule 4752(d) and, pursuant to the proposal, if such an issuer does not retain a financial advisor, the initial pricing will continue to be effected through the Opening Cross; (4) include additional justification in support of the proposed rule change; and (5) make technical and conforming changes. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nasdaq-2019-060/srnasdaq2019060-6163792-192369.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 87445, 84 FR 60130 (November 7, 2019).

[9] In Amendment No. 2, the Exchange further revised the proposal to: (1) clarify that the proposal will not allow a company transferring from the OTC market to concurrently raise capital in the IPO Cross; (2) clarify that the proposal can be beneficial because Rule 4120(c)(8) will provide for extended quoting activity prior to the launch of a security; and (3) make technical and conforming changes. Amendment No. 2 is available at *https://www.sec.gov/comments/sr-nasdaq-2019-060/srnasdaq2019060-6637710-203487.pdf.*

[10] *See* Amendment 2, *supra* note 9, at 4 n.4.

[11] For purposes of this proposed rule change, the term ''regulatory halt'' refers to Nasdaq's authority to halt trading in a security under Rule 4120(a)(7). *See id.* at 4 n.3.

[12] The Exchange states that its proposal will facilitate a more orderly start to trading by permitting the Exchange to declare a regulatory halt in a security that traded in the OTC market prior to its initial pricing on the Exchange, before trading on the Exchange begins, which the Exchange believes will avoid potential price disparities or anomalies that may occur during any unlisted trading privileges (''UTP'') trading before the first transaction on the primary listing exchange. *See id.* at 7.

[13] Rule 4120(c)(9) currently provides that the IPO Cross process is available for the initial pricing of a security that has not been listed on a national securities exchange or traded in the OTC market pursuant to FINRA Form 211 immediately prior to the initial pricing where a broker-dealer serving in the role of financial advisor to the issuer is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering. The Exchange states that the IPO Cross will be a better mechanism to open trading in securities that traded in the OTC market given that these companies may attract significant interest upon listing on the Exchange from investors who previously could not invest in such securities. *See id.* at 8. The Exchange states that the initial interest in such securities upon listing on the Exchange makes it beneficial to provide the issuer's financial advisor with additional time by extending quoting activity prior to launch and to allow significant financial advisor involvement in determining when to launch trading. *See id.* at 8–9. The Exchange also represents that its proposal will not allow a company transferring from the OTC market to concurrently raise capital in the IPO Cross. *See id.* at 8 n.12.

[14] *See id.* at 4 n.4.

[15] The Exchange states that the most recent transaction price in the OTC market is predictive of the price that will develop upon the listing of the security on the Exchange. *See id.* at 8. This proposed change to the fourth tie-breaker will not affect the pricing of a security if the issuer does not retain a financial advisor. *See id.* at 4 n.5.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal to allow the Exchange to declare a regulatory halt prior to the initial pricing on the Exchange of a security that was previously traded in the OTC market is reasonably designed to address potential price disparities or anomalies that may occur during UTP trading in such security before the first transaction on the Exchange and contribute to a fair and orderly market. The Commission also believes that the proposal to allow a security that previously traded in the OTC market to utilize the IPO Cross for its initial pricing on the Exchange, provided that a broker-dealer serving in the role of financial advisor to the issuer is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect an initial public offering, could facilitate a more orderly start to trading in such security on the Exchange, particularly for a company that attracts significant additional interest upon listing on the Exchange. Finally, the Commission believes that it is reasonable to utilize the most recent transaction price in the OTC market, which could be predictive of the price that will develop upon listing of the security on the Exchange, as the fourth tie-breaker for determining the Current Reference Price and the Cross price for a security transferring from the OTC market.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–060 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–060. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–060, and should be submitted on or before February 25, 2020.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. As discussed above, in Amendment No. 2, the Exchange further revised the proposal to: (1) Clarify that the proposal will not allow a company transferring from the OTC market to concurrently raise capital in the IPO Cross; (2) clarify that the proposal can be beneficial because Rule 4120(c)(8) will provide for extended quoting activity prior to the launch of a security; and (3) make technical and conforming changes. The Commission believes that Amendment No. 2 provides additional accuracy and clarity to the proposal and does not raise any novel regulatory issues. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[18] to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NASDAQ–2019–060), as modified by Amendment No. 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02051 Filed 2–3–20; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(2).

[19] *Id.*

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88076; File No. SR–CboeBZX–2020–012]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Exchange's Opening Process To Allow for an Opening Auction, Similar to that Available on Cboe Exchange, Inc. (''Cboe Options'') and Cboe EDGX Exchange, Inc. (''EDGX Options''), and Make Other Conforming Changes to Rules 16.1 and 21.17

January 29, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 22, 2020, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend the Exchange's opening process to allow for an opening auction, similar to that available on Cboe Exchange, Inc. (''Cboe Options'') and Cboe EDGX Exchange, Inc. (''EDGX Options''), and make other conforming changes to Rules 16.1 and 21.17. The text of the proposed rule changes are provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 21.7 sets forth the opening process the Exchange uses to open series on the Exchange at the market open each trading day (and after trading halts). Pursuant to the current opening process, the System determines an opening price for a series based on the National Best Bid and Offer (''NBBO'') [3] and crosses any interest on the book that is marketable at that price. The proposed rule change adopts an opening auction process, substantially similar to the Cboe Options and EDGX Options opening auction process.[4] The Exchange believes an opening auction process will enhance the openings of series on the Exchange by providing an opportunity for price discovery based on then-current market conditions. Pursuant to the proposed opening auction process, the Exchange will have a Queuing Period, during which the System will accept orders and quotes and disseminate expected opening information; will initiate an opening rotation upon the occurrence of certain triggers; will conduct an opening rotation during which the System matches and executes orders and quotes against each other in order to establish an opening Exchange best bid and offer and trade price, if any, for each series, subject to certain price protections; and will open series for trading.[5]

Proposed Rule 21.7(a) sets forth the definitions of the following terms for purposes of the opening auction process in proposed Rule 21.7: [6]

• *Composite Market:* The term ''Composite Market'' means the market for a series comprised of (1) the higher of the then-current best appointed Market-Maker bulk message bid on the Queuing Book and the away best bid (''ABB'') [7] (if there is an ABB) and (2) the lower of the then-current best appointed Market-Maker bulk message offer on the Queuing Book and the away best offer (''ABO'') [8] (if there is an ABO). The term ''Composite Bid (Offer)'' means the bid (offer) used to determine the Composite Market.[9]

• *Composite Width:* The term ''Composite Width'' means the width of the Composite Market (*i.e.,* the width between the Composite Bid and the Composite Offer) of a series.

• *Maximum Composite Width:* The term ''Maximum Composite Width'' means the amount that the Composite Width of a series may generally not be greater than for the series to open (subject to certain exceptions, as described below). The Exchange determines this amount on a class and Composite Bid basis, which amount the Exchange may modify during the opening auction process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates).

• *Opening Auction Updates:* The term ''opening auction updates'' means Exchange-disseminated messages that contain information regarding the expected opening of a series based on orders and quotes in the Queuing Book, including the expected opening price, the then-current cumulative size on each side at or more aggressive than the expected opening price, and whether the series would open (and any reason why a series would not open).

• *Opening Collar:* The term ''Opening Collar'' means the price range that establishes limits at or inside of which the System determines the Opening Trade Price for a series. The Exchange determines the width of this price range on a class and Composite Bid basis, which range the Exchange may modify during the opening auction process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates).

• *Opening Trade Price:* The term ''Opening Trade Price'' means the price at which the System executes opening trades in a series during the opening rotation.[10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The opening price (if not outside the NBBO and no more than a specified minimum amount away from the NBBO) is either the midpoint of the NBBO, the last disseminated transaction price after 9:30 a.m., or the last transaction price from the previous trading day. *See* current Rule 21.7(b).

[4] *See* Cboe Options Rule 5.31 and EDGX Options Rule 21.7.

[5] The order of events that comprise this proposed opening auction process corresponds to the opening auction process on Cboe Options and EDGX Options. *See* Cboe Options Rule 5.31 and EDGX Options Rule 21.7.

[6] A term defined elsewhere in the Rules has the same meaning with respect to Rule 21.7, unless otherwise defined in Rule 21.7. *See* Cboe Options Rule 5.31(a) and EDGX Options Rule 21.7(a).

[7] See the definition of ''ABBO'' included in proposed Rule 16.1.

[8] *Id.*

[9] Cboe Options and EDGX Options similarly consider the Exchange's best quote bid and best quote offer when determining whether the Exchange's market is too wide.

[10] *See* current Rule 21.7(d).

• *Queuing Book:* The term ''Queuing Book'' means the book into which Users may submit orders and quotes during the Queuing Period for participation in the application opening rotation. Orders and quotes on the Queuing Book may not execute until the opening rotation.

• *Queuing Period:* The term ''Queueing Period'' means the time period prior to the initiation of an opening rotation during which the System accepts orders and quotes for participation in the opening rotation for the applicable trading session.[11]

Proposed paragraph (b) describes the Queuing Period. The Queuing Period begins at 7:30 a.m. for all classes.[12] This is the same time at which the System begins accepting orders and quotes today. Therefore, Users will have the same amount of time to submit orders and quotes prior to the opening. Proposed subparagraph (b)(2) clarifies that orders and quotes on the Queuing Book are not eligible for execution until the opening rotation pursuant to proposed paragraph (e), as described below. This is consistent with current order entry period, pursuant to which orders and quotes entered for inclusion in the opening process do not execute until the opening trade pursuant to current paragraph (d). The System accepts all orders and quotes that are available for a class and trading session pursuant to Rule 21.1 during the Queuing Period, which are eligible for execution during the opening rotation, except as follows:

• The System rejects Immediate-or-Cancel (''IOC'') and Fill-or-Kill (''FOK'') orders during the Queuing Period; [13]

• the System accepts orders and quotes with Match Trade Prevention (''MTP'') Modifiers during the Queuing Period, but does not enforce them during the opening rotation; [14]

• the System accepts Stop and Stop Limit Orders [15] during the Queuing Period, but they do not participate during the opening rotation. The System enters any of these orders it receives during the Queuing Period into the Book following completion of the opening rotation (in time priority); [16] and

• the System converts all Intermarket Sweep Orders (''ISOs'') received prior to the completion of the opening rotation into non-ISOs.[17]

Proposed paragraph (c) describes the opening auction updates the Exchange will disseminate as part of the opening auction process. As noted above, opening auction updates contain information regarding the expected opening of a series. These messages provide market participants with information that may contribute to enhanced liquidity and price discovery during the opening auction process. Beginning at a time (determined by the Exchange) no earlier than one hour prior to the expected initiation of the opening rotation and until the conclusion of the opening rotation for a series, the Exchange disseminates opening auction updates for the series. The Exchange disseminates opening auction updates at regular intervals of time (the length of which the Exchange determines for each trading session), or less frequently if there are no updates to the opening information since the previously disseminated update, to all subscribers to the Exchange's data feeds that deliver these messages until a series opens. If there have been no changes since the previous update, the Exchange does not believe it is necessary to disseminate duplicate updates to market participants at the next interval of time.[18]

Proposed paragraph (d) describes the events that will trigger the opening rotation for a class. Pursuant to current paragraph (b), the System will automatically open a related equity option series after the first transaction on the primary listing market after 9:30 a.m. Eastern Time in the securities underlying the options as reported on the first print disseminated pursuant to an effective national market system plan (with respect to equity options). Pursuant to current paragraph (c), the System automatically opens a related index option series after an away options exchange(s) disseminates a quote in an index option series (with respect to index options).

The Exchange proposes to adopt opening rotation triggers applicable to both equity options and index options. As it pertains to equity options, the Exchange proposes to include the System's observation of the first disseminated quote [19] and transaction on the primary market in the security underlying the equity options as an opening trigger for equity options.[20] Specifically, as proposed, the System will initiate the opening rotation after an Exchange-determined time period (which the Exchange determines for all classes) upon the earlier of (A) the passage of two minutes (or such shorter time as determined by the Exchange) after the System's observation after 9:30 a.m. Eastern Time of either the first disseminated transaction or the first disseminated quote on the primary listing market in the security underlying an equity option; or (B) the System's observation after 9:30 a.m. Eastern Time of both the first disseminated transaction and the first disseminated quote on the primary listing market in the security underlying an equity option. The Exchange notes that the proposed triggers are intended to tie the Exchange's opening process to quoting and/or trading in the underlying security. The Exchange believes that quoting activity in the underlying market is a trigger that generally indicates the presence of post-open price discovery and liquidity in the primary market for the underlying, and, therefore, that the market for the underlying is adequately situated for the commencement of options trading the underlying.

The proposed timing steps in connection with the equity option opening triggers are intended to ensure that the market for the underlying security has had sufficient time to open prior to the initiation of the opening rotation where there is not both a two-sided quote and an execution in the underlying security. By waiting a requisite amount of time after the System observes one of the opening triggers, the proposed process pursuant to proposed Rule 21.7(d)(1)(A) is intended to permit post-opening price discovery to occur in the underlying security prior to the opening of options on the security. Similarly, by initiating the opening rotation upon the System's observation of both opening triggers

[11] *See* current Rule 21.7(a)(1) (the current rule does not use the term ''Queuing Period''; however, it does provide for an order entry period prior to the opening of a series during which the System accepts orders and quotes). The proposed rule change moves the rule provisions regarding the opening process following a halt to proposed paragraph (g), with no substantive changes.

[12] *See* proposed Rule 21.7(b)(1).

[13] *See* current paragraph (a) and proposed subparagraph (b)(2)(A); *see also* Cboe Options Rule 5.31(b)(2)(A) and EDGX Options Rule 21.7(b)(2)(A).

[14] *See* proposed subparagraph (b)(2)(B). This is consistent with current functionality, and the detail is being added to the Rules. *See also* Cboe Options Rule 5.31(b)(2)(B) and EDGX Options Rule 21.7(b)(2)(B).

[15] Pursuant to Exchange Rule 21.1(d)(11) and (12), Stop and Stop Limit Orders are triggered based on the consolidated last sale price. Not participating in the opening process is consistent with this requirement, as the Exchange needs to be open (and thus have an opening trade occur) in order for there to be a consolidated last sale price that can trigger these orders. *See also* Cboe Options Rule 5.31(b)(2)(C) and EDGX Options Rule 21.7(b)(2)(C).

[16] This is consistent with current functionality, and the proposed rule change is adding this detail to the Rules.

[17] *See* current paragraph (a) and proposed subparagraph (b)(2)(D); *see also* Cboe Options Rule 5.31(b)(2)(D) and EDGX Options Rule 21.7(b)(2)(D) (which does not permit ISOs to be entered during the Cboe Options pre-opening period).

[18] *See* Cboe Options Rule 5.31(c) and EDGX Options Rule 21.7(c).

[19] The quote must be a two-sided quote.

[20] *See* Cboe Options Rule 5.31(d)(1)(A)(i)–(ii) and EDGX Options Rule 21.7(d)(1)(A)(i)–(ii).

prior to the passage of two minutes, proposed Rule 21.7(d)(1)(B) ties the Exchange's opening process to specific market conditions in the underlying security that generally indicate that sufficient post-opening price discovery has occurred prior to the opening of options on the security. To illustrate, if the System were to observe a disseminated quote (or transaction) in the primary market for the underlying security, it would begin the two-minute (or shorter) timer pursuant to proposed Rule 21.7(d)(1)(A). If two minutes then passed without the System's observation of a disseminated transaction (or quote) on the primary market for the underlying security (which would cause the scenario in Rule 21.7(d)(1)(B) to occur) then it would initiate the opening rotation after a time period determined by the Exchange. Conversely, if the System were to observe a disseminated quote (or transaction) in the primary listing market and begin the two minute (or shorter) timer, but then observe a disseminated transaction (or quote) in the primary listing market before the passage of two minutes (or shorter), it would then, at the time it observed the disseminated transaction (or quote) prior to the passage of two minutes (or shorter), initiate the opening rotation after a period of time determined by the Exchange.

As it pertains to index options, the Exchange proposes to initiate the opening rotation after a time period (which the Exchange determines for all classes) following the System's observation after 9:30 a.m. Eastern Time of the first disseminated index value for the index underlying an index option.[21] The Exchange notes that the proposed trigger is intended to tie the Exchange's opening process to the disseminated index value of the underlying index.

Proposed paragraph (e) describes the opening rotation process, during which the System will determine whether the Composite Market for a series is not wider than a maximum width, will determine the opening price, and open the series.[22] The Maximum Composite Width Check and Opening Collar are intended to ensure that series open in a fair and orderly manner and at prices consistent with the current market conditions for the series and not at extreme prices, while taking into consideration prices disseminated from other options exchanges that may be better than the Exchange's at the open.

Proposed subparagraph (e)(1) describes the Maximum Composite Width Check.

- If the Composite Market of a series is not crossed, and the Composite Width of the series is less than or equal to the Maximum Composite Width, the series is eligible to open (and the System determines the Opening Price as described below).
- If the Composite Market of a series is not crossed, and the Composite Width of the series is greater than the Maximum Composite Width, but there are no non-M Capacity [23] market orders or buy (sell) limit orders with prices higher (lower) than the Composite Market midpoint and there are no locked or crossed orders or quotes, the series is eligible to open (and the System determines the Opening Price as described below).[24]
- If neither of the conditions above are satisfied for a series, or if the Composite Market of a series is crossed, the series is ineligible to open. The Queuing Period for the series will continue (including the dissemination of opening auction updates) until one of the above conditions for the series is satisfied, or the Exchange opens the series pursuant to paragraph (h).[25]

The Exchange will use the Maximum Composite Width Check as a price protection measure to prevent orders from executing at extreme prices at the open. If the width of the Composite Market (which represents the best market, as it is comprised of the better of Market-Maker bulk messages on the Exchange or any away market quotes) is no greater than the Maximum Composite Width, the Exchange believes it is appropriate to open a series under these circumstances and provide marketable orders with an opportunity to execute at a reasonable opening price (as discussed below), because there is minimal risk of execution at an extreme price.

Similarly, if the Composite Width is greater than the Maximum Composite Width but there are no non-M Capacity bids (offers) [26] that are higher (lower) than the Composite Market midpoint (and thus not marketable at a price at which the Exchange would open, as described below), there is similarly limited risk of an order executing at an extreme price on the open. While it is possible for Market-Makers to submit orders to the Exchange at an extreme price, the Exchange believes there is less risk of a Market-Maker inputting an order at an extreme price given that Market-Makers are generally responsible for pricing the market. Given this, the Exchange believes it is appropriate to open a series under certain circumstances if M capacity bids and offers set the Composite Market when the Composite Width is wider than the Maximum Composite Market. Nonetheless, the Exchange also recognizes there may be circumstances under which a non-M capacity order may improve the Composite Market when the Composite Width is greater than the Maximum Composite Width. As such, the Exchange proposes to open a series if the Composite Width is greater than the Maximum Composite Width and there are non-M Capacity limit orders at a price better than the Composite Bid (Offer) in certain circumstances. Specifically, the proposed amendment will allow the Exchange to open a series if the Composite Width of a series is greater than the Maximum Composite Width, but there are no non-M Capacity market orders or buy (sell) limit orders with prices higher (lower) than the Composite Market midpoint and there

[21] *See* Cboe Options Rule 5.31(d)(2) and EDGX Options Rule 21.7(d)(2).

[22] *See* Cboe Options Rule 5.31(e), EDGX Options Rule 21.7(e), and Cboe C2 Exchange Inc. (''C2 Options'') Rule 5.31(e) (pursuant to which Cboe Options/EDGX Options will generally not open a series if the width is wider than an acceptable price range or if the opening trade price is outside of an acceptable price range). The Exchange will similarly have a maximum quote width and acceptable opening price range, however, they may be calculated differently.

[23] Capacity M is used for orders for the account of a Market-Maker (with an appointment in the class). *See* U.S. Options Binary Order Entry Specifications, at 28 (definition of Capacity), available at *http://cdn.cboe.com/resources/membership/US_Options_BOE_Specification.pdf.*

[24] The Exchange notes that Cboe Options and EDGX Options recently amended subparagraph (e)(1)(B) to identically state that if the Composite Market of a series is not crossed, and the Composite Width of the series is greater than the Maximum Composite Width, but there are no non-M Capacity market orders or buy (sell) limit orders with prices higher (lower) than the *Composite Market midpoint* and there are orders or quotes marketable against each other, the series is eligible to open. *See* Securities Exchange Act Release Nos. 87707 (filed December 4, 2019) (SR-CboeEDGX–2019–072) and 87706 (filed December 4, 2019) (SR–CBOE–2019–115).

[25] *See* Cboe Options Rule 5.31(e)(1)(C) and EDGX Options Rule 21.7(e)(1)(C). The proposed rule change moves the provision regarding the Exchange's ability to deviate from the standard manner of the opening process from current paragraph (f) to proposed paragraph (h). Pursuant to the proposed rule change, the Exchange will make and maintain records to document all determinations to deviate from the standard manner of the opening auction process, and periodically review these determinations for consistency with the interests of a fair and orderly market (which, while not specified in the current Rules, the Exchange does today). *See* proposed Rule 21.7(h).

[26] Market-Maker bulk messages are considered when determining the Composite Market. The Exchange believes it is appropriate to consider Market-Maker bulk messages when determining an opening quote to ensure there will be liquidity in a series when it opens. Additionally, while Market-Makers may submit M capacity orders, the Exchange believes there is less risk of a Market-Maker inputting an order at an extreme price given that Market-Makers are generally responsible for pricing the market.

are no locked or crossed orders or quotes. The Exchange believes the proposed provision under proposed subparagraph (e)(1)(B) strikes a reasonable balance between protecting non-M capacity orders from executing at extreme prices and encouraging the submission of non-M capacity orders at prices that improve the Composite Market, as illustrated in examples two and three below.

The following examples show the application of the Maximum Composite Width Check:

Example #1

Suppose the Maximum Composite Width for a class is 1.00, and the Composite Market is 7.00 x 5.00, comprised of an appointed Market-Maker bulk message bid of 7.00 and an appointed Market-Maker bulk message offer of 5.00. There is no other interest in the Queuing Book. The fact that the Composite Market is greater than the Maximum Composite Width does not cause ineligibility to open as there are no non-M capacity market orders or buy (sell) limit orders with prices higher (lower) than the Composite Market midpoint. The series is not eligible to open because there are crossed orders or quotes in the series. The Queuing Period for the series will continue until the series satisfies the Maximum Composite Width Check.

Example #2

Suppose the Maximum Composite Width for a class is 1.00, and the Composite Market is 5.00 × 7.00, comprised of an appointed Market-Maker bulk message bid of 5.00 and an appointed Market-Maker bulk message offer of 7.00. There is a non-M capacity limit order to buy for 5.75 in the Queuing Book. Prior to the open, the Exchange does not know the market value of the option series; however, assume that the intrinsic value of the option series is 5.75. In this case, the series would be eligible to open because the width of the Composite Market is greater than the Maximum Composite Width and the non-M Capacity order is at a price less than the Composite Market midpoint. The System will then determine the Opening Trade Price.

Example #3

Suppose the Maximum Composite Width for a class is 1.00, and the Composite Market is 5.00 × 20.00, comprised of an appointed Market-Maker bulk message bid of 5.00 and an appointed Market-Maker bulk message offer of 20.00. There is a non-M Capacity limit order to buy for 18.00 in the Queuing Book. Prior to the open, the Exchange does not know the market value of the option series; however, assume that the intrinsic value of the option series is 6.00 In this case, the series is not eligible to open because the width of the Composite Market is greater than the Maximum Composite Width, and there is a non-M Capacity bid at a price higher than the Composite Market midpoint of 12.50. The Queuing Period for the series will continue until the series satisfies the Maximum Composite Width Check.

As proposed, subparagraph (e)(1)(B) will allow the Exchange to open a series if the Composite Market of a series is greater than the Maximum Composite Width, but there are no non-M Capacity market orders or buy (sell) limit orders with prices higher (lower) than the Composite Market midpoint and there are no locked or crossed orders or quotes. Thus, under proposed subparagraph (e)(1)(B), the Exchange would allow the option series to open in Example #2 above as the non-M capacity limit bid was entered at a price lower than the Composite Market midpoint. However, the proposed amendment would limit the risk of a non-M capacity order executing at an extreme price such as that in Example #3 as the non-M capacity limit bid was entered at a price higher than the Composite Market midpoint.

Proposed subparagraph (e)(2) describes how the System determines the Opening Trade Price for a series after it satisfies the Maximum Composite Width Check described above.

- The Opening Trade Price is the price that is not outside the Opening Collar and is the volume-maximizing, imbalance minimizing price (''VMIM price''):
  - the price at which the largest number of contracts can execute (*i.e.,* the volume-maximizing price);
  - if there are multiple volume-maximizing prices, the price at which the fewest number of contracts remain unexecuted (*i.e.,* the imbalance-minimizing price); or
  - if there are multiple volume-maximizing, imbalance-minimizing prices, (1) the highest (lowest) price, if there is a buy (sell) imbalance, or (2) the price at or nearest to the midpoint of the Opening Collar, if there is no imbalance.
- There is no Opening Trade Price if there are no locked or crossed orders or quotes at a price not outside the Opening Collar.[27]

The Exchange believes the proposed volume-maximizing, imbalance-minimizing procedure is reasonable, as it will provide for the largest number of contracts in the Queuing Book that can execute, leaving as few as possible bids and offers in the Book that cannot execute. The Exchange will use the Opening Collar as a price protection measure to prevent orders from executing at extreme prices at the open. If the Opening Trade Price is not outside the Opening Collar (which will be based on the best then-current market), the Exchange believes it is appropriate to open a series at that price, because there is minimal risk of execution at an extreme price. However, if the Opening Trade Price would be outside of the Opening Collar, the Exchange believes there may be risk that orders would execute at an extreme price if the series opens, and therefore the Exchange will not open a series.

Pursuant to proposed subparagraph (e)(3), if the System establishes an Opening Trade Price, the System will execute orders and quotes in the Queuing Book at the Opening Trade Price. The System will prioritize orders and quotes in the following order: market orders, limit orders and quotes with prices better than the Opening Trade Price, and orders and quotes at the Opening Trade Price.[28] If there is no Opening Trade Price, the System opens a series without a trade. As set forth in Exchange Rule 21.8, the Exchange's execution algorithm executes trading interest in price/time priority. However, for purposes of the Opening Auction Process, the Exchange's execution algorithm will execute trading interest in a pro-rata fashion, similar to that provided on EDGX Options and Cboe Options.[29] With pro-rata allocation, if there are two or more orders or quotes at the best price then the contracts are allocated proportionally according to size. The executable quantity is allocated to the nearest whole number, with fractions ½ or greater rounded up and fractions less than ½ rounded down. The primary reason for pro-rata allocation in the Opening Auction

[27] *See* current Rule 21.7(e).

[28] *See* current Rule 21.7(d) (which states the System matches (in accordance with Rule 21.8) orders and quotes in the System priced equal to or more aggressively than the Opening Price). *See also* Cboe Options Rule 5.31(e)(3)(A)(i) and EDGX Options Rule 21.7(e)(3)(A)(i). The Exchange believes it is appropriate to prioritize orders with the most aggressive prices, as it provides market participants with incentive to submit their best-priced orders.

[29] EDGX Options and Cboe Options allocate orders and quotes at the same price pursuant to the allocation algorithm that applies to a class intraday (in accordance with EDGX Options Rule 21.8/Cboe Options Rule 5.32), unless the relevant exchange determines to apply a different allocation algorithm to a class during the opening rotation. Currently, both EDGX Options and Cboe Options use pro-rata allocation for the Opening Auction Process.

Process is that all orders will execute at the same price, thus priority would only be given on the time at which the orders were entered. Given that these orders would be entered during the during a [sic] Queuing Period and waiting for execution at the same time, there is no reason to provide a benefit for the speed of entry. Pursuant to proposed subparagraph (f), as is the case today, following the conclusion of the opening rotation, the System enters any unexecuted orders and quotes (or remaining portions) from the Queuing Book into the BZX Options Book in time sequence (subject to a User's instructions—for example, a User may cancel an order), where they may be processed in accordance with Rule 21.8.[30] Consistent with the OPG [31] contingency (and current functionality), the System cancels any unexecuted OPG orders (or remaining portions) following the conclusion of the opening rotation.

The proposed rule change adds paragraph (i), which provides if the underlying security for a class is in a limit up-limit down state when the opening rotation begins for that class, then the System cancels or rejects all market orders. In addition, if the opening rotation has already begun for a class when a limit up-limit down state initiates for the underlying security of that class, market and limit orders will continue through the end of the opening rotation.[32]

Currently, if an order enters the Book following the Opening Process (which would include any Good Til Cancelled (''GTC'') or Good Til Date (''GTD'') orders that reenter the Book from the prior trading day) and become subject to the drill-through protection pursuant to Rule 21.17(d), the NBO (NBB) that existed at the time it enters (or reenters) the Book would be used when determining the drill-through price. Proposed Rule 21.17(d)(1) provides that if an order that enters the BZX Options Book following the Opening Auction Process and becomes subject to the drill-through protection, the bid (offer) limit of the Opening Collar plus (minus) the buffer amount will be the drill-through price. As discussed above, the Opening Collar is a price protection, and the Exchange would execute orders at the open at prices at or within the Opening Collar (as it would execute orders at or within the NBBO). Therefore, the Exchange believes the Opening Collar limit price points are reasonable to use when determining the drill-through price for orders that are unable to execute during the opening rotation.

The Exchange notes that certain provisions of Cboe Options Rule 5.31 and EDGX Options Rule 21.7 are not proposed for inclusion in Exchange Rule 21.7. Specifically, subparagraph (b)(2)(C) of Cboe Options and EDGX Options provides that all-or-none orders are not eligible for execution during the opening rotation. However, because the Exchange does not support all-or-none orders, such a provision is not included in the proposed Rule. Similarly, subparagraph (b)(2)(E) of Cboe Options Rule 5.31 and EDGX Options Rule 21.7 provides that complex orders do not participate in the opening auction process, which is also not applicable to BZX Options as the Exchange does not support a complex options book. Paragraph (d) of Cboe Options Rule 5.31 and EDGX Options Rule 21.7 provides for opening rotation triggers during both Regular Trading Hours and Global Trading Hours; however, as the Exchange does not support Global Trading Hours no such applicable provision is proposed. Lastly, paragraph (j) of Cboe Options Rule 5.31 provides a modified opening process for volatility settlements which is not applicable to BZX Options as such products are not traded on the Exchange.

The proposed amendments to Rule 16.1 include the clarification and addition of definitions to conform with existing Cboe Options and EDGX Options rules. Such proposed amendments involve no substantive changes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[33] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [34] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [35] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change to adopt an opening auction will protect investors, because it will enhance the openings of series on the Exchange by providing an opportunity for price discovery based on then-current market conditions. The proposed Queuing Period is substantively the same as the current Order Entry Period on the Exchange. The proposed detail regarding the Queuing Period provides additional transparency regarding the handling of orders and quotes submitted during that time, and will thus benefit investors. The proposed rule change, including orders that are not permitted during the Queuing Period or orders that are not eligible to trade during the opening rotation, is also similar to the pre-opening period on Cboe Options and EDGX Options.[36]

The proposed rule change will protect investors by ensuring they have access to information regarding the opening of a series, which will provide them with transparency that will permit them to participate in the opening auction process and contribute to, and benefit from, the price discovery the auction may provide. The proposed opening auction updates are not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, as all market participants may subscribe to the Exchange's data feeds that deliver these message, and thus all market participants may have access to this information.

The proposed opening rotation triggers are substantially similar to the current events that will trigger series openings on the Cboe Options and EDGX Options. The proposed trigger events will remove impediments to and perfect the mechanism of a free and open market and a national market system, as they ensure that the underlying securities will have begun trading, or the underlying index values will have begun being disseminated, before the System opens a series for trading.

The proposed Maximum Composite Width Check and Opening Collar will protect investors by providing price protection measures to prevent orders from executing at extreme prices at the

[30] The proposed rule change corrects an error in the current Rule, which references Rule 21.9 rather than Rule 21.8.

[31] *See* Exchange Rule 21.1(f)(6).

[32] This is consistent with the definition of market orders in Rule 21.1(d)(5).

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(5).

[35] *Id.*

[36] *See* Cboe Options Rule 5.31(a) and EDGX Options Rule 21.7(a).

open. The Exchange believes it is appropriate to open a series under the proposed circumstances and provide marketable orders with an opportunity to execute at a reasonable opening price (as discussed below), because there is minimal risk of execution at an extreme price. Furthermore, the Exchange believes proposed Rule 21.7(e)(1)(B) will benefit market participants as it may encourage the submission of orders at prices that improve the Composite Market in the Opening Auction Process on the Exchange, and allow the Exchange to open series earlier, which may also allow for more trading opportunities on the Exchange throughout the trading day. The proposed price protections incorporate all available pricing information, including Market-Maker bulk messages (which are generally used to price markets for series) and any quotes disseminated from away markets, and thus may lead to a more accurate Opening Trade Price based on then-current market conditions. As noted above, Cboe Options and EDGX Options apply similar price protections during its opening rotation. Cboe Options and EDGX Options similarly consider Market-Maker quotes (the equivalent of Market-Maker bulk message on EDGX Options and the Exchange), and in certain classes, quotes of away exchanges, and whether there are crossing orders or quotes when determining whether the opening width and trade price are reasonable.

The proposed priority with respect to trades during the opening rotation are consistent with current priority principles that protect investors, which are to provide priority to more aggressively priced orders and quotes. Orders and quotes will be subject to the same allocation algorithms that the Exchange may apply during the trading day. The proposed priority and allocation of orders and quotes at the opening trade is substantially similar to the priority and allocation of orders and quotes at the opening of Cboe Options and EDGX Options.[37]

The Exchange believes the proposed opening auction process is designed to ensure sufficient liquidity in a series when it opens and ensure series open at prices consistent with then-current market conditions, and thus will ensure a fair and orderly opening process. Additionally, as noted above, the proposed opening auction process is substantially similar to the opening auction process of Cboe Options and EDGX Options.[38] The differences between proposed Rule 21.7 and Cboe Options Rule 5.31 and EDGX Options Rule 21.7 primarily relate to differences between the exchanges, including functionality Cboe Options and EDGX Options offer that the Exchange does not and products Cboe Options and EDGX Options list for trading that the Exchange does not.

The proposed rule change is generally intended to align system functionality currently offered by the Exchange with Cboe Options and EDGX Options functionality in order to provide a consistent technology offering for the Cboe Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology changes and maintenance by Users of the Exchange that are also participants on Cboe Affiliated Exchanges. The Exchange believes this consistency will promote a fair and orderly national options market system. Users of the Exchange and other Cboe Affiliated Exchanges have access to similar functionality on all Cboe Affiliated Exchanges. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change to adopt an opening auction process will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply to orders and quotes of all market participants in the same manner. The same order types that are not currently accepted prior to the opening, and that do not participate in the opening process, will similarly not be accepted during the Queuing Period or be eligible for trading during the opening rotation.

The Exchange does not believe that the proposed rule change to adopt an opening auction process will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it is designed to open series on the Exchange in a fair and orderly manner. The Exchange believes an opening auction process will enhance the openings of series on the Exchange by providing an opportunity for price discovery based on then-current market conditions. The proposed auction process will provide an opportunity for price discovery when a series opens, ensure there sufficient liquidity in a series when it opens, and ensure series open at prices consistent with then-current market conditions (at the Exchange and other exchanges) rather than extreme prices that could result in unfavorable executions to market participants. Additionally, as discussed above, the proposed opening auction process is substantially similar to the Cboe Options and EDGX Options opening auction process.[39]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[40] and Rule 19b–4(f)(6) thereunder.[41] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[42] and Rule 19b–4(f)(6) thereunder.[43]

A proposed rule change filed under Rule 19b–4(f)(6)[44] normally does not become operative for 30 days after the date of the filing. However, pursuant to

[37] *See* Cboe Options Rule 5.31(e)(3)(A) and EDGX Options Rule 21.7(e)(3)(A).

[38] *See* Cboe Options Rule 5.31 and EDGX Options Rule 21.7.

[39] *See* Cboe Options Rule 5.31 and EDGX Options Rule 21.7.

[40] 15 U.S.C. 78s(b)(3)(A)(iii).

[41] 17 CFR 240.19b–4(f)(6).

[42] 15 U.S.C. 78s(b)(3)(A).

[43] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[44] 17 CFR 240.19b–4(f)(6).

Rule 19b–4(f)(6)(iii),[45] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange represents that the functionality of the proposed auction process is scheduled to become available on January 30, 2020. Furthermore, the Exchange states that the proposed auction process is virtually identical to the one used on the Cboe Affiliated Exchanges, and that waiver of the operative delay would enable the Exchange to continue its efforts to provide a technology offering consistent with those of the Cboe Affiliated Exchanges as promptly as possible. The Exchange believes that such consistency will simplify the technology changes and maintenance by Options Members of the Exchange that are also participants on Cboe Affiliated Exchanges. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[46]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–CboeBZX–2020–012 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–CboeBZX–2020–012. 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–CboeBZX–2020–012, and should be submitted on or before February 25, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02049 Filed 2–3–20; 8:45 am]

BILLING CODE 8011–01–P

[45] 17 CFR 240.19b–4(f)(6)(iii).

[46] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[47] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88077; File No. SR–FINRA–2020–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Effective Date for Eliminating Computer-to-Computer Interface as a Technological Option for TRACE Reporting

January 29, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2020, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to provide members with additional time to migrate their trade reporting processes to connect to TRACE through a permissible means other than Computer-to-Computer Interface (''CTCI'').

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 4, 2018, the SEC approved SR–FINRA–2018–030 which amended FINRA Rule 7730 (Trade Reporting and Compliance Engine (TRACE)) to remove CTCI as a technological means of connectivity for reporting transactions to TRACE.[4] Since filing SR–FINRA–2018–030 (''CTCI Elimination Filing''),[5] FINRA has engaged in extensive outreach to industry participants in connection with eliminating CTCI as a means of connectivity, including direct outreach to the firms that used CTCI for reporting, either directly or via a service bureau.

FINRA recently has become aware that some firms have experienced trade rejects after migrating from CTCI to FIX. FINRA understands that the cause of these rejects is related to the validations done on a FIX port to prevent duplicate trade reports from being submitted to the system. These validations are specific to FIX messaging and, as such, were not anticipated by certain firms migrating from CTCI to FIX. FINRA understands that this issue is impacting the successful migration of member firms whose activity, in the aggregate, account for a significant percentage of TRACE reports (*i.e.,* over 10 percent of monthly trade reports). As a result, FINRA is filing the proposed rule change to extend the effective date of the CTCI Elimination Filing until March 16, 2020, which will allow firms adequate time to perform the required coding changes and testing. FINRA will continue to work closely with all firms that have not yet successfully migrated from CTCI, and expects firms to ensure adequate testing and to continue to work expeditiously to migrate as soon as possible in advance of the March 16, 2020 date.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately. The new operative date of the amendments adopted by SR–FINRA–2018–030 will be March 16, 2020.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specifically, the proposed rule change provides additional time for members who have not yet successfully migrated to a permissible means of connectivity other than CTCI for reporting transactions to TRACE. The proposed rule change will allow members to continue to report transactions to TRACE through CTCI for a modest additional period of time, which FINRA believes is reasonable in light of technological difficulties identified recently. Thus, this extension will facilitate efficient and uninterrupted trade reporting as firms make coding refinements and complete a successful migration.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would provide additional time to all members who have not yet successfully migrated to a permissible means of connectivity other than CTCI for reporting transactions to TRACE. FINRA also notes that this extension does not impact or require any changes by firms that already successfully migrated to a permissible means of connectivity other than CTCI for reporting transactions to TRACE.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. If the proposed rule change did not become operative immediately, certain member firms that currently report to TRACE using the CTCI protocol might be unable to report successfully if CTCI were decommissioned on February 3, 2020, as originally planned. This could result in significant degradation of the TRACE information available to regulators and the public. Allowing the proposal to become immediately operative will enable these firms to continue reporting using the CTCI protocol while the necessary technological changes continue to be made for them to fully transition to other reporting protocols. For these reasons, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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:

[4] *See* Securities Exchange Act Release No. 84366, 83 FR 51514 (October 11, 2018) (Order Approving File No. SR–FINRA–2018–030).

[5] *See* Securities Exchange Act Release No. 83868 (August 17, 2018), 83 FR 42741 (August 23, 2018) (Notice of Filing of SR–FINRA–2018–030).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving the requirement in this case.

[9] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–FINRA–2020–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2020–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2020–003 and should be submitted on or before February 25, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02050 Filed 2–3–20; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88080; File No. SR–NYSE–2019–68]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of Longer Period for Commission Action To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend NYSE's Rules To Add New Rule 7.19 (Pre-Trade Risk Controls)

January 29, 2020.

On November 27, 2019, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NYSE Rule 7.19 to provide for optional pre-trade risk controls. The proposed rule change was published for comment in the **Federal Register** on December 17, 2019.[3] The Commission has received two comment letters.[4]

Section 19(b)(2) of the Act[5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be approved or disapproved. The 45th day after publication of the notice for this proposed rule change is January 31, 2020. The Commission is extending this 45-day time period.

The Commission finds it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates March 16, 2020 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2019–68).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02052 Filed 2–3–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87715 (Dec. 11, 2019), 84 FR 68995 (Dec. 17, 2019).

[4] *See* Letter, dated January 7, 2020, to Vanessa Countryman, Secretary, Commission, from Murray Pozmanter, Managing Director, Head of Clearing Agency Services and GOCS, DTCC. *See also* Letter, dated January 7, 2020, to Vanessa Countryman, Secretary, Commission, from Tom Barrett, Managing Director, Goldman Sachs & Co. LLC.

[5] 15. U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(57).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16259 and #16260; MISSISSIPPI Disaster Number MS–00118]

Administrative Declaration of a Disaster for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 01/28/2020.

Incident: Severe Weather and Tornado.

Incident Period: 12/16/2019.

DATES: Issued on 01/28/2020.

Physical Loan Application Deadline Date: 03/30/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 10/28/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Jones

Contiguous Counties:

Mississippi: Covington, Forrest, Jasper, Perry, Smith, Wayne.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.000

	Percent
Homeowners without Credit Available Elsewhere	1.500
Businesses with Credit Available Elsewhere	7.750
Businesses without Credit Available Elsewhere	3.875
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.875
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16259 C and for economic injury is 16260 0.

The State which received an EIDL Declaration # is Mississippi.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020–02127 Filed 2–3–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Centers Advisory Board

AGENCY: Small Business Administration.

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for a meeting of the National Small Business Development Center Advisory Board. The meeting will be open to the public; however, advance notice of attendance is required.

DATES: Wednesday, February 12, 2020 at 11:00 a.m. EST.

ADDRESSES: U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Alanna Falcone, Office of Small Business Development Centers, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; *alanna.falcone@sba.gov;* 202–619–1612. If anyone wishes to be a listening participant or would like to request accommodations, please contact Alanna Falcone at the information above.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

Purpose: The purpose of the meeting is to onboard the new members and discuss the following issues pertaining to the SBDC Program:

- SBA Briefing
- Member Introductions
- Annual Meetings
- Board Assignments

Dated: January 29, 2020.

Nicole Nelson,

Committee Management Officer (Acting).

[FR Doc. 2020–02081 Filed 2–3–20; 8:45 am]

BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2019–0033]

Social Security Acquiescence Ruling 19–1(6), Hicks v. Commissioner of Social Security: Disregarding Evidence During Redeterminations Under Sections 205(u) and 1631(e)(7) of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling (AR).

SUMMARY: This Social Security AR explains how we will apply a holding in a decision of the United States Court of Appeals for the Sixth Circuit. We have determined that the court's holding conflicts with our interpretation of the provisions of the Social Security Act (Act) that require us to disregard evidence when we conduct a redetermination or make an initial determination of entitlement or eligibility, in cases in which there is a reason to believe that fraud or similar fault was involved in the providing of evidence.

DATES: We will apply this notice on February 4, 2020.

FOR FURTHER INFORMATION CONTACT: Amanda Gilman, Office of the General Counsel, Office of Program Law, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9641, or TTY 410–966–5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: We are publishing this Social Security AR in accordance with 20 CFR 402.35(b)(2), 404.985(a), (b), and 416.1485(a), (b) to explain how we will apply the holding in *Hicks* v. *Commissioner of Social Security,* 909 F.3d 786 (6th Cir. 2018), *rehearing en banc denied* (March 29, 2019). *Hicks* addressed the procedures we apply when we make a decision at the hearings level of our administrative review process and disregard evidence under sections 205(u) and 1631(e)(7) of the Act.

An AR explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

This AR explains how we will apply the holding in *Hicks* v. *Commissioner of Social Security* when we disregard evidence under sections 205(u) and 1631(e)(7) of the Act at the hearings level of our administrative review process. We will apply this AR to all decisions we make under sections 205(u) and 1631(e)(7) of the Act on or after February 4, 2020 for individuals who reside in one of the States within the Sixth Circuit. If we made a decision at the hearings level of our administrative review process and disregarded evidence under sections 205(u) or 1631(e)(7) of the Act between November 21, 2018, the date of the court of appeals' decision, and February 4, 2020, the date we will begin to apply this AR, the affected individual may request that we apply the AR to the prior decision. The affected individual must show, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that applying the AR could change our prior decision in the case.

When we received this precedential court of appeals' decision and determined that an AR might be required, we began to identify those claims that were pending before us within the circuit that might be subject to readjudication if we subsequently issued an AR. Because we have determined that an AR is required and are publishing this AR, we will send a notice to those individuals whose claims we have identified. However, a claimant does not need to receive a notice in order to request that we apply this AR to our prior determination or decision on his or her claim, as provided in 20 CFR 404.985(b)(2) and 416.1485(b)(2). If we later rescind this AR as obsolete, we will publish a notice in the **Federal Register** to that effect, as provided in 20 CFR 404.985(e) and 416.1485(e). If we decide to relitigate the issue covered by this AR, as

provided by 20 CFR 404.985(c) and 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006 Supplemental Security Income)

Dated: December 23, 2019.

Andrew Saul,

Commissioner of Social Security.

Acquiescence Ruling 19–1(6)

Hicks v. *Commissioner of Social Security,* 909 F.3d 786 (6th Cir. 2018), reh'g en banc den. (Mar. 29, 2019): Disregarding Evidence During Redeterminations under Sections 205(u) and 1631(e)(7) of the Social Security Act.

Issue: Sections 205(u) and 1631(e)(7) of the Act require us to redetermine entitlement to or eligibility for benefits if there is reason to believe fraud or similar fault was involved in an application for benefits. When we redetermine entitlement or eligibility, or we make an initial determination of entitlement or eligibility, these sections of the Act also require that we disregard any evidence if there is reason to believe that fraud or similar fault was involved in providing that evidence. Do we have to consider an individual's objection to disregarding the evidence before we disregard the evidence?

Statute/Regulation/Ruling Citation: Sections 205(u) and 1631(e)(7) of the Social Security Act (42 U.S.C. 405(u) and 1383(e)(7)); Social Security Ruling (''SSR'') 16–1p, 81 FR 13436 (Mar. 14, 2016); SSR 16–2p, 81 FR 13440 (March 14, 2016).

Circuit: Sixth (Kentucky, Michigan, Ohio, Tennessee).

Applicability of Ruling: This ruling applies to decisions we make when we disregard evidence under sections 205(u) and 1631(e)(7) of the Social Security Act (Act) at the hearings level of our administrative review process for individuals who reside in a State within the Sixth Circuit.

Description of Case: Plaintiff Amy Jo Hicks and several other plaintiffs whose cases were consolidated for purposes of appeal applied for and were awarded Social Security Disability Insurance Benefits (DIB) or Supplemental Security Income (SSI) payments based on disability, after being represented by an attorney who provided evidence on their behalf. After the plaintiffs and nearly 2000 other claimants had been found disabled and entitled to or eligible for benefits, the Office of the Inspector General (OIG) informed us, in accordance with section 1129(l) of the Act, that it had reason to believe fraud was involved in the applications and in the providing of evidence. The United States District Court for the Eastern District of Kentucky subsequently convicted the plaintiffs' attorney, the administrative law judge who decided the plaintiffs' claims, and a doctor who provided evidence in support of the applications of perpetrating a large-scale fraud scheme on the agency. Based on these criminal convictions, the district court sentenced each defendant to terms in Federal prison for their respective roles in this massive fraud scheme.

As required by sections 205(u) and 1631(e)(7) of the Act, we redetermined the entitlement to and eligibility for benefits of the individuals whom the OIG referred to us. During the redeterminations, we held new hearings and in each case disregarded evidence OIG told us that it had reason to believe involved fraud. In making the redetermination, we considered the rest of the evidence in the plaintiffs' claims files, any new evidence related to the relevant period that plaintiffs submitted, and we heard argument regarding each plaintiff's entitlement to DIB or eligibility for SSI payments based on disability.

Plaintiffs argued that during the redeterminations, they should have been given the opportunity to show that fraud was not involved in providing evidence in their claims.

Holding

In *Hicks* v. *Commissioner of Social Security,* 909 F.3d 786 (6th Cir. 2018), *reh'g denied* (Mar. 29, 2019), the Court of Appeals for the Sixth Circuit held, in a 2–1 decision, that before disregarding evidence during a redetermination, we must provide a factual basis for the reason to believe fraud was involved in providing evidence, and plaintiffs must have a chance to rebut our assertions before a neutral decisionmaker.

Statement as to How Hicks Differs From the Agency's Policy

Under our interpretation of sections 205(u) and 1631(e)(7) of the Act, when we disregard evidence in cases OIG refers to us because there is a reason to believe fraud was involved in the application and in the providing of evidence, we do not consider the individual's objection to disregarding the evidence.

The court of appeals' decision differs from our policy because it held that when we disregard evidence under sections 205(u) and 1631(e)(7) of the Act, we must provide the affected individual the opportunity to challenge the reason to believe that fraud or similar fault was involved in the provision of evidence in his or her case.

Explanation of How We Will Apply Hicks Within the Circuit

This Ruling applies only to cases in which we disregard evidence based on a referral from OIG under section 1129(l) of the Act and the affected individual resides in Kentucky, Michigan, Ohio, or Tennessee at the time we make the decision at the hearings level of our administrative review process.

In these States, before we disregard the evidence pursuant to sections 205(u)(1)(B) and 1631(e)(7)(A)(ii) of the Act at the hearings level of our administrative review process, we will consider the individual's objection to the disregarding of that evidence.

Our adjudicators will decide whether there is a reason to believe that fraud or similar fault was involved in providing evidence in the individual's case. We define a ''reason to believe'' as reasonable grounds to suspect that fraud or similar fault was involved in the application or in the provision of evidence. The ''reason to believe'' standard requires more than a mere suspicion, speculation or a hunch, but it does not require a preponderance of evidence. Adjudicators may make reasonable inferences based on the totality of circumstances, such as facts or case characteristics common to patterns of known or suspected fraudulent activity. For us to disregard evidence, it is not necessary that the affected beneficiary or recipient had knowledge of or participated in the fraud or similar fault.

[FR Doc. 2020–02114 Filed 2–3–20; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 11020]

United States Proposals and Positions for the U.S. Delegation to the 2020 World Telecommunication Standardization Assembly (WTSA–2020)

ACTION: Notice and request for public comment.

SUMMARY: The U.S. Government seeks input from stakeholders and interested parties to help develop its proposals and positions for the U.S. Delegation

regarding matters that will be addressed at the upcoming 2020 World Telecommunication Standardization Assembly (WTSA–2020) of the International Telecommunication Union (ITU), being held November 17–27, 2020 in Hyderabad, India. The results of this Notice and Request for Public Comment will be taken into account as the United States develops proposals and positions for WTSA–2020, a process which is being coordinated by the U.S. Department of State.

DATES: Comments are due on or before February 21, 2020.

ADDRESSES: Written comments may be submitted by mail to Adam Lusin, Director, Office of International Communications and Information Policy, Bureau of Economic & Business Affairs, 2201 C Street NW, Room 4634, Washington, DC 20520. Comments may also be submitted electronically to *LusinAW@state.gov* and *ITAC@state.gov.* Comments provided electronically should be submitted in a text searchable format using standard Microsoft Word or Adobe PDF. Comments will be posted to the State Department website at *https://www.state.gov/international-telecommunication-advisory-committee/.*

FOR FURTHER INFORMATION CONTACT: For questions about this Notice contact: Adam Lusin, Director, Office of International Communications and Information Policy, Bureau of Economic & Business Affairs, 2201 C Street NW, Room 4634, Washington, DC 20520; telephone: (202) 647–5834; email: *LusinAW@state.gov.* Please direct media inquiries to the Office of Public Affairs, State Dept., at (202) 647–6575.

SUPPLEMENTARY INFORMATION:

Background: The International Telecommunication Union (ITU) Telecommunication Standardization Sector (ITU–T) World Telecommunication Standardization Assembly (WTSA), held every four years, sets the sector's overall strategic direction and activities for the next four years; defines ITU–T's general policy; approves, modifies, or rejects ITU–T Standards (known as ''Recommendations''); and establishes the ITU–T study groups' structure, approves their work program for the next four-year period, and appoints their Chairmen and Vice-Chairmen. The next WTSA conference (WTSA–20) will be held November 17–27, 2020 in Hyderabad, India. Participants historically include ministers, ambassadors, government regulators and policymakers, regional and international organizations, and representatives from academia, civil society, and industry.

The United States Government seeks input from stakeholders and other interested parties to develop and refine the U.S. approach for participation at WTSA–20 and in the ITU–T more broadly. Under the auspices of the U.S. Department of State's International Telecommunications Advisory Committee (ITAC), the United States' preparatory process is intended to ensure U.S. proposals and positions are consistent with U.S. international digital economy policy, reinforce our approach to international standards, reflect and advance U.S. priorities and approaches, and foster an environment that promotes economic growth and technological innovation.

Discussion: The United States approach to international standards supports open, private sector-led, transparent, consensus-based processes that help lead to timely, robust, market-relevant, and technically appropriate standards. Given the number and range of telecommunication and information and communication technology standards being developed by a range of standards development organizations (SDOs), the discussions and negotiations at WTSA–20 will offer a valuable opportunity to shape the appropriate scope of work for the ITU–T within the international telecommunications/ICT standards ecosystem.

Purpose: The purpose of this Notice and Request for Public Comment is to seek input from stakeholders and interested parties to share their perspectives on whether and how the ITU–T's work produces standards that are impactful and meet current and evolving market needs. We are particularly interested in responses regarding ITU–T restructuring, working methods, and rules of procedure. We are further interested in views regarding U.S. participation in the various ITU–T study groups and information that can support the development of a longer-term United States vision and strategy regarding ITU–T engagement. Please provide insights on these areas as well as the specific questions outlined below.

Questions for Public Comment

Objectives and Priorities

(1) What overarching vision, objectives and priorities do you believe the U.S. delegation should adopt for WTSA–20 and for U.S. ongoing engagement in the ITU–T? What is the best way for the U.S. delegation to advance and ultimately achieve these objectives and priorities?

(2) In what areas or subjects do you believe the ITU–T has a particular role or expertise? What, if any, is the appropriate role for the ITU–T in developing standards in areas of emerging technologies? How do ITU standards and related standards development activities influence or affect U.S. industry interests in the global digital economy?

(3) Do all ITU–T Recommendations conform to general U.S. goals for international standards in that they are market-relevant, timely, robust and fit for purpose?

Working Methods and Rules of Procedure

(4) How are the procedures and working methods of ITU–T more or less effective than those of other standards setting organizations in enabling the development of market-relevant timely, robust and fit for purpose standards?

(5) What, if any, modifications to the ITU–T working methods or study group structure would you recommend to improve the quality and effectiveness of the ITU–T's work?

(6) What metrics might be used to measure the value and effectiveness of the ITU–T's outputs?

Participation

(7) In what way does your organization participate in the work of the ITU–T? What factors inform your organizations' participation in the standards development work of ITU–T? For the immediate future, are you looking to increase or reduce your participation in the work of ITU–T? Why?

(8) Assuming the ITU–T study group structure remains as it is today, in which study groups and activities should the United States government prioritize its participation and why?

Capacity-Building, Cooperation and Collaboration

(9) What are your recommendations for how the ITU–T can best address the needs of developing countries regarding international standards development? Would ITU programs related to development and capacity building be better placed within the ITU Development Sector (ITU–D) or the ITU–T? How might the ITU address regional or developing country needs within its work or in its engagement with other SDOs?

(10) What changes, if any, to ITU–T's methods of working with other standards and specification setting

organizations would provide you value or benefit?

Franz J. Zichy,

Designated Federal Officer.

[FR Doc. 2020–02216 Filed 2–3–20; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0124]

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: FAA Organization Designation Authorization (ODA) Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The collection involves a survey of Organization Designation Authorization (ODA) holders and ODA program applicants to document and assess FAA certification and oversight activities. The information to be collected is necessary because it is required of the FAA per Section 213 of the FAA Reauthorization Act of 2018.

DATES: Written comments should be submitted by April 6, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Andrew Jeffrey; 1200 District Ave., 4th Floor; Burlington, MA 01803.

By fax: 781–238–7171.

FOR FURTHER INFORMATION CONTACT: Robert Busto by email at: *robert.busto@faa.gov;* phone: 816–329–4143.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–XXXX.

Title: FAA Organization Designation Authorization (ODA) Survey.

Form Numbers: None.

Type of Review: New information collection.

Background: Section 213 of the FAA Reauthorization Act of 2018 requires FAA to establish an Expert Panel comprised of ODA holders, aviation manufacturers, safety experts, and FAA labor organizations. The Panel is instructed in the Act to conduct a survey, ''of ODA holders and ODA program applicants to document and assess FAA certification and oversight activities, including the use of the ODA program and the timeliness and efficiency of the certification process.'' The survey's purpose will be to provide information of whether ODA processes and procedures function as intended, and such information will be incorporated into the Expert Panel's report of assessment and recommendations.

Respondents: Respondents may include ODA holders, ODA applicants, ODA unit members, and FAA Organizational Management Team (OMT) leads/members.

Frequency: The survey will be distributed at least once to support the work of the Expert Panel, and may be re-administered to conduct a longitudinal study; or to support future efforts of the Panel as directed by Congress.

Estimated Average Burden per Response: 1 Hour.

Estimated Total Annual Burden: Total: approximately 2,150 hours.

Issued in Washington, DC.

Joy Wolf,

Directives & Forms Management Officer (DMO/FMO), Aircraft Certification Service.

[FR Doc. 2020–02026 Filed 2–3–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2020–0002]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 6, 2020.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2020–0002 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Berg, (202) 740–4602, Office of Freight Management and Operations, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of Vehicle Size and Weight Laws.

OMB Control Number: 2125–00034

Background: Title 23, U.S.C., section 141, requires each State, the District of Columbia and Puerto Rico to file an annual certification that they are enforcing their size and weight laws on Federal-aid highways and that their Interstate System weight limits are consistent with Federal requirements to be eligible to receive an apportionment of Federal highway trust funds. Failure of a State to file a certification, adequately enforce its size and weight laws, and enforce weight laws on the Interstate System that are consistent with Federal requirements, could result in a specified reduction of its Federal highway fund apportionment for the next fiscal year. In addition, section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689, 2701) requires each jurisdiction to

inventory annually (1) its penalties for violation of its size and weight laws, and (2) the term and cost of its oversize and overweight permits.

Section 141 also authorizes the Secretary to require States to file such information as is necessary to verify that their certifications are accurate. To determine whether States are adequately enforcing their size and weight limits, FHWA requires that each State submit to the FHWA an updated plan for enforcing their size and weight limits. The plan goes into effect at the beginning of each Federal fiscal year. At the end of the fiscal year, States must submit their certifications and sufficient information to verify that their enforcement goals established in the plan have been met.

Respondents: The State Departments of Transportation (or equivalent) in the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico.

Frequency: Annually in separate collections: One certification and one plan (2 collections).

Estimated Average Burden per Response: Each response will take approximately 40 hours.

Estimated Total Annual Burden Hours: 4,160 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information in the plan and in the certification is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology or reduced frequency of collection of the plan, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: January 30, 2020.

Michael Howell,

FHWA Information Collection Officer.

[FR Doc. 2020–02093 Filed 2–3–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2125–0005]

Agency Information Collection Activities: Request for Comments for Periodic Information Collection

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (USDOT).

ACTION: Notice of request for approval of a new information collection and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of a new (periodic) information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 18, 2019. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 5, 2020.

ADDRESSES: You may submit comments within 30 days identified by DOT Docket ID Number (FHWA–2125–0005) by any of the following methods:

Website: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Next Generation National Household Travel Survey (Next Gen NHTS), please contact Daniel Jenkins, 202–366–1067, *daniel.jenkins@dot.gov,* National Travel Behavior Data Program Manager, Federal Highway Administration, Office of Policy, 1200 New Jersey Avenue SE, Room E83–414, Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Next Generation National Household Travel Survey (Next Gen NHTS).

Type of Request: New request for periodic information collection requirement.

Background: Title 23, United States Code, Section 502 authorizes the USDOT to carry out advanced research and transportation research to measure the performance of the surface transportation systems in the U.S., including the efficiency, energy use, air quality, congestion, and safety of the highway and intermodal transportation systems. The USDOT is charged with the overall responsibility to obtain current information on national patterns of travel, which establishes a data base to better understand travel behavior, evaluate the use of transportation facilities, and gauge the impact of the USDOT's policies and programs.

The NHTS is the USDOT's authoritative nationally representative data source for daily passenger travel. This inventory of travel behavior reflects travel mode (*e.g.,* private vehicles, public transportation, walk and bike) and trip purpose (*e.g.,* travel to work, school, recreation, personal/family trips) by U.S. household residents. Survey results are used by federal and state agencies to monitor the performance and adequacy of current facilities and infrastructure, and to plan for future needs.

The collection and analysis of national transportation data has been of critical importance for half a century. Previous surveys were conducted in 1969, 1977, 1983, 1990, 1995, 2001, 2009, and 2017. The current survey will be the ninth in this series, and allow researchers, planners, and officials at the state and federal levels to monitor travel trends.

Data from the NHTS are widely used to support research needs within the USDOT, and State and local agencies, in addition to responding to queries from Congress, the research community and the media on important issues. Current and recent topics of interest include:

- Travel to work patterns by transportation mode for infrastructure improvements and congestion reduction,
- Access to public transit, paratransit, and rail services by various demographic groups,
- Measures of travel by mode to establish exposure rates for risk analyses,
- Support for Federal, State, and local planning activities and policy evaluation,
- Active transportation by walk and bike to establish the relationship to public health issues,
- Vehicle usage for energy consumption analysis,

• Traffic behavior of specific demographic groups such as Millennials and the aging population.

Within the USDOT, the Federal Highway Administration (FHWA) holds responsibility for technical and funding coordination. The National Highway Traffic Safety Administration (NHTSA), Federal Transit Administration (FTA), and the Bureau of Transportation Statistics (BTS) are also primary data users, and have historically participated in project planning and financial support.

Proposed Data Acquisition Methodology

NHTS data are collected from a probability-based sample comprised of a representative mixture of households with respect to various geodemographic characteristics. For this purpose, a previously recruited national panel will serve as the sampling frame. Email invitations which will include a link to an online household survey will be sent to selected panel members requesting some basic demographic and contact information inviting them to participate in the survey. The invitation email will mention the purpose of the study, underline the voluntary nature of survey participation, provide information about incentive, and contain the link that will take respondents directly into the survey. KnowledgePanel members can also access the online survey by logging into their specific KnowledgePanel home page, where they will find a hyperlink to surveys for which they have been selected.

Email reminders will be sent periodically to households who do not respond within the expected timeframe. Monetary incentives will be provided for all households that complete the survey. As the burden is higher for those in households with more people they will receive a larger incentive amount. Households with 3 or fewer eligible members (*i.e.,* 5 years of age or older) will receive $5 when all householders complete the travel survey. Households with 4 or more eligible members will receive $10 for when all householders complete the travel survey.

The survey will collect data during an entire 12-month period so that all 365 days of the year including weekends and holidays are accounted for. To maximize the accuracy of the recall information and to provide coverage for every day of the year, all retrieval surveys will collect information about the travel during the previous 24 hours. A total of 7,500 households will comprise the national sample for the 2020 data collection. As described below, changes in the establishment of the sampling frame, the promotion of participation, and in data retrieval techniques are planned, as compared to previous surveys, to improve statistical precision, enhance response rates, and increase survey efficiency.

Issues Related to Sampling. In previous years, the household sample was identified using random digit dialing (RDD) techniques. Today, only 54 percent [1] have a landline telephone in the home (down from 75% during the 2009 NHTS) while nearly 88 percent of US households have access to the internet [2]—although estimate of internet access are subject to various measurement challenges due to the many different ways household members can gain access to the web. This survey will leverage this shift in technology, the move away from home telephone usage, to structure a research design that uses web data collection methods.

In 2020, the NHTS is moving to an online probability-based sample approach. The sample will be drawn from a panel which is representative of the national population. This approach allows for a better response rate, making the NHTS data representative of the nation's travel behavior, while lowering the burden on responding households. This is a change from the national address-based sample (ABS), and the telephone-based random digit dialing (RDD) sample design used in recent NHTS efforts, while also incorporating core data elements that have been part of the NHTS since 1969.

The panel is constructed by drawing from the USPS Delivery Sequence File (DSF), which include all points of delivery in the US. The needed address samples are obtained from Marketing Systems Group (MSG) that provides the ability to match various auxiliary variables to the DSF prior to sample selection. By geocoding the entire sampling frame, MSG can append block-, block group-, and tract-level characteristics from the Decennial Census and the American Community Survey (ACS) to each delivery point.

Sample Size. In total, completed surveys will be secured for a nationally representative sample of 7,500 households for the national sample. Accounting for the various nonresponse and incompleteness rates, however, we anticipate needing a starting sample of about 29,000 households to secure the desired number of completed surveys.

Stratification. The sample for this survey will be designed to ensure broad coverage of the 50 states to produce the most efficient estimates at the national level, as well as those needed for urban and rural areas. Assuming equal costs and population variances across all areas, the most efficient design is one in which the total sample is allocated in proportion to the size of the civilian, noninstitutionalized population in each area. In contrast, the most efficient design for area-level estimates is one in which equal sample sizes are allocated to each area. While different sample allocation options for the national sample are being considered in order to arrive at a final allocation for the NHTS national sample, unless required, otherwise throughout this document it will be assumed that the national sample of 7,500 households will be selected based on a proportional allocation without any geographic oversampling.

Given the availability of a rich reservoir of profile data for all panel members, with the panel approach identifying targeted areas (*e.g.,* urban/rural) that correspond to those for which efficient estimates are needed will be rather straightforward. Moreover, with this approach ambiguities related to addresses that are P.O. boxes or those remaining as simplified (void of delivery details) will be rendered moot.

Assignments for recording travel data by sampled households will be equally distributed across all days to ensure an approximately balanced day of week distribution. To this end, the sample will be released periodically through a process that will control the balance of travel days by month.

Data Collection Methods

The questionnaire for this survey will be designed to be relevant, aesthetically pleasing, and elicit participation by including topics of importance to the respondents.

Information Proposed for Collection

Recruitment and retrieval. The survey will begin with emailing the sampled households an invitation to the study. The primary household respondent will complete a short household roster to collect key household information (*e.g.* enumeration of household members. Once the household roster is complete, the respondent will proceed to a travel diary pre-populated for each eligible member of the household.

Household travel diary. All travel information about a specific day from every household member 5 years of age

[1] Blumberg, S.J., and Luke, J.V. (2018). *Wireless substitution: Early release of estimates from the National Health Interview Survey, July–December 2017.* National Center for Health Statistics. Available from *http://www.cdc.gov/nchs/nhis.htm.*

[2] Source: internet World Stats, 2017. *https://www.internetworldstats.com/stats14.htm#north*

and older will be collected using the online travel diary.

Once the household roster is completed, the primary household respondent will complete his or her diary and will serve as a proxy responder for all children 5–15 years old in the household. Household members 16 and older will be invited to complete their own online diaries. If they fail to do so in a reasonable amount of time after multiple reminders, the primary household member may be re-contacted to serve as a proxy for non-responding teens and adults in the household.

The household travel diary will be based upon a single database that allows for sophisticated branching and skip patterns to enhance data retrieval by asking only those questions that are necessary and appropriate for the individual participant. Look-up tables are included to assist with information such as vehicle makes and models. The Google map API will be used to assist in identifying specific place names and locations. The location data for the participant's home, workplace, or school are stored and automatically inserted in the dataset for trips after the first report. Household rostering is a list of all persons in the household that allows a trip to be reported from one household member and can include another household member who travel together to be inserted into the record for the second person. This automatic insert of information reduces the burden of the second respondent to be queried about a trip already reported by the initial respondent.

Data range, consistency and edit checks will be automatically programmed to reduce reporting error, survey length, and maintain the flow of information processing. Data cross checks also help reduce the burden by ensuring that the reporting is consistent within each trip.

Estimated Burden Hours for Information Collection

Frequency: This collection will be conducted every 2–4 years in the future.

Respondents. As mentioned earlier, a nationally representative random sample of 7,500 households across the 50 states and the District of Columbia will be included in this survey. Given that household will include an average of 2.5 members 5-years of age or older, travel data for a total of 18,750 individual respondents will be collected for the main survey.

Estimated Average Burden per Response. It will take approximately 5 minutes to complete the roster data form, and 15 minutes to complete the retrieval survey. This results in a total of 20 minutes for the first household member and 15 minutes per additional household member.

Estimated Total Annual Burden Hours. It is estimated that a total of 18,750 persons will be included in the survey. This would result in approximately 5,312.5 hours of support for this data collection effort, assuming an average of 17 minutes per person across the roster survey and retrieval survey.

Public Comments Invited

You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the USDOT's performance, including whether the information will have practical utility; (2) the data acquisition methods; (3) the accuracy of the USDOT's estimate of the burden of the proposed information collection; (4) the types of data being acquired; (5) ways to enhance the quality, usefulness, and clarity of the collected information; and (6) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: January 30, 2020.

Michael Howell,

Information Collection Officer, Federal Highway Administration.

[FR Doc. 2020–02092 Filed 2–3–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2009–0063]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on January 22, 2020, the Mohawk, Adirondack, and Northern Railroad Corporation (MHWA) petitioned the Federal Railroad Administration (FRA) to extend a waiver of compliance from the safety glazing requirements of 49 CFR 223.11, *Requirements for existing locomotives.* FRA assigned the petition Docket Number FRA–2009–0063.

Specifically, MHWA seeks to extend its waiver for one 80-ton, 470-horsepower diesel-electric locomotive numbered 1670. This locomotive was built for the United States Air Force by General Electric in March 1952.

MHWA operates this locomotive on a terminal/switching railroad at the former Griffiss Air Force Base in Rome, New York, now called the Griffiss Industrial Park. MHWA operates at speeds not exceeding 10 miles per hour and hauls one to three cars on a once-per-week basis. The locomotive is equipped with safety laminate glass (AS–1, AS–2) and is serviced and maintained by MHWA at Rome, New York. MHWA requests the extension due to the ''high cost to replace the glazing and the low risk to safety of continuing to operate with the current glazing.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 20, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual

submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2020–02031 Filed 2–3–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0015]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this provides the public notice that on January 27, 2020, WATCO Companies, LLC (WATCO) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2020–0015.

Applicant: WATCO Companies, LLC, Mr. Scott Adams, Vice President of Engineering, 315 W 3rd Street, Pittsburg, KS 66762.

Specifically, WATCO requests permission to discontinue the automatic interlocking signal system at Metcalf, Illinois, where the Decatur Subdivision, milepost (MP) BD 215.9, crosses the Charleston Subdivision, MP 288.5.

Upon discontinuance of the automatic interlocking signal system, the railroad crossing-at-grade will be protected by lighted STOP signs placed in each quadrant, and General Code of Operating Rules 6.16, *Approaching Railroad Crossings, Drawbridges, and End of Multiple Main Track,* will be in effect.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 20, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2020–02030 Filed 2–3–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5227

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 5227, Split-Interest Trust Information Return.

DATES: Written comments should be received on or before April 6, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at (202) 317–6038, or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Split-Interest Trust Information Return.

OMB Number: 1545–0196.

Form Number: 5227.

Abstract: Form 5227 is used to report the financial activities of a split-interest trust described in Internal Revenue Code section 4947(a)(2), and to determine whether the trust is treated as a private foundation and is subject to the excise taxes under Chapter 42 of the Code.

Current Actions: There are no changes being made to the form since 2019 revision; however, there are changes and adjustments made to the burden estimates based on the most recent filing data.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 199,900.

Estimated Time per Respondent: 45 hr., 24 min.

Estimated Total Annual Burden Hours: 9,076,744.

The following paragraph applies to all of the collections of information covered by this notice:

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.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: January 28, 2020.

Philippe Thomas,

IRS Supervisory Tax Analyst.

[FR Doc. 2020–02079 Filed 2–3–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 970

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Application To Use LIFO Inventory Method.

DATES: Written comments should be received on or before April 6, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, (202) 317–6038, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application To Use LIFO Inventory Method.

OMB Number: 1545–0042.

Form Number: Form 970.

Abstract: Form 970 is filed by individuals, partnerships, trusts, estates, or corporations to elect to use the last-in first-out (LIFO) inventory method or to extend the LIFO method to additional goods as described in section 472. The IRS uses Form 970 to determine if the election was properly made.

Current Actions: There are no changes being made to Form 970 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individual or households.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 21 hours, 6 minutes.

Estimated Total Annual Reporting Burden Hours: 42,220.

The following paragraph applies to all of the collections of information covered by this notice:

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. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: January 28, 2020.

Philippe Thomas,

IRS Supervisory Tax Analyst.

[FR Doc. 2020–02078 Filed 2–3–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8855

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 3506(c)(2)(A). Currently, the IRS is soliciting comments concerning Form 8855, Election To Treat a Qualified Revocable Trust as Party of an Estate.

DATES: Written comments should be received on or before April 6, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election To Treat a Qualified Revocable Trust as Party of an Estate.

OMB Number: 1545–1881.

Form Number: 8855.

Abstract: Form 8855 is used to make a section 645 election that allows a qualified revocable trust to be treated and taxed (for income tax purposes) as part of its related estate during the election period.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 5 hours, 38 minutes.

Estimated Total Annual Burden Hours: 28,200.

The following paragraph applies to all of the collections of information covered by this notice:

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. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: January 29, 2020.

Philippe Thomas,

Supervisory Tax Analyst.

[FR Doc. 2020–02077 Filed 2–3–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Specially Adapted Housing Assistive Technology Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for the Specially Adapted Housing Assistive Technology (SAHAT) Grant Program for Fiscal Year (FY) 2020. The objective of the grant is to encourage the development of new assistive technologies for specially adapted housing (SAH). This notice is intended to provide applicants with the information necessary to apply for the SAHAT Grant Program. VA strongly recommends referring to the SAHAT Grant Program regulation in conjunction with this notice. The registration process described in this notice applies only to applicants who will register to submit project applications for FY 2020 SAHAT Grant Program funds.

DATES: Applications for the SAHAT Grant Program must be submitted via *www.Grants.gov* by 11:59 p.m. Eastern Standard Time on March 6, 2020. Awards made for the SAHAT Grant Program will fund operations for FY 2020. The SAHAT Grant Program application package for funding opportunity VA–SAHAT–20–05 is available through *www.Grants.gov* and is listed as VA-Specially Adapted Housing Assistive Technology Grant Program. Applications may not be sent by mail, email, or facsimile. All application materials must be in a format compatible with the *www.Grants.gov* application submission tool. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected. Technical assistance with the preparation of an initial SAHAT Grant Program application is available by contacting the program official listed below.

FOR FURTHER INFORMATION CONTACT: Jason Latona (Program Manager), Specially Adapted Housing Program (262), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *Jason.Latona@va.gov,* (202) 632–8862. (This is not a toll-free number.)

DATES: February 4, 2020.

SUPPLEMENTARY INFORMATION: This notice is divided into eight sections. Section I provides a summary of and background information on the SAHAT Grant Program as well as the statutory authority, desired outcomes, funding priorities, definitions, and delegation of authority. Section II covers award information, including funding availability, and the anticipated start date of the SAHAT Grant Program. Section III provides detailed information on eligibility and the threshold criteria for submitting an application. Section IV provides detailed application and submission information, including how to request an application, application content, and submission dates and times. Section V describes the review process, scoring criteria, and selection process. Section VI provides award administration information such as award notices and reporting requirements.

Section VII lists agency contact information. Section VIII provides additional information related to the SAHAT Grant Program. This notice includes citations from 38 Code of Federal Regulations (CFR) part 36, and VA Financial Policy, Volume X Grants Management, which applicants and stakeholders are expected to read to increase their knowledge and understanding of the SAHAT Grant Program.

I. Program Description

A. Summary

Pursuant to the Veterans' Benefits Act of 2010 (Public Law (Pub. L.) 111–275, § 203, 124 Stat. 2864), the Secretary of Veterans Affairs (Secretary), through the Loan Guaranty Service (LGY) of the Veterans Benefits Administration (VBA), is authorized to provide grants of financial assistance to develop new assistive technology. The objective of the SAHAT Grant Program is to encourage the development of new assistive technologies for adapted housing.

B. Background

LGY currently administers the SAH Grant Program. Through this program, LGY provides funds to eligible veterans and servicemembers with certain service-connected disabilities to help purchase or construct an adapted home, or modify an existing home, to allow them to live more independently. Please see 38 United States Code (U.S.C.) 2101(a)(2)(B) and (C) and 38 U.S.C. 2101(b)(2) for a list of qualifying service-connected disabilities. Currently, most SAH adaptations involve structural modifications such as ramps; wider hallways and doorways; roll-in showers; and other accessible bathroom features, etc. For more information about the

SAH Grant Program, please visit: *http://www.benefits.va.gov/homeloans/adaptedhousing.asp.*

VA acknowledges there are many emerging technologies and improvements in building materials that could improve home adaptions or otherwise enhance a veteran's or servicemember's ability to live independently. Therefore, in 38 CFR 36.4412(b)(2), VA has defined ''new assistive technology'' as an advancement that the Secretary determines could aid or enhance the ability of an eligible individual, as defined in 38 CFR 36.4401, to live in an adapted home. New assistive technology can include advancements in new-to-market technologies, as well as new variations on existing technologies. Examples of the latter might include modifying an existing software application for use with a smart home device; upgrading an existing shower pan design to support wheelchairs; using existing modular construction methods to improve bathroom accessibility; or using existing proximity technology to develop an advanced application tailored to blind users.

Please Note: SAHAT funding does not support the construction or modification of residential dwellings for accessibility. Veterans and servicemembers interested in receiving assistance to adapt a home are encouraged to review the following fact sheet: *http://www.prosthetics.va.gov/factsheet/PSAS-FactSheet-Housing-Adaptation-Programs.pdf* to identify Home Adaptation programs offered by VA.

C. Statutory Authority

Public Law 111–275, the Veterans' Benefits Act of 2010 (the Act), was enacted on October 13, 2010. Section 203 of the Act added 38 U.S.C. 2108 to establish the SAHAT Grant Program. The Act authorized VA to provide grants of up to $200,000 per fiscal year, through September 30, 2016, to a ''person or entity'' for the development of specially adapted housing assistive technologies. The Act limited the aggregate amount of such grants VA may award in any fiscal year to $1 million. On September 29, 2018, the Department of Veterans Affairs Expiring Authorities Act of 2018 was enacted (Pub. L. 115–251, 122, 132 Stat. 3166, 3169). Section 122 of Public Law 115–251 extended the authority for VA to provide grants in the manner listed above through September 30, 2020. See 38 U.S.C. 2108 and 38 CFR 36.4412.

D. Desired Outcomes and Funding Priorities

Grantees will be expected to leverage grant funds to develop new assistive technologies for SAH. In 38 CFR 36.4412(f)(2), VA set out the scoring criteria and the maximum points allowed for each criterion. As explained in the preambles to both the proposed and final rules, while the scoring framework is set out in the regulation text, each notice will address the scoring priorities for that particular grant cycle (79 **Federal Register** (FR) 53146, 53148, Sept. 8, 2014; 80 FR 55763, 55764, Sept. 17, 2014). For FY 2020, the Secretary has identified the categories of innovation and unmet needs as top priorities. These categories are further described as scoring criteria 1 and 2 in Section V(A) of this notice. Although VA encourages innovation across a wide range of specialties, VA is, in this grant cycle, particularly interested in technologies that could help blinded veterans optimize their independence (*e.g.,* mobile applications, safety devices, etc.). VA also has particular interest in applications that either demonstrate innovative approaches in the design and building of adaptive living spaces or would lead to new products and techniques that expedite the modification of existing spaces, so as to reduce the impact that adaptive projects can have on a veteran's quality of life during the construction phase. VA notes that applications addressing these categories of special interest are not guaranteed selection, but they would, on initial review, be categorized as meeting the priorities for this grant cycle.

Additional information regarding how these priorities will be scored and considered in the final selection is contained in Section V(A) of this notice.

E. Definitions

Definitions of terms used in the SAHAT Grant Program are found at 38 CFR 36.4412(b).

F. Delegation of Authority

Pursuant to 38 CFR 36.4412(i), certain VA employees appointed to or lawfully fulfilling specific positions within VBA are delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to the SAHAT Grant Program authorized by 38 U.S.C. 2108.

II. Award Information

A. Funding Availability

The aggregate amount of assistance VA may award in any fiscal year is limited to $1 million. This funding will be provided as an assistance agreement in the form of grants. The number of assistance agreements VA will fund as a result of this notice will be based on the quality of the technology grant applications received and the availability of funding. However, the maximum amount of assistance a technology grant applicant may receive in any fiscal year is limited to $200,000.

B. Additional Funding Information

Funding for these projects is not guaranteed and is subject to the availability of funds and the evaluation of technology grant applications based on the criteria in this announcement. In appropriate circumstances, VA reserves the right to partially fund technology grant applications by funding discrete portions or phases of proposed projects that relate to adapted housing. Award of funding through this competition is not a guarantee of future funding. The SAHAT Grant Program is administered annually and does not guarantee subsequent awards. Renewal grants to provide new assistive technology will not be considered under this announcement.

C. Start and Close-Out Date

The anticipated start date for funding grants awarded under this announcement is April 1, 2020. The funding period will not exceed 15 months from the start date, to be followed by a 90-day period for closeout. Grant projects must be closed out by September 30, 2021.

III. Eligibility Information

A. Eligible Applicants

As authorized by 38 U.S.C. 2108, the Secretary may provide a grant to a ''person or entity'' for the development of specially adapted housing assistive technologies.

B. Cost Sharing or Matching

There is no cost sharing, matching, or cost participation for the SAHAT Grant Program.

C. Threshold Criteria

All technology grant applicants and applications must meet the threshold criteria set forth below. Failure to meet any of the following threshold criteria in the application will result in the automatic disqualification for funding consideration. Ineligible participants will be notified within 30 days of the finding of disqualification for award consideration based on the following threshold criteria:

1. Projects funded under this notice must involve new assistive technologies

that the Secretary determines could aid or enhance the ability of a veteran or servicemember to live in an adapted home.

2. Projects funded under this notice must not be used for the completion of work which was to have been completed under a prior grant.

3. Applications in which the technology grant applicant is requesting assistance funds in excess of $200,000 will not be reviewed.

4. Applications that do not comply with the application and submission information requirements provided in Section IV of this notice will be rejected.

5. Applications submitted via mail, email, or facsimile will not be reviewed.

6. Applications must be received through *www.Grants.gov*, as specified in Section IV of this announcement, on or before the application deadline, March 6, 2020. Applications received through *www.Grants.gov* after the application deadline will be considered late and will not be reviewed.

7. Technology grant applicants that have an outstanding obligation that is in arrears to the Federal Government or have an overdue or unsatisfactory response to an audit will be deemed ineligible.

8. Technology grant applicants in default by failing to meet the requirements for any previous Federal assistance will be deemed ineligible.

9. Applications submitted by entities deemed ineligible will not be reviewed.

10. Applications with project dates that extend past June 30, 2021, (this period does not include the 90-day closeout period) will not be reviewed.

All technology grant recipients, including individuals and entities formed as for-profit entities, will be subject to the rules on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as found at 2 CFR part 200. See 2 CFR 200.101(a). Where the Secretary determines that 2 CFR part 200 is not applicable or where the Secretary determines that additional requirements are necessary due to the uniqueness of a situation, the Secretary will apply the same standard applicable to exceptions under 2 CFR 200.102.

IV. Application and Submission Information

A. Address To Request Application Package

Technology grant applicants may download the application package from *www.Grants.gov*. Questions regarding the application process should be referred to the program official: Jason Latona (Program Manager), Specially Adapted Housing Program, *Jason.Latona@va.gov*, (202) 632–8862 (This is not a toll-free number.)

B. Content and Form of Application Submission

The SAHAT Grant Program application package provided at *www.Grants.gov* (Funding Opportunity Number: VA–SAHAT–20–05) contains electronic versions of the application forms that are required. Additional attachments to satisfy the required application information may be provided; however, letters of support included with the application will not be reviewed. All technology grant applications must consist of the following:

1. Standard Forms (SF) 424, 424A, and 424B. SF–424, SF–424A, and SF–424B require general information about the applicant and proposed project. The project budget should be described in SF–424A. Please do not include leveraged resources in SF–424A.

2. VA Form 26–0967: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.

3. VA Form 26–0967a: Scoring Criteria for SAHAT Grants.

4. Applications: In addition to the forms listed above, each technology grant application must include the following information:

a. A project description, including the goals and objectives of the project, what the project is expected to achieve, and how the project will benefit veterans and servicemembers;

b. An estimated schedule including the length of time (not to extend past June 30, 2021) needed to accomplish tasks and objectives for the project;

c. A description of what the project proposes to demonstrate and how this new technology will aid or enhance the ability of veterans and servicemembers to live in an adapted home. The following link has additional information regarding adapted homes: *http://www.benefits.va.gov/homeloans/adaptedhousing.asp.;* and

d. Each technology grant applicant is responsible for ensuring that the application addresses each of the scoring criteria listed in Section V(A) of this notice.

C. Dun and Bradstreet Universal Numbering System (DUNS) and System for Award Management (SAM)

Each technology grant applicant, unless the applicant is an individual or Federal awarding agency that is excepted from these requirements under 2 CFR 25.110(b) or (c), or has an exception approved by VA under 2 CFR 25.110(d), is required to:

1. Be registered in SAM prior to submitting an application;

2. Provide a valid DUNS number in the application; and

3. Continue to maintain an active SAM registration with current information at all times during which the technology grant applicant has an active Federal award or an application under consideration by VA.

VA will not make an award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements, and if the applicant has not fully complied with the requirements by the time VA is ready to make an award, VA will determine the applicant is not qualified to receive a Federal award and will use this determination as a basis for making the award to another applicant.

D. Submission Dates and Times

Applications for the SAHAT Grant Program must be submitted via *www.Grants.gov* to be transmitted to VA by 11:59 p.m. Eastern Standard Time on March 6, 2020. Submissions received after this application deadline will be considered late and will not be reviewed or considered. Submissions via email, mail, or fax will not be accepted.

Applications submitted via *www.Grants.gov* must be submitted by an individual registered with *www.Grants.gov* and authorized to sign applications for Federal assistance. For more information and to complete the registration process, visit *www.Grants.gov.* Technology grant applicants are responsible for ensuring that the registration process does not hinder timely submission of the application.

It is the responsibility of grant applicants to ensure a complete application is submitted via *www.Grants.gov.* Applicants are encouraged to periodically review the ''Version History Tab'' of the funding opportunity announcement in *www.Grants.gov* to identify if any modifications have been made to the funding announcement and/or opportunity package. Upon initial download of the funding opportunity package, applicants will be asked to provide an email address that will allow *www.Grants.gov* to send the applicant an email message in the event this funding opportunity package is changed and/or republished on *www.Grants.gov* prior to the posted closing date.

E. Confidential Business Information

It is recommended that confidential business information (CBI) not be included in the application. However, if

CBI is included in an application, applicants should clearly indicate which portion(s) of their application they are claiming as CBI. See 2 CFR 200.333–200.337 (addressing access to a non-Federal entity's records pertinent to a Federal award).

F. Intergovernmental Review

This section is not applicable to the SAHAT Grant Program.

G. Funding Restrictions

The SAHAT Grant Program does not allow reimbursement of pre-award costs.

V. Application Review Information

Each eligible proposal (based on the Section III threshold eligibility review) will be evaluated according to the criteria established by the Secretary and provided below in Section A.

A. Scoring Criteria

The Secretary will score technology grant applications based on the scoring criteria listed below. As indicated in Section I of this notice, the Secretary is placing the greatest emphasis on criteria 1 and 2. This emphasis does not establish new scoring criteria but is designed to assist technology grant applicants in understanding how scores will be weighted and ultimately considered in the final selection process. A technology grant application must receive a minimum aggregate score of 70. Instructions for completion of the scoring criteria are listed on VA Form 26–0967a. This form is included in the application package materials on *www.Grants.gov.* The scoring criteria and maximum points are as follows:

1. A description of how the new assistive technology is innovative, to include an explanation of how it involves advancements in new-to-market technologies, new variations on existing technologies, or both (up to 50 points);

2. An explanation of how the new assistive technology will meet a specific, unmet need among eligible individuals, to include whether and how the new assistive technology fits within a category of special emphasis for FY 2020, as explained in Section I(D) of this notice (up to 50 points);

3. An explanation of how the new assistive technology is specifically designed to promote the ability of eligible individuals to live more independently (up to 30 points);

4. A description of the new assistive technology's concept, size, and scope (up to 30 points);

5. An implementation plan with major milestones for bringing the new assistive technology into production and to the market. Such milestones must be meaningful and achievable within a specific timeframe (up to 30 points); and

6. An explanation of what uniquely positions the technology grant applicant in the marketplace. This can include a focus on characteristics such as the economic reliability of the technology grant applicant, the technology grant applicant's status as a minority or veteran-owned business, or other characteristics that the technology grant applicant wants to include to show how it will help protect the interests of, or further the mission of, VA and the program (up to 20 points).

B. Review and Selection Process

Eligible applications will be evaluated by a review panel comprising five VA employees. The review panel will score applications using the scoring criteria provided in Section V(A) and refer to the selecting official those applications that receive a minimum aggregate score of 70. In determining which applications to approve, the selecting official will take into account the review panel score, the priorities described in this Notice of Funding Availability, the governing statute, 38 U.S.C. 2108, and the governing regulation, 38 CFR 36.4412. VA Financial Policy, Volume X Grants Management, Chapter 4 Grants Application and Award Process, § 040202.06, *https://www.va.gov/finance/docs/VA-FinancialPolicyVolumeXChapter04.pdf.*

VI. Award Administration Information

A. Award Notices

Although subject to change, the SAHAT Grant Program Office expects to announce grant recipients by April 1, 2020. Prior to executing any funding agreement, VA will contact successful applicants; make known the amount of proposed funding; and verify the applicant's desire to receive the funding. Any communication between the SAHAT Grant Program Office and successful applicants prior to the issuance of an award notice is not authorization to begin project activities. Once VA verifies that the grant applicant is still seeking funding, VA will issue a signed and dated award notice. The award notice will be sent by U.S. mail to the organization listed on the SF–424. All applicants will be notified by letter, sent by U.S. mail to the address listed on the SF–424.

B. Administrative and National Policy Requirements

This section is not applicable to the SAHAT Grant Program.

C. Reporting

VA places great emphasis on the responsibility and accountability of grantees. Grantees must agree to cooperate with any Federal evaluation of the program and provide the following:

1. *Quarterly Progress Reports:* These reports will be submitted electronically and outline how grant funds were used, describe program progress, and describe any barriers and measurable outcomes. The format for quarterly reporting will be provided to grantees upon grant award.

2. *Quarterly Financial Reports:* These reports will be submitted electronically using the SF–425-Federal Financial Report.

3. *Grantee Closeout Report:* This final report will be submitted electronically and will detail the assistive technology developed. The Closeout Report must be submitted to the SAHAT Grant Program Office not later than 11:59 p.m. Eastern Standard Time, September 30, 2021.

VII. Agency Contact(s)

For additional general information about this announcement contact the program official: Jason Latona (Program Manager), Specially Adapted Housing Program, *Jason.Latona@va.gov.*, (202) 632–8862 (This is not a toll-free number.)

Mailed correspondence, which should not include application material, should be sent to: Loan Guaranty Service, VA Central Office, Attn: Jason Latona (262), 810 Vermont Avenue NW, Washington, DC 20420.

All correspondence with VA concerning this announcement should reference the funding opportunity title and funding opportunity number listed at the top of this solicitation. Once the announcement deadline has passed, VA staff may not discuss this competition with applicants until the application review process has been completed.

VIII. Other Information

Section 2108 authorizes VA to provide grants for the development of new assistive technologies through September 30, 2020. Additional information related to the SAHAT Grant Program administered by LGY is available at: *http://www.benefits.va.gov/homeloans/adaptedhousing.asp.*

The SAHAT Grant is not a veterans' benefit. As such, the decisions of the Secretary are final and not subject to the same appeal rights as decisions related

to veterans' benefits. The Secretary does not have a duty to assist technology grant applicants in obtaining a grant.

Grantees will receive payments electronically through the U.S. Department of Health and Human Services Payment Management System (PMS). All grant recipients should adhere to PMS user policies.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on January 28, 2020, for publication.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2020–02115 Filed 2–3–20; 8:45 am]

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Part II

Securities and Exchange Commission

17 CFR Parts 201 and 240

Cross-Border Application of Certain Security-Based Swap Requirements and Risk Mitigation Techniques for Uncleared Security-Based Swaps; Final Rules; Order Designating Certain Jurisdictions as ''Listed Jurisdictions'' for Purposes of Applying the Security-Based Swap Dealer De Minimis Exception of Rule 3a71–3(d) Under the Exchange Act to Certain Cross-Border Security-Based Swap Transactions; Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 201 and 240

[Release No. 34–87780; File No. S7–07–19]

RIN 3235–AM13

Cross-Border Application of Certain Security-Based Swap Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Final rules; guidance.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is adopting rule amendments and providing guidance to address the cross-border application of certain security-based swap requirements under the Securities Exchange Act of 1934 (''Exchange Act'') that were added by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''). The Commission also is issuing a statement regarding compliance with rules for security-based swap data repositories and Regulation SBSR.

DATES:

Effective date: These rules are effective April 6, 2020.

Compliance date: The compliance dates are discussed in Part X.B of this final release.

FOR FURTHER INFORMATION CONTACT: Carol M. McGee, Assistant Director, Laura Compton, Senior Special Counsel, or Kateryna Imus, Special Counsel, regarding the guidance related to security-based swap transactions that have been ''arranged'' or ''negotiated'' by personnel located in the United States, the amendment to Exchange Act Rule 3a71–3, applications for substituted compliance, the amendments to Rule 0–13 related to designation as a listed jurisdiction, and the compliance dates and statement regarding compliance with rules for security-based swap data repositories and Regulation SBSR referenced in Part X, at 202–551–5870; Devin Ryan, Senior Special Counsel, and Edward Schellhorn, Special Counsel, regarding the amendment to Commission Rule of Practice 194; Joanne Rutkowski, Assistant Chief Counsel, and Bonnie Gauch, Senior Special Counsel, regarding the amendments to Exchange Act Rule 15Fb2–1 and guidance related to Exchange Act Rule 15Fb2–4; and Joseph Levinson, Senior Special Counsel, regarding the modifications to Exchange Act Rule 18a–5, at 202–551–5777; Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is providing guidance regarding the application of certain uses of the terms ''arranged'' and ''negotiated'' in connection with the cross-border application of security-based swap regulation under the Exchange Act; providing guidance regarding the certification and opinion of counsel requirements in Exchange Act Rule 15Fb2–4 and Rule 3a71–6 and adequate assurance requirement in Exchange Act Rule 3a71–6; adopting amendments to Exchange Act Rules 0–13, 3a71–3, 15Fb2–1, and 18a–5 and Commission Rule of Practice 194; and issuing a statement regarding compliance with rules for security-based swap data repositories and Regulation SBSR.

I. Overview

The Commission is enhancing the effectiveness and the efficiency, in the cross-border context, of rules that implement requirements under Title VII of the Dodd-Frank Act [1] to provide for the regulation of security-based swap activity. The amendments finalize proposals that the Commission made to address issues regarding the cross-border application of Title VII.[2] Previously, market participants and other commenters had raised concerns regarding possible disruptive effects associated with several requirements that implicate cross-border activity in the security-based swap market, suggesting that those requirements would create significant operational burdens and impose unwarranted costs. The Commission also noted that those concerns may be exacerbated by differences between the Commission's rules in those areas and corresponding rules of the Commodity Futures Trading Commission (''CFTC'') in connection with the regulation of the swaps market.[3]

Commenters addressed a range of issues regarding the proposed rules and guidance, and those comments are addressed below.[4] The Commission has carefully considered commenters' views. For the reasons discussed below, the Commission is taking the following actions:

- The Commission is providing guidance regarding the terms ''arrange'' and ''negotiate,'' as those terms are used within certain rules connected to the cross-border application of Title VII.[5]
- The Commission is adopting a conditional exception to provisions of Exchange Act Rule 3a71–3 that otherwise would require non-U.S. persons to count—against the thresholds associated with the *de minimis* exception to the ''security-based swap dealer'' definition—security-based swap dealing transactions with non-U.S. counterparties when U.S. personnel arrange, negotiate, or execute those transactions.[6]
- The Commission is adopting an amendment to Exchange Act Rule 15Fb2–1 to allow a nonresident security-based swap dealer or major security-based swap participant (each, an ''SBS Entity'') that is unable to provide the certification and opinion of counsel required by Rule 15Fb2–4, to be conditionally registered if the nonresident SBS Entity instead submits a certification and an opinion of counsel that identify, and are conditioned upon, the occurrence of a future action that would provide the Commission with adequate assurances of prompt access to the books and records of the nonresident SBS Entity, and the ability of the nonresident SBS Entity to submit to onsite inspection and examination by the Commission. A nonresident SBS Entity that submits a conditional certification and opinion of counsel in connection with an application that otherwise is complete in all respects shall be conditionally registered and

[1] Public Law 111–203, 124 Stat. 1376 (2010). Unless otherwise indicated, references to Title VII in this release are to Subtitle B of Title VII of the Dodd-Frank Act.

[2] Proposed Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements, Exchange Act Release No. 85823 (May 10, 2019), 84 FR 24206 (May 24, 2019) (''Proposing Release'').

[3] *See* Proposing Release, 84 FR at 24207.

[4] The comment letters are available at *https://www.sec.gov/comments/s7-07-19/s70719.htm.* The Commission also received comments on topics outside the scope of the proposal that are not addressed in this release. *See* letter from Scott O'Malia, CEO, International Swaps and Derivatives Association, dated July 23, 2019 (''ISDA letter'') at 3–4 (arguing that the CFTC's rules for swaps and the Commission's rules regarding security-based swaps, including those not proposed to be amended, should not materially differ); Yolanda Lewis, dated July 23, 2019 (generally discussing certain issues related to certificate-less bonds and employees' securities companies).

[5] As discussed in more detail below, these rules include provisions of Exchange Act Rule 3a71–3 regarding the cross-border application of the ''security-based swap dealer'' definition, the cross-border application of security-based swap dealer business conduct requirements, and provisions related to activities of foreign branches of U.S. banks. These also include provisions of Regulation SBSR regarding the cross-border application of regulatory reporting and public dissemination requirements, and provisions of Rule 3a67–10 regarding the cross-border application of definitions and requirements applicable to major security-based swap participants. *See generally* Part II.B, *infra.*

[6] In connection with that exception, the Commission also is adopting a technical amendment to Exchange Act Rule 0–13.

will remain conditionally registered until the Commission acts to grant or deny ongoing registration. If none of the future actions that are included in an applicant's conditional certification and opinion of counsel occurs within 24 months of the compliance date for Rule 15Fb2–1, and there is not otherwise a basis that would provide the Commission with the required assurances, the Commission may institute proceedings thereafter to determine whether ongoing registration should be denied.

- The Commission is providing guidance regarding the requirements, in Exchange Act Rules 15Fb2–4(c) and 3a71–6, to provide the Commission with a certification and opinion of counsel, including with respect to the foreign laws to be covered in the certification and opinion of counsel of a nonresident SBS Entity; the scope of the books and records covered by the certification and opinion of counsel; whether the certification and opinion of counsel can be predicated on consents (if consents are allowed in the relevant jurisdiction); and whether the certification and opinion of counsel can rely on a memorandum of understanding (''MOU''), agreement, protocol, or other regulatory arrangement with the Commission facilitating access to the books and records of SBS Entities located in that jurisdiction, an applicant's understanding of the general experience with the application of the relevant local law or rule, or a Commission order granting substituted compliance based on a finding of ''adequate assurances'' in accordance with Exchange Act Rule 3a71–6(c).

- The Commission is adopting, as proposed, an amendment to Rule of Practice 194, by including proposed paragraph (c)(2), to exclude an SBS Entity, subject to certain limitations, from the prohibition in Exchange Act Section 15F(b)(6) with respect to an associated person who is a natural person who (i) is not a U.S. person and (ii) does not effect and is not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons, other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person.

- The Commission is adopting, as proposed, amendments to Rule 18a–5 to provide that a bank [7] or stand-alone [8] SBS Entity is not required to make and keep current a questionnaire or application for employment executed by an associated person if the SBS Entity is excluded from the prohibition in Section 15F(b)(6) of the Exchange Act with respect to such associated person. The Commission also is adopting amendments to Rule 18a–5 to provide that a questionnaire or application for employment executed by an associated person who is not a U.S. person need not include all of the information described in paragraphs (a)(10)(i)(A) through (H) and (b)(8)(i)(A) through (H) of Rule 18a–5 unless the SBS Entity (1) is required to obtain such information under applicable law in the jurisdiction in which the associated person is employed or located or (2) obtains such information in conducting a background check that is customary for such firms in that jurisdiction, and the creation or maintenance of records reflecting that information would not result in a violation of applicable law in the jurisdiction in which the associated person is employed or located.[9]

- The Commission is issuing a statement regarding compliance with rules for security-based swap data repositories and Regulation SBSR.

A number of these final actions have been modified from the proposals to address issues raised by commenters, and more generally to enhance the actions' effectiveness and efficiency. The Commission has consulted and coordinated with staff of the CFTC and the prudential regulators,[10] in accordance with the consultation mandate of the Dodd-Frank Act.[11] The Commission also has consulted and coordinated with foreign regulatory authorities through Commission staff participation in numerous bilateral and multilateral discussions with foreign regulatory authorities addressing the regulation of OTC (over-the-counter) derivatives.[12]

II. Security-Based Swap Transactions Arranged, Negotiated, or Executed by U.S. Personnel

A. Use of ''Arranged, Negotiated, or Executed'' Criteria

1. Background

A number of the rules implementing Title VII in the cross-border context account for whether security-based swap transactions have been arranged, negotiated, or executed by personnel located in the United States. In 2016, the Commission adopted Exchange Act Rule 3a71–3(b)(1)(C)(iii). The rule provides that for purposes of determining whether non-U.S. persons will be deemed to be security-based swap dealers—and hence subject to the Title VII requirements applicable to

[7] The Exchange Act distinguishes between SBS Entities for which there is a prudential regulator as defined in Section 1a(39) of the Commodity Exchange Act (''CEA''), 7 U.S.C. 1a(39), incorporated by reference in Section 3(a)(74) of the Exchange Act, 15 U.S.C. 78c(a)(74), and those that are not subject to supervision by a prudential regulator (*see, e.g.,* 15 U.S.C. 78o–10(f)(1)(B)). SBS Entities for which there is a prudential regulator are referred to herein as ''bank SBS Entities.''

[8] An SBS Entity for which there is no prudential regulator could be dually registered with the Commission as a broker-dealer (''broker-dealer SBS Entity'') or registered with the Commission only as an SBS Entity (''stand-alone SBS Entity'').

[9] 17 CFR 240.17a–3(a)(12) requires broker-dealers, including broker-dealer SBS Entities, to make and keep current a questionnaire or application for employment for each associated person that contains information about the associated person (the ''questionnaire requirement'') as well other information about associated persons. The Commission adopted parallel requirements in Rule 18a–5 for stand-alone and bank SBS Entities. *See* Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers, Exchange Act Release No. 87005 (Sep. 19, 2019), 84 FR 68550 (Dec. 16, 2019) (''Recordkeeping and Reporting Adopting Release'').

[10] The term ''prudential regulator'' is defined in Section 1a(39) of the CEA, 7 U.S.C. 1a(39), and that definition is incorporated by reference in Section 3(a)(74) of the Exchange Act, 15 U.S.C. 78c(a)(74). Pursuant to the definition, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, or the Federal Housing Finance Agency (collectively, the ''prudential regulators'') is the ''prudential regulator'' of a security-based swap dealer or major security-based swap participant if the entity is directly supervised by that regulator.

[11] Section 712(a)(2) of the Dodd-Frank Act provides in part that the Commission shall ''consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.''

In addition, Section 752(a) of the Dodd-Frank Act provides in part that ''[i]n order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators . . . as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps.''

[12] Staff participates in a number of international standard-setting bodies and workstreams working on OTC derivatives reforms. For example, Commission staff participates in the Financial Stability Board's Working Group on OTC Derivatives Regulation. Commission staff also participates in the International Organization of Securities Commissions (''IOSCO'') Committee on Derivatives, the joint Basel Committee on Banking Supervision (''BCBS'') and IOSCO Working Group on Margin Requirements' Monitoring Group and participates in international working groups that impact OTC derivatives financial market infrastructures, such as Committee on Payment Market Infrastructures (''CPMI'')—IOSCO joint working groups assessing legal and regulatory frameworks for central counterparties and trade repositories and examining central counterparty resilience and recovery.

security-based swap dealers—non-U.S. persons (other than conduit affiliates as defined in the rule) must count, against the applicable *de minimis* threshold, their security-based swap dealing transactions with non-U.S. counterparties that were ''arranged, negotiated, or executed'' by personnel within the United States.[13] The Commission also incorporated the ''arranged, negotiated, or executed'' criteria into the cross-border application of other parts of the security-based swap dealer *de minimis* counting rules,[14] of the cross-border application of business conduct provisions for SBS Entities,[15] of Regulation SBSR's regulatory reporting and public dissemination provisions,[16] and of Title VII rules regarding major security-based swap participants.[17]

In the Proposing Release, the Commission solicited comment regarding how U.S. personnel are used in connection with cross-border security-based swap transactions, and regarding the impacts of tests that account for the activity of U.S. personnel.[18] The Commission also solicited comment on guidance regarding the use of the terms ''arranged'' and ''negotiated'' in the cross-border application of Title VII rules, as well as on two alternative approaches to a conditional exception to Rule 3a71–3(b)(1)(C)(iii).[19] The proposals sought to address concerns that had been raised regarding the consequences associated with the incorporation of ''arranged, negotiated, or executed'' criteria in the cross-border application of Title VII, in a manner that balanced two competing considerations.[20] On one hand, the proposals reflected the Commission's continued belief that the use of ''arranged, negotiated, or executed'' criteria appropriately should constitute part of the security-based swap dealer *de minimis* counting requirement in connection with transactions involving two non-U.S. counterparties, in part due to the risk that non-U.S. persons engaged in security-based swap dealing activity in the United States otherwise could avoid regulation under Title VII.[21] On the other hand, the proposals also reflected the Commission's recognition that the use of ''arranged, negotiated, or executed'' criteria as part of the *de minimis* counting requirement might produce negative consequences such as causing financial groups ''to relocate U.S. personnel or relocate the activities performed by U.S. personnel, to avoid security-based swap dealer registration,'' and that those results ''have the potential to increase fragmentation and harm U.S. market participants and the U.S. economy.'' [22]

2. Commission Action

After considering comments submitted in response to the Proposing Release, the Commission continues to believe the ''arranged, negotiated, or executed'' criteria form an appropriate basis for applying Title VII requirements in the cross-border context.[23] At the same time, after considering commenters' views, the Commission continues to recognize that the use of ''arranged, negotiated, or executed'' criteria has the potential to lead to a variety of negative consequences. Accordingly, the Commission is issuing guidance regarding the application of the terms ''arranged'' and ''negotiated'' in the cross-border application of Title VII rules to the provision of ''market color,'' as well as adopting a conditional exception from the incorporation of ''arranged, negotiated, or executed'' criteria as part of the *de minimis* counting test.[24]

As the Commission previously recognized, the ''arranged, negotiated, or executed'' criteria serve important regulatory interests, including helping protect against the potential that market participants would use booking practices to engage in an unregistered security-based swap dealing business in the United States. Those criteria further

[13] *See* Proposing Release, 84 FR at 24208 nn.12–13.

Rule 3a71–3 further requires that such non-U.S. persons count their dealing transactions with certain U.S. counterparties, their dealing transactions in which their performance under the security-based swap is guaranteed by a U.S. affiliate, and, in some circumstances, certain transactions of affiliates. *See* Exchange Act Rules 3a71–3(b)(1)(iii)(A)–(B), (b)(2) and 3a71–4, 17 CFR 240.3a71–3(b)(1)(iii)(A)–(B), (b)(2) and 3a71–4.

Persons whose dealing activities exceed the *de minimis* thresholds will be required to register as security-based swap dealers. *See* Exchange Act Section 3(a)(71)(D), 15 U.S.C. 78(c)(a)(71)(D); Exchange Act Rule 3a71–2, 17 CFR 240.3a71–2. For a discussion of the compliance date for registration of security-based swap dealers, see Part X.B.

[14] *See* Proposing Release, 84 FR at 24208 n.81.

[15] *See* Exchange Act Rule 3a71–3(c), 17 CFR 240.3a71–3(c). *See* Proposing Release, 84 FR at 24208 n.79 for further discussion.

[16] *See* Regulation SBSR Rules 908(a)(1)(v) and 908(b)(5), 17 CFR 242.908(a)(1)(v) and 908(b)(5) (incorporating an ''arranged, negotiated, or executed'' standard). *See* Proposing Release, 84 FR at 24208 n.80 for further discussion.

[17] *See* Exchange Act Rule 3a67–10(b)(3)(i), 17 CFR 240.3a67–10(b)(3)(i) (setting out that the ''major security-based swap participant'' excludes positions that arise from transactions conducted through a foreign branch of a counterparty that is a registered security-based swap dealer and thus incorporating the definition of ''transaction conducted through a foreign branch,'' which makes use of ''arranged, negotiated, and executed'' criteria); Exchange Act Rule 3a67–10(d), 17 CFR 240.3a67–10(d) (stating that U.S. and non-U.S. major security-based swap participants are excluded from having to comply with certain business conduct requirements in connection with transactions conducted through a foreign branch, based on that same definition). *See* Proposing Release, 84 FR at 24208 n.82 for further discussion.

[18] *See* Proposing Release, 84 FR at 24217, 24227–28.

[19] *See* Proposing Release, 84 FR at 24217–18, 24237–43.

[20] *See* Proposing Release, 84 FR at 24207–08.

[21] *See* Proposing Release, 84 FR at 24208–09, 24218.

[22] *See id.* at 24216, 24218.

[23] Some commenters supported these criteria, with one noting that failure to regulate these transactions under Title VII would create competitive disparities between U.S. and non-U.S. market participants, while regulating these transactions ''will enable the Commission to better monitor for disruptive trading practices and will also provide the necessary data regarding overall market trading activity to allow the Commission to evaluate market trends and accurately assess the impact of other reforms implemented in the security-based swap market.'' *See* letter from Stephen Berger, Managing Director, Citadel, dated July 23, 2019 (''Citadel letter'') at 2–5; *see also* letter from Dennis Kelleher, President and CEO, Better Markets, dated July 23, 2019 (''Better Markets letter'') at 11 (''Better Markets would like to commend the SEC for affirming fundamental legal bases for continuing to apply Dodd-Frank Act requirements to ANE Transactions based on a territorial analysis of the SEC's cross-border jurisdiction''); letter from Americans for Financial Reform Education Fund, dated July 23, 2019 (''AFR letter'') at 2 (''we also pointed out that given the narrow definition of U.S. person under the rule, the inclusion of ANE transactions in the de minimis count was an absolutely crucial protection to include in the rule'').

In contrast, some commenters reiterated opposition to any use of ''arranged, negotiated, or executed'' criteria in connection with Title VII implementation, including cross-border tests related not only to the *de minimis* exception to the ''security-based swap dealer'' definition, but also to other requirements related to security-based swap dealer registration, to business conduct requirements and to reporting and public dissemination requirements. *See* letter from Briget Polichene, CEO, Institute of International Bankers, and Kenneth E. Bentsen, President and CEO, Securities Industry and Financial Markets Association, dated July 23, 2019 (''IIB/SIFMA letter'') at 7–8, 16–18; ISDA letter at 4–7; letter from Wim Mijs, CEO, European Banking Federation, dated July 23, 2019 (''EBF letter'') at 7; letter from Mark Hutchinson, Managing Director & General Counsel, HSBC Bank USA, N.A., dated July 23, 2019 (''HSBC letter'') at 2–3. Some of these commenters also expressed the view, however, that the proposed exception would partially—but not completely—address the problems they identified in connection with the use of those criteria. *See* IIB/SIFMA letter at 2 (stating that if the Commission does not adopt the commenter's recommended approach of not incorporating ''arranged, negotiated, or executed'' criteria as part of Title VII implementation, it should ''adopt a modified version of the Proposal's conditional exception from the *de minimis* calculation''); ISDA letter at 7–9; HSBC letter at 1, 5. One commenter also argued that the Commission should exempt all non-U.S. registered security-based swap dealers from business conduct requirements other than those that also apply to transactions subject to the proposed exception to the *de minimis* counting requirement. *See* IIB/SIFMA letter at 16.

[24] As noted in the Proposing Release, the antifraud provisions of the federal securities laws and certain relevant Title VII requirements would continue to apply to the transactions subject to the exception. *See* Proposing Release, 84 FR at 24219.

reflect the activity-based focus of the ''security-based swap dealer'' definition,[25] as well as considerations regarding competitive disparities, market fragmentation, and public transparency. Similarly, the Title VII SBS Entity requirements more generally serve a number of regulatory purposes apart from mitigating counterparty and operational risks, ''including enhancing counterparty protections and market integrity, increasing transparency, and mitigating risk to participants in the financial markets and the U.S. financial system more broadly.'' [26]

For similar reasons, the Commission is unpersuaded by one commenter's suggestion [27] to replace the ''arranged, negotiated, or executed'' criteria for applying Title VII in the cross-border context with a ''primary trading relationship'' test. Moreover, the Commission recognizes that a test, such as a primary trading relationship test, that purports to distinguish between ''direct'' and ''meaningful'' involvement in a transaction on the one hand, and ''occasional'' and ''incidental'' involvement on the other hand, in practice would be subject to subjective and inconsistent application.

At the same time, commenters argued that the use of ''arranged, negotiated, or executed'' criteria has the potential to lead to a variety of negative consequences. In particular, commenters expressed concern that these criteria may cause the relocation of operations and personnel out of the United States, inhibit the use of centralized risk management, reduce liquidity in the U.S. market, increase fragmentation in global markets, impose significant compliance costs and logistical challenges, and produce competitive disparities.[28] As discussed below, the conditional exception should help mitigate the negative consequences that otherwise may arise from the use of those criteria to their security-based swap business, while also helping to avoid allowing persons to engage in an unregulated security-based swap dealing business in the United States.

Commenters expressed concerns about both the proposed ''market color'' guidance and the proposed conditional exception. Some commenters asserted that the proposed guidance would encourage market participants to restructure their security-based swaps business to avoid the requirements of the Dodd-Frank Act.[29] Commenters argued that this evasion would impede the Commission's ability to monitor compliance,[30] as well as to exercise its anti-fraud authority.[31] Commenters also worried that the Commission would lose the ability to oversee the vast majority of ''arranging'' and ''negotiating'' activity.[32] Similarly, some commenters objected to the proposed exception to the *de minimis* counting rule, asserting that the proposal reflected industry preference contrary to the Commission's public interest mandate,[33] was unsupported by new information,[34] and would permit certain market participants to use booking practices to avoid having to register as security-based swap dealers.[35] The Commission recognizes that the guidance addresses certain activity that will not be cross-border ''arranging'' and ''negotiating'' subject to the application of certain Title VII rules. Further, the Commission is mindful that the exception modifies the approach taken in 2016, when the Commission incorporated the ''arranged, negotiated, or executed'' criteria into the *de minimis* counting rule. Though the exception does permit market participants to avoid counting certain ''arranging, negotiating, or executing'' activity towards the security-based swap dealer registration thresholds, in the Commission's view, its approach appropriately balances the recent concerns presented by commenters [36] and helps avoid the potential negative consequences that some have suggested may be associated with the current ''arranging, negotiating, or executing'' standard. In the Commission's view, this approach is in the public interest because it should help facilitate implementation of the Title VII security-based swap dealer requirements in a manner that is both effective and efficient.[37]

[25] As the Commission has previously noted, ''Exchange Act Section 3(a)(71)(A) identifies specific activities that bring a person within the definition of a 'security-based swap dealer': (1) [h]olding oneself out as a dealer in security-based swaps; (2) making a market in security-based swaps; (3) regularly entering into security-based swaps with counterparties as an ordinary course of business for one's own account; or (4) engaging in any activity causing oneself to be commonly known in the trade as a dealer in security-based swaps.'' Security-Based Swap Transactions Connected with a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed By Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer *De Minimis* Exception, Exchange Act Release No. 77104 (Feb. 10, 2016), 81 FR 8598, 8614 (Feb. 19, 2016) (''ANE Adopting Release'') (citing Exchange Act Section 3(a)(71)(A), 15 U.S.C. 78c(a)(71)(A)).

The Commission has interpreted this definition to apply to persons engaged in indicia of dealing activity. *See* ANE Adopting Release, 81 FR at 8614 (citing Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596, 30617–18 (May 23, 2012) (''Intermediary Definitions Adopting Release'')).

Consistent with the statutory definition, the Commission has stated that the *de minimis* threshold relates to the volume of dealing activity and not to specific risk-related factors. Moreover, the fact that risk from a transaction between two non-U.S. persons exists largely outside the United States does not determine whether a sufficient nexus exists to require a non-U.S. person to count the transaction toward its *de minimis* threshold. Rather, ''the appropriate analysis . . . also considers whether a non-U.S. person in such a transaction is engaged, in the United States, in any of the activities set forth in the statutory definition [or in the Commission's further definition] of 'security-based swap dealer.''' ANE Adopting Release, 81 FR at 8614.

[26] *See* Proposing Release, 84 FR at 24201 n.20. The Commission's actions to mitigate the negative consequences potentially associated with the various uses of this type of test accordingly are designed to do so while preserving the important Title VII interests that the Commission advanced when it incorporated the test into the various cross-border rules. *See* Proposing Release, 84 FR at 24208.

[27] *See* HSBC letter (highlighting operational issues associated with the use of an ''arranged, negotiated, or executed test'' and stating that it would be more practical to make use of a ''primary trading relationship'' test that looks at ''the nature of the trading relationship between the non-U.S. parties and the U.S. personnel involved in the trade''; adding that that test would apply ''if U.S. personnel are directly and meaningfully involved in the trading relationship with the non-U.S. parties at the relationship level (*e.g.,* the client's primary point of contact for the SBS is located in the United States), but not when ''U.S. personnel are only occasionally and incidentally involved in the trading relationship with the non-U.S. parties'').

[28] *See* IIB/SIFMA letter at 7–8, 16–18; ISDA letter at 4–7; EBF letter at 7; HSBC letter at 2–3.

[29] *See* Citadel letter at 5; *see also* Better Markets letter at 17.

[30] *See* Citadel letter at 5.

[31] *See* Better Markets letter at 21.

[32] *See* Citadel letter at 5.

[33] *See* Better Markets letter at 1–2.

[34] *See* Better Markets letter at 25; AFR letter at 3–4.

[35] *See* AFR letter at 4; *see also* Citadel letter at 5 (expressing concerns regarding permitting counterparties to ''engage in dealing activity using U.S.-based personnel without being appropriately registered with the Commission'' in connection with expressing opposition to Alternative 2); letter from Karl Muth, dated July 19, 2019 (''Muth letter'') (expressing view that ''the risk that non-U.S. persons engaged in security-based swap dealing activity in the United States could avoid regulation under Title VII . . . is a more serious risk than the risk that the ambit of Title VII may be expanded nominally in some unanticipated way'').

[36] *See* note 23, *supra,* and Parts II.B and II.C, *infra.*

[37] Three commenters expressed concerns regarding documentation-related compliance burdens in connection with the use of the ''arranging, negotiating, or executing'' standard in Title VII rules. *See* IIB/SIFMA letter at 16 (asserting that many business conduct requirements ''would impose documentation burdens on non-U.S. counterparties that would deter them from having the interactions with U.S. personnel that would trigger these requirements''; suggesting an exemption from all business conduct requirements as applied to non-U.S. security-based swap dealers' ''arranging, negotiating, or executing'' activity,'' except for those requirements that are conditions to the new exception from the *de minimis* counting rule); ISDA letter at 7 (asserting that ''certain

Continued

B. Guidance Regarding the Meaning of ''Arranged'' and ''Negotiated'' in Connection With the Cross-Border Application of Title VII

1. Proposed Approach

For purposes of the ''arranged, negotiated, or executed'' test, the Commission intended for the terms ''arrange'' and ''negotiate'' to ''indicate market-facing activity of sales or trading personnel in connection with a particular transaction, including interactions with counterparties or their agents.'' [38] Recognizing that market-facing activity may vary significantly in connection with security-based swap transactions, the Commission proposed guidance regarding activity that is not ''arranging'' or ''negotiating'' for purposes of Title VII requirements.[39] The proposed guidance would have applied to the ''arranged, negotiated, or executed'' test that is used in connection with the *de minimis* counting rules [40] and in the cross-border application of business conduct rules,[41] regulatory reporting and public dissemination requirements,[42] and major security-based swap participant rules.[43]

In the Proposing Release, the Commission explained that in certain circumstances the market-facing activity of U.S. personnel is so limited that it would not implicate the regulatory interests underlying the relevant Title VII requirements.[44] The Commission proposed that such circumstances arise when U.S. personnel provide ''market color'' in connection with security-based swap transactions, but otherwise have no client responsibility and receive no transaction-linked compensation.[45] The Commission further proposed that, for those purposes, the term ''market color'' would mean background information regarding pricing or market conditions associated with particular instruments or with markets more generally, including information regarding current or historic pricing, volatility, or market depth, and trends or predictions regarding pricing, volatility, or market depth, as well as other types of information reflecting market conditions and trends.[46] The Commission proposed that U.S. personnel who have no client responsibility and receive no transaction-linked compensation could provide market color in connection with security-based swap transactions in support of non-U.S. persons who actually arrange, negotiate, and execute those transactions on behalf of their clients, without triggering the requirements under Title VII that incorporate the ''arranged, negotiated, or executed'' test.[47] The Commission explained that, for purposes of the proposed guidance, having no client responsibility would mean that the U.S. personnel providing market color must not have been assigned, and must not otherwise exercise, client responsibility in connection with the transaction.[48] The Commission noted that the involvement of U.S. personnel who are designated as sales persons or traders would not necessarily trigger the ''arranged, negotiated, or executed'' test as long as such personnel's activity is limited to the provision of market color, rather than arranging or negotiating.[49] The Commission also explained that U.S. personnel not receiving transaction-linked compensation means that the U.S. personnel do not receive compensation based on or otherwise linked to the completion of transactions on which the U.S. personnel provide market color.[50] The Commission clarified, however, that this does not include profit-sharing arrangements or other compensation practices that account for aggregated profits, as such arrangements would not be expected to incentivize U.S. personnel in a similar manner or to a similar degree as compensation that is directly linked to the success of individual transactions.[51]

In proposing the guidance, the Commission reasoned that the provision of market color by U.S. personnel who have no client responsibility and receive

business conduct requirements would impose documentation burdens on non-U.S. counterparties that may incentivize them not to transact with nonresident [security-based swap dealers] that utilize U.S. personnel''; suggesting either an exemption from, or substituted compliance for, all business conduct requirements as applied to non-U.S. security-based swap dealers' ''arranging, negotiating, or executing'' activity''); HSBC letter at 3–4 (noting that it would be ''immensely cumbersome to modify [OTC derivatives regulation compliance systems] to systematically monitor and track the location of any front office personnel acting for HSBC''). Another commenter did not cite documentation burdens but called for an exemption from all business conduct requirements for transactions between two non-U.S. persons that are ''arranged, negotiated, or executed'' by U.S. personnel. *See* EBF letter at 7. For the reasons discussed above, the Commission continues to believe the ''arranged, negotiated, or executed'' criteria form an appropriate basis for applying Title VII requirements, including business conduct requirements, in the cross-border context. The Commission encourages potential foreign SBS Entity registrants, however, to contact the staff to discuss concerns regarding any disruption that may be associated with any documentation requirements arising from transactions that are arranged, negotiated, or executed by U.S. personnel. In this regard, the Commission notes that certain of these business conduct requirements are required by statute.

Similarly, three commenters expressed concerns regarding the application of Regulation SBSR to transactions between non-U.S. persons that are ''arranged, negotiated, or executed'' by U.S. personnel. *See* IIB/SIFMA letter at 16–18 (suggesting an exemption from Regulation SBSR for such transactions when they are reported in another jurisdiction but not publicly disseminated due to insufficient liquidity in that jurisdiction); ISDA letter at 5–7 (suggesting an exemption from Regulation SBSR for such transactions until the Commission issues substituted compliance determinations for all G–20 jurisdictions); EBF letter at 7 (suggesting an exemption from Regulation SBSR for such transactions). One commenter urged the Commission to continue applying Regulation SBSR to transactions between non-U.S. persons that are ''arranged, negotiated, or executed'' by U.S. personnel, to promote the Commission's supervisory interest in monitoring U.S. trading activity and to increase transparency and enhance price discovery for U.S. market participants. *See* Citadel letter at 1, 2–5. For the reasons discussed above, the Commission continues to believe the ''arranged, negotiated, or executed'' criteria form an appropriate basis for applying Title VII requirements, including Regulation SBSR, in the cross-border context. Another commenter asked the Commission to allow transaction reports made pursuant to Regulation SBSR to mask counterparty information when a foreign legal barrier requires counterparty consent and/or regulatory authorization to report unmasked data. *See* IIB/SIFMA letter at 28–29. As discussed in Part X.C, the Commission is issuing a statement regarding compliance with Regulation SBSR. This statement takes account of these comments.

[38] *See* ANE Adopting Release, 81 FR at 8622; *see also* Proposing Release, 84 FR at 24215.

[39] *See* Proposing Release, 84 FR at 24216.

[40] In connection with *de minimis* counting, this guidance would apply to: (1) Exchange Act Rule 3a71–3(b)(1)(iii)(C), which requires the counting of security-based swap dealing transactions between non-U.S. counterparties that have been ''arranged, negotiated, or executed'' in the United States, 17 CFR 240.3a71–3(b)(1)(iii)(C); (2) Exchange Act Rule 3a71–3(b)(2), which addresses the counting of affiliate transactions described by paragraph (b)(1) (which includes the (b)(1)(iii)(C) requirement), 17 CFR 240.3a71–3(b)(2); (3) Exchange Act Rule 3a71–5, which excepts certain cleared anonymous transactions from the individual counting requirement of paragraph (b)(1) of Rule 3a71–3 and from the affiliate counting requirement of paragraph (b)(2), but is unavailable to transactions ''arranged, negotiated, or executed'' by U.S. personnel, 17 CFR 240.3a71–5; and (4) the *de minimis* counting requirement of Exchange Act Rule 3a71–3(b)(1)(iii)(A), requiring the counting of dealing transactions involving a foreign branch of a registered security-based swap dealer and a non-U.S. counterparty (or another foreign branch), 17 CFR 240.3a71–3(b)(1)(iii)(A). The regulatory interests underlying the Rule 3a71–3(b)(1)(iii)(C) and Rule 3a71–3(b)(1)(iii)(A) uses of arranged, negotiated, and/or executed criteria to implement the *de minimis* counting requirement are similar (as are, derivatively, the Rule 3a71–3(b)(2) and Rule 3a71–5 uses).

The guidance also would apply to the definition of ''transaction conducted through a foreign branch'' in Rule 3a71–3(a)(3), which incorporates the functionally equivalent ''arranged, negotiated, and executed'' terminology.

[41] *See* note 14, *supra.*

[42] *See* note 16, *supra.*

[43] *See* note 17, *supra.*

[44] *See* Proposing Release, 84 FR at 24216.

[45] *See id.* at 24216–17.

[46] *See id.* at 24216.

[47] *See id.* at 24217.

[48] *See id.* at 24217.

[49] *See id.* at 24216 n.95.

[50] *See id.* at 24217.

[51] *See id.* at 24217 n.96.

no transaction-linked compensation is a type of limited market-facing activity by U.S. personnel that, standing alone, would not trigger the concerns and regulatory interests that underpin the various uses of the ''arranged, negotiated, or executed'' test, as such activity would not appear comprehensive enough to pose a significant risk of allowing an entity to exit the Title VII regulatory regime without exiting the U.S. market.[52] Moreover, non-U.S. counterparties reasonably would not expect Title VII business conduct requirements to apply merely as the result of receiving technical information from U.S. personnel.[53] As noted in the Proposing Release, in circumstances where limited market-facing activity by U.S. personnel does not trigger the ''arranged, negotiated, or executed'' test, the federal securities laws, including applicable anti-fraud provisions, still may apply to that activity depending on the particular facts and circumstances.[54]

2. Commission Action

The Commission is providing the guidance largely as proposed, modified to further explain the term ''market color.'' [55] The Commission believes that, as revised, the guidance will help entities evaluate what is, and what is not, ''market color.''

The Commission is providing guidance [56] regarding the ''arranged, negotiated, or executed'' test that is used in connection with *de minimis* counting,[57] the cross-border application of business conduct rules,[58] regulatory reporting and public dissemination requirements,[59] and major security-based swap participant rules.[60]

In the Commission's view, ''market color'' is limited to background information regarding pricing or market conditions associated with particular instruments or with markets more generally in support of persons who arrange, negotiate, or execute security-based swap transactions on behalf of their clients. Background information includes information regarding (1) current or historic pricing, volatility, or market depth, and (2) trends or predictions regarding pricing, volatility, or market depth, as well as information related to risk management.

The Commission is clarifying that U.S personnel who provide market color in connection with security-based swap transactions—in the form of information or data as described above—do not trigger the Title VII requirements that use an ''arranged, negotiated, or executed'' test when both the following circumstances exist:

- *No client responsibility*—The U.S. personnel have not been assigned, and do not otherwise exercise, client responsibility in connection with the transaction.
- *No transaction-linked compensation*—The U.S. personnel do not receive compensation based on, or otherwise linked to, the completion of individual transactions on which the U.S. personnel provide market color. [61]

In contrast, in the Commission's view, any solicitation activity by personnel located in the United States or activity to respond to requests by counterparties to enter into transactions when such requests are made directly to personnel located in the United States would *not* be ''market color.'' [62] Moreover, market-facing activity by personnel located in the United States also would not be ''market color'' if such activity involves:

- Providing recommendations, such as recommending particular instruments;
- providing predictions regarding potential merits or risks of, or providing trading ideas or strategies relating to, a proposed security-based swap transaction;
- structuring a particular security-based swap transaction; or
- finalizing or reaching agreement with respect to any pricing or non-pricing element, such as underlier, notional amount or tenor, that must be resolved to complete a security-based swap transaction.

The language above is different from the language in the proposal in response to a number of commenters who expressed concern that it would be difficult to distinguish ''market color'' activity from ''arranging'' and ''negotiating'' activity.[63]

Commenters expressed concern that the guidance would encourage entities (including U.S. entities) to restructure to avoid or evade requirements applicable

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[52] *See id.* at 24216 n.94.

[53] *See id.*

[54] *See id.* at 24217 n.97.

[55] Three commenters expressed general support for the guidance as proposed. *See* IIB/SIFMA letter at 3, 9–10; HSBC letter at 1, 5 (expressing general support for the comments in the IIB/SIFMA letter); ISDA letter at 2.

[56] The Commission continues to believe there is no reason to revisit its prior guidance regarding the scope of the term ''execute''; the Commission therefore did not in the Proposing Release and does not now provide any additional guidance regarding the interpretation of that term. Moreover, although the Commission is providing guidance with respect to certain market-facing activities that in its view do not constitute arranging or negotiating for purposes of the relevant Title VII requirements, the Commission's view otherwise remains unchanged with respect to guidance provided in the ANE Adopting Release regarding what constitutes arranging, negotiating, or executing security-based swaps.

[57] In connection with *de minimis* counting, this guidance applies to: (1) Exchange Act Rule 3a71–3(b)(1)(iii)(C), which requires the counting of security-based swap dealing transactions between non-U.S. counterparties that have been ''arranged, negotiated, or executed'' in the United States, 17 CFR 240.3a71–3(b)(1)(iii)(C); (2) Exchange Act Rule 3a71–3(b)(2), which addresses the counting of affiliate transactions described by paragraph (b)(1) (which includes the (b)(1)(iii)(C) requirement), 17 CFR 240.3a71–3(b)(2); (3) Exchange Act Rule 3a71–5, which excepts certain cleared anonymous transactions from the individual counting requirement of paragraph (b)(1) of Rule 3a71–3 and from the affiliate counting requirement of paragraph (b)(2), but is unavailable to transactions ''arranged, negotiated, or executed'' by U.S. personnel, 17 CFR 240.3a71–5; and (4) the *de minimis* counting requirement of Exchange Act Rule 3a71–3(b)(1)(iii)(A), requiring the counting of dealing transactions involving a foreign branch of a registered security-based swap dealer and a non-U.S. counterparty (or another foreign branch), 17 CFR 240.3a71–3(b)(1)(iii)(A). The regulatory interests underlying the Rule 3a71–3(b)(1)(iii)(C) and Rule 3a71–3(b)(1)(iii)(A) uses of arranged, negotiated, and/or executed criteria to implement the *de minimis* counting requirement are similar (as are, derivatively, the Rule 3a71–3(b)(2) and Rule 3a71–5 uses).

The guidance also applies to the definition of ''transaction conducted through a foreign branch'' in Rule 3a71–3(a)(3), which incorporates the functionally equivalent ''arranged, negotiated, and executed'' terminology.

[58] *See* note 15, *supra* (addressing Exchange Act Rule 3a71–3(c), 17 CFR 240.3a71–3(c), business conduct exclusion).

[59] *See* note 16, *supra* (addressing Regulation SBSR Rules 908(a)(1)(v) and 908(b)(5), 17 CFR 242.908(a)(1)(v) and 908(b)(5), regarding the cross-border application of regulatory reporting and public dissemination requirements).

[60] *See* note 18, *supra* (addressing cross-border major security-based swap participant provisions of Exchange Act Rules 3a67–10(b)(3)(i) and 3a67–10(d), 17 CFR 240.3a67–10(b)(3)(i) and 3a67–10(d)).

[61] As stated in the Proposing Release, the Commission understands that it is commonplace for firms to account for the overall profit or loss of the firm, or of a particular division or office, in calculating compensation for personnel. Solely for the purposes of this guidance, the Commission does not view profit-sharing arrangements or other compensation practices that account for aggregated profits as transaction-linked compensation, as such arrangements would not be expected to incentivize U.S. personnel in a similar manner or to a similar degree as compensation that is directly linked to the success of individual transactions.

[62] *See* Intermediary Definitions Adopting Release, 77 FR at 30618 (identifying actively soliciting clients in security-based swaps as a factor in indicating that a person meets the statutory definition of security-based swap dealer); *see also* Application of ''Security-Based Swap Dealer'' and ''Major Security-Based Swap Participant'' Definitions to Cross-Border Security-Based Swap Activities, Exchange Act Release 34–72472 (Jun. 25, 2014), 79 FR 47278, 47322 n.364 (Aug. 12, 2014) (''Cross-Border Adopting Release'') (stating that the term ''arranging'' was used in lieu of ''solicit'' to reflect the fact that a person may engage in dealing activity not only through transactions that the person actively solicits, but also through transactions that result from counterparties reaching out to the person); ANE Adopting Release, 81 FR 8622 n.221.

[63] *See* Citadel letter at 5; Better Markets letter at 13–14.

under the Dodd-Frank Act.[64] One commenter warned that ''market color'' was ''highly facts and circumstances-specific, complicating monitoring and surveillance by the Commission regarding whether dealer firms are appropriately classifying ANE transactions,'' [65] as well as the exercise of the Commission's anti-fraud authority [66] and would result in the Commission losing oversight over the vast majority of transactions that are currently classified as ''arranging'' or ''negotiating.'' [67] Finally, a commenter stated that the guidance would lead to ''bifurcation of U.S. and non-U.S. markets'' that would be ''almost certain to impair liquidity and increase costs on U.S. counterparties'' and lead to increased fragmentation.[68]

The Commission is not making additional changes in response to these comments. The Commission believes the guidance describes activities that are sufficiently limited and should not encourage entities (including U.S. entities) to restructure to avoid requirements applicable under the Dodd-Frank Act or to lead to market fragmentation. Moreover, contrary to one commenter's suggestion, the Commission is not taking the position that market color activities are not within its jurisdiction.[69] Indeed, to the extent federal securities laws, including anti-fraud, apply to U.S. personnel's provision of market color, nothing in this guidance affects requirements for U.S. personnel to comply with those laws. Moreover, any U.S. personnel who would have the requisite expertise to provide market color, likely would be associated persons of an entity registered with the Commission in an appropriate capacity, such as a security-based swap dealer or broker-dealer.

C. Conditional Exception to Required De Minimis Counting of Certain Dealing Transactions Arranged, Negotiated, or Executed by U.S. Personnel

For the reasons discussed above in part A.2, and after carefully considering comments received, the Commission is adopting a conditional exception to the *de minimis* counting requirement of Rule 3a71–3(b)(1)(iii)(C), subject to certain modifications from the proposal that are addressed below.[70]

1. Registration and Ownership Status of the Entity With Which U.S. Personnel Is Associated

(a) Proposed Approach

The proposal set forth two alternatives that differed with regard to the registration status of the entity with which personnel engaged in arranging, negotiating, or executing activity within the United States is associated. Under Alternative 1, all such arranging, negotiating, or executing activity within the United States would have to be performed by personnel associated with an entity that is registered with the Commission as a security-based swap dealer.[71] Alternative 1 was predicated on the reasoning that requiring this U.S. activity to be conducted by personnel in their capacity as associated persons of a registered security-based swap dealer would help ensure that the U.S. activity would be subject to key security-based swap dealer requirements under Title VII, including requirements regarding supervision, books and records, trade acknowledgments and verifications, and business conduct standards. Alternative 2 as proposed was broader, allowing for the U.S. activity to be performed by personnel associated with an entity that is registered with the Commission as a broker (or, as with the first alternative, an entity that is registered as a security-based swap dealer).[72] The other proposed conditions to the two alternatives were intended to be functionally identical.[73]

Both proposed alternatives required that the registered entity (whether it is a registered security-based swap dealer or a registered broker) be a majority-owned affiliate of the non-U.S. person relying on the exception.[74] The affiliation condition in part reflected the expectation that financial groups that use the exception to avoid having to relocate their U.S.-based personnel (so as to avoid triggering security-based swap dealer registration) would use affiliated entities to satisfy the exception.[75] The affiliation condition also was intended to help guard against the risk that a financial group may seek to attenuate its responsibility for any shortcomings in the registered entity's compliance with the conditions to the exception.[76] The proposal made use of a majority-ownership standard [77] to achieve that goal—rather than other measures of affiliation such as a common control standard or alternative ownership thresholds—to help ensure that the financial group has a significant interest in the registered entity, including the registered entity's compliance with applicable requirements.[78]

(b) Commission Action

As discussed above in part II.A.2, ''arranging,'' ''negotiating,'' and ''executing'' are core components of security-based swap dealing activity.[79]

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[64] *See* Citadel letter at 5; *see also* Better Markets letter at 17.

[65] *See* Citadel letter at 5.

[66] *See* Better Markets letter at 21.

[67] *See* Citadel letter at 5.

[68] *See* Better Markets letter at 23–24.

[69] Nothing in the amendments or guidance should be interpreted as a limitation or further clarification of the ''outer bounds of the agency's cross-border jurisdiction.'' *See* ISDA letter at 2.

[70] As discussed below, the Commission is adopting a modified version of Alternative 2 of the proposed exception, which requires that the U.S. personnel at issue be associated either with a registered broker or with a registered security-based swap dealer. *See* Part II.C.1, *infra.*

This conditional exception to Rule 3a71–3(b)(1)(iii)(C) also would have ramifications to affiliate counting provisions of paragraph (b)(2) of Rule 3a71–3. Paragraph (b)(2) requires persons engaged in security-based swap transactions described in paragraph (b)(1) of the rule –which includes the transactions at issue—also to count certain dealing transactions of affiliates under common control, including transactions described in paragraph (b)(1)(iii) (unless, pursuant to Rule 3a71–4, the affiliate itself is a registered security-based swap dealer or a person in the process of registering as a security-based swap dealer). As a result, transactions subject to the proposed Rule 3a71–3(b)(1)(iii)(C) exception further would not be subject to the paragraph (b)(2) affiliate transaction counting requirement.

Also, Exchange Act Rule 3a71–5 excepts certain cleared anonymous transactions from the individual counting requirement of paragraph (b)(1) of Rule 3a71–3 (which includes the (b)(1)(iii)(C) requirement) and from the affiliate counting requirement of paragraph (b)(2), but the Rule 3a71–5 exception is unavailable to transactions arranged, negotiated, or executed by U.S. personnel. Because the exception to (b)(1)(iii)(C) will prevent the transactions at issue from triggering either the (b)(1) or (b)(2) counting requirements, the Rule 3a71–5 exception would not be relevant to those transactions.

[71] *See* Alternative 1—proposed Rule 3a71–3(d)(1)(i)(A).

[72] *See* Alternative 2—proposed Rule 3a71–3(d)(1)(i)(A).

[73] There were certain technical differences between the two alternatives, to reflect the potential that, under Alternative 2, the U.S. activity could be conducted by a registered broker that is not also registered as a security-based swap dealer. *See* note 154, *infra.*

[74] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(i)(B).

[75] *See* Proposing Release, 84 FR at 24220, 24227.

[76] *See id.*

[77] Paragraph (a)(10) of Rule 3a71–3 defines the term ''majority-owned affiliate'' to encompass relationships whereby one entity directly or indirectly owns a majority interest in another, or whereby a third party directly or indirectly owns a majority interest in both, where ''majority interest'' is the right to vote or direct the vote of a majority of a class of voting securities of an entity, the power to sell or direct the sale of a majority of a class of voting securities of an entity, or the right to receive upon dissolution, or the contribution of, a majority of the capital of a partnership.

[78] *See id.*

[79] The ''arranged, negotiated, or executed'' criteria do not encompass non market-facing activity, such as:

Processing trades and other back-office activities; designing security-based swaps without engaging in market-facing activity in connection with specific transactions; preparing underlying documentation including negotiating master agreements (''as

Moreover, a non-U.S. person that, as part of its security-based swap dealing, ''engages in market-facing activity using personnel located in the United States' would perform activities that fall within the security-based swap dealer definition 'at least in part in the United States.' '' [80] The Commission is adopting Alternative 2—which requires that the ''arranging, negotiating, or executing'' activity in the United States be performed by personnel associated with either a registered security-based swap dealer or a registered broker [81]—but is modifying elements of Alternative 2 from the proposal in response to concerns raised by commenters.[82] In addition, the Commission is adopting, as proposed, the condition requiring that the registered entity be a majority-owned affiliate of the non-U.S. person relying on the exception.[83]

The Commission believes that its modified approach to Alternative 2 is preferable both to Alternative 1—which would have required the U.S. activity to be performed by persons associated with a registered security-based swap dealer—and to Alternative 2 as proposed in supporting the use of ''arranged, negotiated, or executed'' criteria as part of *de minimis* counting, while avoiding negative consequences that otherwise may be associated with those criteria. The Commission also believes that the modified approach to Alternative 2 will provide important relief to non-U.S. persons from the potential need to register multiple entities. This conclusion in part reflects the reasons outlined below and in part reflects the fact that, although the registration status of the entity engaged in U.S. activity is different, the two alternatives are subject to other conditions that are nearly identical (as one commenter also noted).[84] Though the registered entity is not the counterparty to the transaction, the registered entity must comply with certain requirements for security-based swap dealers who act as counterparties to a security-based swap. The registered entity must comply with these requirements as if it were the counterparty to the transaction. Moreover, even when the U.S. activity at issue is conducted through a registered broker that is not also registered as a security-based swap dealer, the entity nonetheless must comply with these requirements as if it were a registered security-based swap dealer. These additional conditions protect both counterparties and the Commission's ability to access information, as well as avoid the potential that the exception could be relied upon by non-U.S. persons that are not subject to certain minimum financial responsibility requirements.[85] These conditions also materially distinguish the modified version of Alternative 2 from alternatives that the Commission previously rejected when it incorporated ''arranged, negotiated, or executed'' criteria into the *de minimis* counting test.[86] Further, the Commission agrees with the commenters who supported Alternative 2 because it provides more flexibility to market participants to utilize U.S. personnel associated with either a registered broker or a registered security-based swap dealer.[87]

In adopting its modified approach to Alternative 2, the Commission also is mindful both of the comments in opposition to any exception as discussed above in Part II.A.2 and of one commenter's view that the exception should not permit a non-U.S. firm to engage in security-based swap dealing activity in the United States without it or an affiliate being registered as a security-based swap dealer.[88] On

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opposed to negotiating with the counterparty the specific economic terms of a particular security-based swap transaction''); and clerical and ministerial tasks such as entering executed transactions on a non-U.S. person's books.

Proposing Release, 84 FR at 24215 (citing ANE Adopting Release, 81 FR at 8622). Further, the ''arranged'' and ''negotiated'' criteria do not include certain types of market-facing activity consistent with the ''market color'' guidance discussed in Part II.B, *supra.*

[80] *See* Proposing Release, 84 FR at 24208.

As noted in the Proposing Release, the exception applies only to the Rule 3a71–3(b)(1)(iii)(C) requirement for non-U.S. persons to count transactions that involve dealing activity in the United States. Rule 3a71–3 continues to require non-U.S. persons to count all of their security-based swap dealing transactions with U.S. person counterparties, all of their security-based swap dealing transactions that are guaranteed by their U.S. person affiliates, and certain dealing transactions of their affiliates. *See* Proposing Release, 84 FR at 24219 nn.102, 105.

[81] As noted in the Proposing Release, the exception would not be satisfied if the ''arranging, negotiating, or executing'' activity is conducted by a bank that has not registered as a broker due to exceptions for bank brokerage activity in the Exchange Act's definition of ''broker,'' unless the bank is registered as a security-based swap dealer. *See* Proposing Release, 84 FR at 24226 n.166.

[82] *See* Exchange Act Rule 3a71–3(d)(1)(i)(A).

[83] The Commission received no comments specific to that proposed condition. As discussed in the Proposing Release, that condition is intended to help ensure that the financial group of the non-U.S. person has a significant interest in the registered security-based swap dealer or registered broker-dealer, to help promote appropriate compliance and oversight practices. *See* Proposing Release, 84 FR at 24220.

Paragraph (a)(10) to Rule 3a71–3 defines ''majority-owned affiliate'' to encompass a relationship whereby one entity directly or indirectly owns a majority interest in another, or where a third party directly or indirectly owns a majority interest in both, where ''majority interest'' reflects voting power, the right to sell, or the right to receive capital upon dissolution or the contribution of capital.

[84] *See* IIB/SIFMA letter at 10–11 (stating that under Alternative 2 the relevant transactions would be ''no less protected'' than under Alternative 1 because Alternative 2 would require compliance with the same conditions as Alternative 1).

[85] *See id.*

[86] In particular, when the Commission adopted rule amendments incorporating ''arranged, negotiated, or executed'' criteria as part of the *de minimis* counting test, and rejected an alternative approach based on the use of registered broker-dealers or U.S. banks:

The Commission noted that the broker-dealer framework does not apply to banks engaged in certain activities, which may include a significant proportion of security-based swap dealing activity, and stated that such an approach would effectively supplant Title VII security-based swap dealer regulation for a majority of dealing activity carried out in the United States with a ''cobbled together'' grouping of other requirements.

Proposing Release, 84 FR at 24220.

Alternative 2, in contrast, does not permit any carve-out for banks, and would require compliance with security-based swap dealer requirements in connection with key protections, including security-based swap dealer requirements regarding disclosure of risks, characteristics, material incentives, and conflicts of interest; suitability; fair and balanced communications; and trade acknowledgment and verification.

[87] *See* ISDA letter at 7–8 (''We believe that this flexible approach is important given that certain non-U.S. entities that enter into SBSs with other non-U.S. persons do not intend to register as an SBSD in the United States.''); HSBC letter at 2–3 (noting that U.S. personnel associated with two registered security-based swap dealers and one registered broker-dealer engage in arranging, negotiating, or executing activity for non-U.S. entities in the HSBC group).

For the same reasons, and for the avoidance of doubt, the Commission is adopting as proposed the provision of Alternative 2 that permits the registered entity not to count against the *de minimis* thresholds for security-based swap dealer registration the transactions that its associated persons arrange, negotiate, or execute pursuant to the exception. *See* Exchange Act Rule 3a71–3(d)(3).

[88] *See* Citadel letter at 5–6 (''While we have concerns about permitting a dealer counterparty to engage in dealing activity using U.S.-based personnel without being appropriately registered with the Commission, in no event should the Commission adopt Alternative 2. This would allow a non-U.S. firm to engage in dealing activity in the U.S. in security-based swaps without either it, or an affiliate, being registered in the appropriate capacity with the Commission. As a result, key entity-level requirements designed specifically for firms engaged in security-based swap dealing activities would not apply. The Exchange Act is clear that '[i]t shall be unlawful for any person to act as a security-based swap dealer unless the person is registered as a security-based swap dealer with the Commission.' ANE Transactions constitute dealing activity in the U.S. and therefore should be taken into account for security-based swap dealer registration.'' (footnote omitted)). The same commenter also stated that a failure to regulate the transactions at issue would create competitive disparities between U.S. and non-U.S. dealers with respect to the requirements applicable to the trading activities conducted by their U.S. personnel. *See* Citadel letter at 2. Finally, the commenter viewed Alternative 2 as allowing non-U.S. persons to ''exit the Title VII regulatory regime without exiting the U.S. market'' and to conduct ''an unregistered security-based swap dealing business in the United

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balance, however, the Commission is persuaded that the modified version of Alternative 2 will help to address the potential negative consequences that otherwise would be associated with the use of ''arranged, negotiated, or executed'' criteria as part of the *de minimis* counting test, while providing flexibility to market participants and promoting effective, efficient cross-border implementation of security-based swap dealer registration requirements in a manner consistent with the public interest.[89] Importantly, the exception does not apply to dealing activities involving U.S. counterparties or U.S. guarantees and thus does not permit market participants to avoid counting those transactions against the *de minimis* thresholds.[90]

(1) Minimum Capital Requirement

The Commission is modifying Alternative 2 from the proposal to require any broker that serves as the registered entity for purposes of the exception, and that is not approved to use models to compute deductions for market or credit risk, to maintain minimum net capital and establish and maintain risk management control systems as if the broker were also registered as a security-based swap dealer.[91] The Commission is mindful that, as proposed, Alternative 2 would have permitted a registered broker holding significantly less capital than a registered security-based swap dealer to serve as the registered entity for purposes of the exception. Indeed, one commenter favored Alternative 2 precisely because it would not require a broker to dually register as a security-based swap dealer, nor require it to hold the potentially higher minimum net capital required of registered security-based swap dealer, if it wished to serve as the registered entity for purposes of the exception.[92] The lowest fixed-dollar minimum net capital requirement for registered broker-dealers is $5,000, so long as the broker-dealer does not receive, owe, or hold customer funds or securities, does not carry customer accounts, and does not engage in certain other activities.[93] However, broker-dealers may be subject to significantly higher capital requirements depending on their businesses. For example, broker-dealers that carry customer funds or securities must maintain at least $250,000 in net capital.[94] These minimum net capital requirements nonetheless are significantly lower than the minimum net capital required of brokers who are also registered security-based swap dealers. A broker dually registered as a security-based swap dealer must maintain at least $20 million in net capital if it does not use models to compute deductions for market or credit risk (or the sum of an indebtedness-based ratio and up to eight percent of the risk margin amount, if that sum is greater than $20 million).[95]

The Commission believes it is appropriate to require a broker serving as the registered entity for purposes of the exception to maintain minimum net capital at least equal to the minimum net capital requirements for brokers that are also security-based swap dealers. A minimum capital requirement for brokers serving as the registered entity for purposes of the exception ensures that every financial group that has foreign dealers engaged in U.S. security-based swap dealing activity pursuant to the exception—whether through a registered security-based swap dealer or a registered broker—must maintain the same amount of net capital. The Commission believes that this requirement reduces the potential for competitive disparities between firms that make use of a registered broker for purposes of the exception and those that make use of a registered security-based swap dealer. Reducing the potential for such disparities should help to mitigate one commenter's concern that Alternative 2 could allow non-U.S. persons to ''exit the Title VII regulatory regime without exiting the U.S. market'' and to conduct ''an unregistered security-based swap dealing business in the United States.'' [96] On balance, the Commission believes that these concerns regarding the potential for evasion of Title VII weigh more heavily than another commenter's preference for the flexibility to use a minimally capitalized broker for purposes of the exception.[97] Accordingly, a broker not approved to use models may not serve as the registered entity for purposes of the exception unless it maintains at least as much net capital as that required for a broker that is also registered as a security-based swap dealer (*i.e.,* currently a minimum of $20 million).[98] Because the use of a broker subject to higher capital requirements mitigates concerns regarding the potential for avoidance of Title VII, a broker that is approved to use models also could serve as the registered entity for purposes of the exception. In addition to complying with the other conditions to the exception, such brokers must comply with the higher minimum net capital and tentative net capital requirements that apply to them (*i.e.,* currently minimums of $1 billion and $5 billion, respectively).[99]

For analogous reasons, the Commission is modifying the proposal to require any broker that is not approved to use models and that serves as the registered entity for purposes of the exception to establish and maintain risk management control systems as if the entity also were a security-based swap dealer.[100] This condition imposes a new requirement to comply with portions of Rule 15c3–4 only for brokers who engage in ''arranging, negotiating, or executing'' activity pursuant to the exception and who are not approved to use models and are not dually registered as a security-based swap dealer or an OTC derivatives dealer. Other registered entities who may engage in ''arranging, negotiating, or executing'' activity pursuant to the exception—brokers who are approved to use models, non-model brokers who are dually registered as

States.'' *See* Citadel letter at 2 (quoting the Proposing Release, 84 FR at 24215 nn.80–81).

[89] As discussed in Part II.A.2, *supra,* the Commission reiterates its conclusion that the ''arranged, negotiated, or executed'' criteria appropriately belong in the *de minimis* counting requirement.

[90] To be clear, the exception to the *de minimis* counting requirement does not reflect a determination by the Commission that these transactions are without the jurisdiction of the United States under Exchange Act Section 30(c). Consistent with the Commission's view expressed in the ANE Adopting Release, transactions that are arranged, negotiated, or executed by personnel located in the United States in connection with a foreign person's dealing activity constitute dealing activity within the United States. Accordingly, and as noted above, although the Commission is providing a limited exception from the requirement to count certain of these trades toward the *de minimis* threshold, the antifraud provisions of the federal securities laws and certain relevant Title VII requirements would continue to apply to the transactions subject to the exception.

[91] *See* Exchange Act Rule 3a71–3(d)(1)(i)(A)(*1*)–(*2*).

[92] *See* IIB/SIFMA letter at 10–11 & n.18 (arguing that the higher security-based swap dealer capital requirements would be disproportionate to the associated risk to the registered entity).

[93] *See* Exchange Act Rule 15c3–1(a)(2)(vi), 17 CFR 240.15c3–1(a)(2)(vi).

[94] *See* Exchange Act Rule 15c3–1(a)(2)(i), 17 CFR 240.15c3–1(a)(2)(i).

[95] *See* Exchange Act Rule 15c3–1(a)(10), 17 CFR 204.15c3–1(a)(10).

[96] *See* Citadel letter at 2 (quoting the Proposing Release, 84 FR at 24215 nn.80–81).

[97] *See* IIB/SIFMA letter at 10–11 & n.18.

[98] *See* Exchange Act Rule 15c3–1(a)(10), 17 CFR 240.15c3–1(a)(10). The minimum net capital requirement for a broker that serves as the registered entity for purposes of the exception does not lower the minimum net capital or tentative net capital that a broker must maintain if required pursuant to other applicable requirements.

[99] *See* Exchange Act Rule 15c3–1(a)(7), 17 CFR 240.15c3–1(a)(7).

[100] *See* Exchange Act Rule 3a71–3(d)(1)(i)(B)(*2*) (requiring compliance with Exchange Act Rule 15c3–1(a)(10)), which in turn requires compliance with portions of Exchange Act Rule 15c3–4, when the registered entity is a broker not approved to use models to compute deductions for market or credit risk).

either a security-based swap dealer or an OTC derivatives dealer, and stand-alone security-based swap dealers—are already required to comply with Rule 15c3–4.[101] As the Commission noted when adopting rules regarding risk management control systems for non-model-approved broker-dealers also registered as security-based swap dealers, ''[t]he Commission believes that establishing and maintaining a strong risk management control system is necessary for entities engaged in security-based swap business.'' [102] Appropriate risk management controls help a firm to reduce its risk of significant loss, which also reduces the risk of spreading the losses to other market participants or throughout the financial markets as a whole.[103] The Commission recognizes that service as the registered entity for purposes of the exception would not by itself be expected to create the same level of market or credit risk for a registered broker as it would for dealing entities that hold positions in security-based swaps. The Commission would expect the registered broker to establish such controls appropriate to the risk it undertakes. If the registered broker does not undertake any other activities other than arranging, negotiating, or executing transactions for its affiliates, the system of internal risk management controls regarding market and credit risk could, for example, entail guidelines, policies, and procedures that the broker does not undertake activities that create market or credit risk. Accordingly, the Commission is requiring that a broker that is not approved to use models and that serves as the registered entity for the purposes of the exception, must comply with Rule 15c3–1(a)(10)(ii) as if that entity were registered with the Commission as a security-based swap dealer.

(2) Limited Exemption From Broker Registration

The Commission is modifying Alternative 2 from the proposal to include, as an ancillary to the conditional exception, a limited exemption from the broker registration requirement in Section 15(a) of the Exchange Act for ''arranging, negotiating, or executing'' activity that is conducted in compliance with the exception and that is with or for a counterparty that is an eligible contract participant. Consistent with the Proposing Release, the Commission also recognizes that the ''arranging, negotiating, or executing'' activity subject to the exception generally would constitute ''broker'' activity under the Exchange Act.[104] As a result, a security-based swap dealer not already registered as a broker that serves as the registered entity for purposes of the exception, and its associated persons, could be required to register as brokers pursuant to Section 15(a) of the Exchange Act unless they can avail themselves of an exception from broker status or an exemption from broker registration.[105] One commenter suggested that the Commission exempt from broker registration any registered security-based swap dealer whose only securities brokerage activity is the ''arranging, negotiating, or executing'' activity that its U.S. personnel conducts in connection with the exception.[106] That commenter noted that a security-based swap dealer not dually registered as a broker-dealer and approved to use models to compute deductions for market or credit risk is subject to a minimum net capital requirement of $20 million and a minimum tentative net capital requirement of $100 million, versus minimum requirements of $1 billion and $5 billion, respectively, for a broker-dealer approved to use models.[107] The Commission believes that applying the heightened broker-dealer capital requirements to all security-based swap dealers approved to use models who serve as the registered entity for purposes of the exception could limit the usefulness of the exception, and is adopting the limited exemption from broker registration to avoid that potential outcome.[108]

At the same time, the Commission is mindful that the exception applies to ''arranging, negotiating, or executing'' activity with both eligible contract participants and non-eligible contract participants. As noted above, the exemption from broker registration applies only to ''arranging, negotiating, or executing'' activity that is conducted in compliance with the exception and that is with or for a counterparty that is an eligible contract participant. The Commission believes that requiring broker registration with respect to ''arranging, negotiating, and executing'' activity with or for a counterparty that is not an eligible contract participant is consistent with the heightened protections that Congress applied to security-based swap transactions with or for non-eligible contract participants.[109]

[101] *See* Exchange Act Rule 15c3–1(a)(7) (requiring brokers approved to use models to comply with portions of Exchange Act Rule 15c3–4); Exchange Act Rule 15c3–1(a)(10) (requiring brokers not approved to use models who are dually registered as security-based swap dealers to comply with portions of Exchange Act Rule 15c3–4); Exchange Act Rule 15c3–4 (requiring compliance by OTC derivatives dealers); Exchange Act Rule 18a-1(f) (requiring security-based swap dealers to comply with portions of Exchange Act Rule 15c3–4).

[102] Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872, 43907 (Aug. 22, 2019) (''Capital, Margin, and Segregation Adopting Release'').

[103] *See id.*

[104] *See* Proposing Release, 84 FR at 24220. Although the Dodd-Frank Act excludes from the Exchange Act definition of ''dealer'' persons who engage in security-based swaps with or for persons who are eligible contract participants, *see* Section 3(a)(5) of the Exchange Act, 15 U.S.C. 78c(a)(5), as amended by Section 761(a)(1) of the Dodd-Frank Act, it does not include comparable provisions for persons who act as brokers in security-based swaps. Because security-based swaps, as defined in Section 3(a)(68) of the Exchange Act, are included in the Exchange Act Section 3(a)(10) definition of ''security,'' persons who act as brokers in connection with security-based swaps must, absent an exception or exemption, register with the Commission as a broker pursuant to Exchange Act Section 15(a), and comply with the Exchange Act's requirements applicable to brokers. *See* Intermediary Definitions Adopting Release, 77 FR at 30597 n.9

[105] *See* Proposing Release, 84 FR at 24220. Exchange Act Section 15(a) requires persons who engage in brokerage activities involving securities (including security-based swaps) to register with the Commission unless they can avail themselves of an exception or exemption from the registration requirement. The definition of ''broker'' in Exchange Act Section 3(a)(4) generally encompasses persons engaged in the business of effecting transactions in securities for the account of others, but does not encompass banks that are engaged in certain activities, which may include a significant portion of banks' security-based swap dealing activity. *See* Proposing Release, 84 FR at 24209 n.21 (citing ANE Adopting Release, 81 FR at 9619).

[106] *See* IIB/SIFMA letter at 11.

[107] *See* IIB/SIFMA letter at 11 n.18; Exchange Act Rules 18a–1(a) and 15c3–1(a)(7), (10), 17 CFR 240.18a–1(a) and 15c3–1(a)(7), (10).

[108] The Commission also acknowledges that the exemption creates the potential for competitive disparities between market participants who engage in ''arranging, negotiating, or executing'' activity with non-U.S. eligible contract participants pursuant to the exception, for whom an exemption from broker registration potentially would be available, and market participants who engage in similar activity with U.S. persons, for whom the Rule 3a71–3 exception is not available and thus the related exemption from broker registration also would not apply. For example, an exemption from broker registration available only with respect to ''arranging, negotiating, or executing'' activity with non-U.S. persons could create an incentive for market participants to provide greater liquidity and/or liquidity at a lower cost to non-U.S. eligible contract participants than to U.S. eligible contract participants. The limitations on the availability of the exemption should minimize the potential for these competitive disparities while also making the exception from the *de minimis* counting standard a practicable alternative.

[109] In its Title VII statutory framework, Congress applied heightened protections for security-based swap counterparties who are not eligible contract participants, requiring, for example, security-based swap transactions with or for a person who is not

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Finally, Exchange Act Rule 10b–10 requires brokers to provide certain disclosures in connection with ''transactions'' that involve ''customers'' of the broker.[110] Although many of the disclosures required by Rule 10b–10 would be included in a trade acknowledgment and verification [111] delivered pursuant to the condition discussed in Part II.C.2 below, some of the Rule 10b–10-required disclosures may not duplicate the information provided in a trade acknowledgment and verification. These additional disclosures required under Rule 10b–10 provide the customer with important information regarding the brokerage activity.[112] The Commission thus believes that the limited exemption from broker registration should be conditioned upon the security-based swap dealer providing these non-duplicative disclosures to the customer if Rule 10b–10 otherwise would apply to the activity subject to the exception.[113] Accordingly, pursuant to Section 15(a)(2) of the Exchange Act, the Commission deems consistent with the public interest and the protection of investors to adopt a limited exemption from the broker registration requirements of Section 15(a)(1) of the Exchange Act for ''arranging, negotiating, or executing'' activity conducted pursuant to the exception with or for eligible contract participants. New paragraph (d)(4) of Rule 3a71–3 provides that a registered security-based swap dealer that serves as the registered entity for purposes of the exception and its associated persons shall not be subject to registration as a broker pursuant to Section 15(a)(1) solely because that registered entity or the associated person engages in ''arranging, negotiating, or executing'' activity pursuant to the exception with or for an eligible contract participant, provided that (i) the conditions to the availability of the exception are satisfied in connection with such activities and (ii) if Rule 10b–10 would apply to an activity subject to the exception, the registered security-based swap dealer provides to the customer [114] the disclosures required by Rule 10b–10(a)(2) (excluding Rule 10b–10(a)(2)(i)–(ii)) and Rule 10b–10(a)(8) in accordance with the time and form requirements set forth in Rule 15Fi–2(b)–(c), or, alternatively, promptly after discovery of any defect in the registered security-based swap dealer's good faith effort to comply with such requirements.

(3) Limit on Use of the Exception for Covered Inter-Dealer Security-Based Swaps and Related Notice and Recordkeeping Provisions

The final rule limits the availability of the exception in connection with certain inter-dealer security-based swaps, and provides for related notices and recordkeeping requirements to facilitate implementation of this limit. In particular, the final rule provides that the availability of the exception is conditioned on the aggregate gross notional amount of certain inter-dealer security-based swap positions connected with dealing activity subject to the exception over the course of the immediately preceding 12 months remaining below $50 billion.[115] If that threshold is exceeded, the exception will not be available and all of the relevant transactions (including transactions below the $50 billion threshold) must be counted against the *de minimis* thresholds to the ''security-based swap dealer'' definition.[116] The rules further condition the availability of the exception on the registered entity whose associated persons conduct the ''arranging, negotiating, or executing'' activity in the United States filing a notice with the Commission prior to commencing such activity.[117] Finally, the registered entity must comply with certain recordkeeping requirements designed to facilitate compliance with this $50 billion threshold.[118]

(a) Purpose of the Limit

In its releases adopting rules applying Title VII requirements to cross-border transactions in 2014 and 2016, the Commission recognized and sought to reduce the risk that market participants might restructure their business or develop novel business structures to permit them to characterize their security-based swap dealing activity as occurring outside the United States.[119] Section 30(c) of the Exchange Act provides the Commission with authority to adopt rules that apply to a ''person that transacts a business in security-based swaps without the jurisdiction of the United States'' if it determines that such rules are ''necessary or appropriate to prevent the evasion'' of any Title VII requirements.[120] The Commission invoked this authority in connection with several of its cross-border requirements.[121] In particular, the Commission identified this provision as the basis for adopting a rule requiring conduit affiliates to count certain of their dealing transactions against the *de minimis* threshold.[122] The Commission

an eligible contract participant to be effected only on a registered national securities exchange. *See* Exchange Act Section 6(l), 15 U.S.C. 78f(*l*), as added by Section 763(e) of the Dodd-Frank Act. Congress' Title VII statutory framework also includes an exception from the definition of dealer for persons engaged in the business of buying and selling security-based swaps with or for eligible contract participants, but provides no exception from the dealer definition for persons engaged in the business of buying and selling security-based swaps with or for non-eligible contract participants. *See* Exchange Act Section 3(a)(5), 15 U.S.C. 78c(a)(5), as amended by Section 761(a)(1) of the Dodd-Frank Act.

[110] *See* Exchange Act Rule 10b–10(a), 17 CFR 240.10b–10(a) (prohibiting a broker or dealer to effect for or with an account of a customer any transaction in, or to induce the purchase or sale by such customer of, a security unless the broker or dealer delivers a written confirmation at or before completion of the transaction).

[111] While Rule 15Fi–2 requires a trade acknowledgment to disclose all terms of the security-based swap transaction, *see* Exchange Act Rule 15Fi–2(c), 17 CFR 240.15Fi–2(c), Rule 10b–10 includes provisions requiring disclosures that may not form part of the terms of the security-based swap transaction between the relying entity and its counterparty, including the capacity in which the broker (who would not be party to the transaction) is acting, *see* Exchange Act Rule 10b–10(a)(2), CFR 240.10b–10(a)(2), and the fact that the broker is not a member of the Securities Investor Protection Corporation, if such is the case, *see* Exchange Act Rule 10b–10(a)(8), 17 CFR 240.10b–10(a)(8).

[112] For example, customers may use disclosures regarding the capacity in which the broker is acting and membership in the Securities Investor Protection Corporation to determine whether the broker is able to meet the customer's needs.

[113] For the reasons discussed in Part II.C.2, *infra,* these disclosures may be delivered to the customer in accordance with the time and form requirements set forth in Rule 15Fi–2(b)–(c), rather than in accordance with the slightly different timing standards set forth in Rule 10b–10. If the registered security-based swap dealer relying on this exemption from registration as a broker makes a good faith effort to comply with the requirement to deliver these disclosures to the customer as and when required, the failure to do so will not make the exemption from broker registration unavailable so long as the registered security-based swap dealer delivers the disclosures to the customer promptly after discovery of the defect in compliance. *See* Exchange Act Rule 3a71–3(d)(4).

[114] For example, the Rule 10b–10 disclosures could be provided as part of the disclosures required pursuant to the disclosure condition in Rule 3a71–3(d)(1)(ii)(B)(*1*) discussed below.

[115] *See* Exchange Act Rule 3a71–3(d)(1)(vii).

[116] *See* Exchange Act Rule 3a71–3(d)(6)(ii).

[117] *See* Exchange Act Rule 3a71–3(d)(1)(vi).

[118] *See* Exchange Act Rule 3a71–3(d)(1)(iii)(B)(*2*).

[119] *See* Cross-Border Adopting Release, 79 FR at 47363–64; ANE Adopting Release, 81 FR at 8609.

[120] Exchange Act Section 30(c), 15 U.S.C. 78dd(c).

[121] *See, e.g.,* Cross-Border Adopting Release, 79 FR at 47291–92 (interpreting the Commission's anti-evasion authority under section 30(c) of the Exchange Act and including anti-evasion among the principles informing the Commission's approach to cross-border regulation of these markets).

[122] *See* Cross-Border Adopting Release, 79 FR at 47314. A conduit affiliate is ''a non-U.S. affiliate of a U.S. person that enters into security-based swaps with non-U.S. persons, or with certain foreign branches of U.S. banks, on behalf of one or more of its U.S. affiliates (other than U.S. affiliates that are registered as security-based swap dealers or major security-based swap participants), and enters into offsetting transactions with its U.S. affiliates to transfer the risks and benefits of those security-based swaps.'' *Id.* The Commission noted in that release that ''[t]he conduit affiliate concept serves as a prophylactic anti-evasion measure'' and that it

also explained that several other of its cross-border requirements that apply to activity occurring in the United States are ''necessary or appropriate as a prophylactic measure to help prevent the evasion of the provisions of the Exchange Act that were added by the Dodd-Frank Act, and thus help ensure that the relevant purposes of the Dodd-Frank Act are not undermined.'' [123]

Similarly, when the Commission adopted the ''arranged, negotiated, or executed'' test, it recognized the possibility that financial groups might seek to avoid this requirement by having personnel outside the United States perform market-facing activities under the direction of personnel located in the United States.[124] It addressed this concern by explaining that ''arranging, negotiating, and executing'' as used in Exchange Act Rule 3a71–3 ''also include directing other personnel to arrange, negotiate, or execute a particular security-based swap.'' [125] The Commission explained that it ''would view personnel located in a U.S. branch or office who direct personnel not located in the United States to arrange, negotiate, or execute a security-based swap transaction as themselves arranging, negotiating, or executing the transaction.'' [126] Consequently, ''sales and trading personnel of a non-U.S. person who are located in the United States cannot avoid application of this rule by simply directing other personnel to carry out dealing activity.'' [127]

The Commission recognizes that the exception it is adopting may also create incentives for financial groups to restructure their business to avoid the application of certain Title VII requirements in some circumstances. Available data suggests that the majority of inter-dealer transaction activity in North American corporate single-name credit default swaps involved at least one non-U.S.-domiciled dealer in 2017.[128] Although the data also suggests that these non-U.S.-domiciled dealers would be likely to register as security-based swap dealers even absent a requirement to count their transactions arranged, negotiated, or executed by U.S. personnel,[129] a financial group could restructure its dealing business in response to this exception in such a way that it could carry out this inter-dealer business in significant part in one or more unregistered non-U.S. dealers, while continuing to arrange, negotiate, or execute transactions using personnel located in the United States. Further, as the Commission recognized in proposing the exception, U.S. dealing entities also may use this type of exception from the counting requirement to reduce the application of Title VII requirements to their transactions.[130] Two commenters expressed similar concerns that the exception as proposed could allow firms to structure large portions of their business to avoid Title VII while continuing to pose risks to the U.S. financial system.[131] Allowing this type of restructuring of the inter-dealer business could have potentially undesirable effects on the underlying credit and equity markets in the United States.

To help to mitigate these concerns, the Commission is imposing a limit on covered inter-dealer security-based swap transactions that a non-U.S. dealer or its affiliates may conduct in reliance on the exception. In adopting this limit, the Commission is balancing the concerns discussed above regarding the potential negative consequences associated with both the ''arranging, negotiating, or executing'' counting standard and the exception as proposed. The Commission is choosing not to apply the limit to non-inter-dealer security-based swaps at this time because it is not clear that a broader limitation is necessary to avoid the potential negative consequences associated with the exception. Rather, the Commission believes that a limit on inter-dealer security-based swaps will mitigate concerns regarding the proposed exception without unduly restricting the non-inter-dealer security-based swap market. Taken as a whole, the limit and related notice and recordkeeping provisions are designed to focus the availability of the exception in a manner that will promote the exception's benefits for market efficiency as addressed above, but that also will help reduce incentives for financial groups to restructure their business to avoid the application of certain Title VII requirements.

The limit on use of the exception applies to any non-U.S. person, regardless of whether it is affiliated with a U.S or non-U.S. financial group, as the Commission has concerns about potential evasive activity on the part of non-U.S. affiliates of U.S. financial groups as well as of non-U.S. financial groups. The Commission is concerned that failing to apply the same limit to non-U.S. dealers relying on the exception, whether they belong to U.S. or non-U.S. financial groups, could distort competition in this market. Moreover, the regulatory status of the relying entity's counterparty does not impact these potentially undesirable effects, and thus is not relevant to application of the $50 billion limit.[132]

did ''not believe that any entities currently act as conduit affiliates in the security-based swap market.'' *Id.* at 47315.

[123] The Commission stated in these releases that, apart from the *de minimis* counting requirements applicable to conduit affiliates, the rules it adopted apply to conduct occurring within the United States and thus are within the Commission's authority apart from this anti-evasion provision. However, it went on to state that it also viewed these rules as necessary or appropriate as an anti-evasion measure under Section 30(c) of the Exchange Act. *See, e.g.,* Cross-Border Adopting Release, 79 FR at 47302 n.186 (definitions of ''foreign branch'' and ''transaction conducted through a foreign branch''); *id.* at 47309 n.262 (definition of ''principal place of business''); *id.* at 47320 n.365 (requirement that non-U.S. persons count dealing transactions with U.S. persons toward their *de minimis* thresholds); ANE Adopting Release, 81 FR at 8615 n.158 (requirement that non-U.S. persons count transactions in connection with their dealing activity that are arranged, negotiated, or executed by personnel located in the United States).

[124] ANE Adopting Release, 81 FR at 8623.

[125] *Id.*

[126] *Id.*

[127] *Id.*

[128] Using data obtained from the DTCC Derivatives Repository Limited Trade Information Warehouse (*see* Part IV.A.1, *infra*), the Commission estimates that approximately 82% of the notional amount of bilateral (*i.e.,* uncleared) inter-dealer transactions referencing North American single-name corporate underliers involve at least one non-U.S.-domicile dealer.

[129] Each of these dealers currently transacts significant volumes security-based swaps with U.S. persons, including with counterparties that are themselves not dealers, which they would be required to count against their *de minimis* thresholds. These dealers would exceed the $8 billion *de minimis* threshold that applies to credit default swap transactions based solely on transactions with U.S. persons.

[130] *See* Proposing Release, 84 FR at 24219 (''In making this proposal, the Commission is mindful that U.S.-based dealing entities may use this type of exception to structure their booking practices to manage the application of Title VII to their security-based swap dealing business—*e.g.,* by booking dealing transactions with non-U.S. counterparties into their non-U.S. affiliates, to reduce the application of Title VII security-based swap dealer requirements to those transactions.'').

[131] *See* Better Markets letter at 1, 25 (noting that the proposed exception could ''facilitate[e] evasion or avoidance of critical pillars of the [security-based swap] framework'' and expressing concern that this framework must ''reach far enough'' to prevent restructuring that would ''expos[e] [the] U.S. financial system and U.S. taxpayers to the risks arising from [security-based swap] activities''); AFR letter at 1–3 (noting that the proposed exception could prompt U.S.-based financial groups to ''easily avoid swap dealer designation for large shares of their U.S.-related business'').

[132] In many cases, the non-U.S. person counterparty may be recognized, registered, or regulated under U.S. or foreign law as a security-based swap dealer, swap dealer, bank, broker-dealer, or futures commission merchant, but the regulatory status of the counterparty is not relevant to the $50 billion limit, as a transaction will need to be counted toward that limit even if the counterparty is an unregulated entity.

Similarly, the regulatory status of the relying entity and its affiliates also is irrelevant for purposes of the $50 billion limit. The relying entity is required to count toward its *de minimis*

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This limit thus applies without regard to whether either counterparty is affiliated with a U.S or non-U.S. financial group and regardless of the regulatory status of the relying entity's counterparty. The $50 billion limit should help ensure that a relying entity, together with its non-U.S. person affiliates, cannot use the exception to enter into unlimited transactions with other firms that themselves could engage in dealing activity subject to the exception. Under this approach, the Commission believes these financial groups will have less incentive to structure their businesses to avoid regulation of their inter-dealer business under the relevant Title VII requirements. For example, with this limitation, a financial group will not be able to use the exception to move its inter-dealer business with non-U.S. persons involving ''arranging, negotiating, or executing'' activity above the $50 billion threshold to an unregistered non-U.S. affiliate.[133] Moreover, the requirement to aggregate transactions of covered affiliates, as discussed below, ensures that the $50 billion threshold applies to all unregistered non-U.S. persons in a financial group and thus prevents the financial group from allocating its inter-dealer transactions to multiple unregistered non-U.S. affiliates to avoid registration of any affiliate.

The Commission intends to monitor changes in the market in response to this exception and initially will use the report that Commission staff is required to produce under Exchange Act Rule 3a71–2A to analyze the changes. Commission staff will repeat this analysis at least once every five years. If this initial analysis or subsequent monitoring suggests that firms are using the exception to avoid the *de minimis* counting requirement in a manner that is inconsistent with the statutory and regulatory objectives of Title VII or that non-U.S. persons are entering into disproportionately large volumes of security-based swaps pursuant to the exception, the Commission may determine that it is necessary to consider amendments to the exception or to the underlying counting requirements, including possible amendments pursuant to its anti-evasion authority in Exchange Act Section 30(c).

(b) Scope of the Limit and Related Recordkeeping Requirement

Under the final rule, the exception would be available to a relying entity only if the aggregate gross notional amount of covered inter-dealer security-based swap positions connected with dealing activity subject to the exception over the course of the immediately preceding 12 months does not exceed $50 billion.[134] Covered inter-dealer security-based swaps are those that are between, on the one hand, the non-U.S. person relying on the exception, and, on the other hand, a non-U.S. person that is either (1) a registered entity that has filed with the Commission a notice that its associated persons may conduct ''arranging, negotiating, or executing'' activity pursuant to the exception [135] or (2) an affiliate of such a registered entity.[136] A relying entity would count towards this $50 billion threshold two types of covered int er-dealer security-based swaps: (1) The covered inter-dealer security-based swap positions connected with the relying entity's dealing activity subject to the exception and (2) the covered inter-dealer security-based swap positions connected with dealing activity subject to the exception engaged in by non-U.S. person affiliates of the relying entity.[137] The Commission is applying the $50 billion limit to security-based swaps involving the relying entity's non-U.S. person affiliates because failure to count such affiliates could allow a financial group to structure its inter-dealer security-based swap business to avoid the limit. For example, absent a requirement to count the transactions of a relying entity's own affiliates, a financial group could organize a new legal entity to conduct inter-dealer security-based swap business each time a relying entity approached the $50 billion limit. Similarly, the requirement to count transactions with affiliates of another financial group's registered entity includes the non-U.S. majority-owned affiliates relying on the exception as well as other non-U.S. affiliates who do not rely on the exception. Absent such a requirement, a relying entity could conduct unlimited security-based swap business with the other financial group, so long as the counterparty is an entity not relying on the exception. The $50 billion limit applies to transactions of affiliates as described above to avoid such outcomes.

To identify the covered inter-dealer security-based swap positions connected with the relying entity's dealing activity subject to the exception, a relying entity first must determine whether a security-based swap is connected with its own dealing activity subject to the exception and, if it is, then it must determine whether the counterparty is a non-U.S. person that is either (i) a registered entity whose associated persons conduct ''arranging, negotiating, or executing'' activity pursuant to the exception or (ii) an affiliate of such a registered entity. The Commission believes that a relying entity will be able to structure its operations to answer this first question, as it and its registered affiliate must comply with certain recordkeeping conditions discussed below in connection with the specific ''arranging, negotiating, or executing'' activity that is subject to the exception. To assist the relying entity in determining whether its counterparty is a registered entity whose associated persons act pursuant

thresholds all covered inter-dealer security-based swap positions connected with its own or an affiliate's ''arranging, negotiating, or executing'' dealing activity subject to the exception, regardless of the application of non-U.S. regulatory regimes to those transactions.

[133] For the avoidance of doubt, the $50 billion limit does not apply transactions that are not eligible for the exception (or for which reliance on the exception is not sought). For example, if a non-U.S. person (''counterparty 1'') enters into a security-based swap with a U.S. person (''counterparty 2''), even if that U.S. person is an affiliate of a registered entity that acts pursuant to the exception, counterparty 1 would not be required to count that transaction towards its $50 billion limit, as transactions with U.S. persons are not eligible for the exception. Counterparty 1 would, of course, count such a transaction toward the *de minimis* thresholds for registration as a security-based swap dealer.

Similarly, if a non-U.S. person (''counterparty 1'') enters into a security-based swap that is ''arranged, negotiated, or executed'' by U.S. personnel with a non-U.S. person (''counterparty 2''), for which counterparty 1 does not seek reliance on the exception, counterparty 1 would not be required to count that transaction towards its $50 billion limit, even if counterparty 1 relies on the exception for other transactions and even if counterparty 2 is relying on the exception for that transaction. Counterparty 1 would, of course, count such a transaction toward the *de minimis* thresholds for registration as a security-based swap dealer.

[134] *See* Exchange Act Rule 3a71–3(d)(1)(vii) (limitation on application of the exception to covered inter-dealer security-based swaps); Exchange Act Rule 3a71–3(a)(13) (definition of covered inter-dealer security-based swap); Exchange Act Rule 3a71–3(d)(6)(i) (description of the persons whose covered inter-dealer security-based swaps count towards the limitation).

[135] If the counterparty to the security-based swap is a registered entity that is a U.S. person, then the exception would not be available for the security-based swap and the limitation on covered inter-dealer security-based swaps conducted pursuant to the exception thus would not apply.

[136] Exchange Act Rule 3a71–3(a)(13) defines covered inter-dealer security-based swaps to include transactions with a registered entity that has filed a notice pursuant to Rule 3a71–3(d)(1)(vi) and with an affiliate of such a registered entity. As discussed more fully below, Rule 3a71–3(d)(1)(vi) requires the registered entity to file a notice with the Commission that its associated persons may conduct ''arranging, negotiating, or executing'' activity pursuant to the exception.

[137] *See* Exchange Act Rule 3a71–3(d)(1)(vii), (d)(6). This threshold extends to dealing transactions by affiliates of the relying entity to guard against a firm's evasion of the threshold by dividing transactions among multiple affiliates.

to the exception or an affiliate of such a registered entity, the final rules condition the availability of the exception on a registered entity first filing with the Commission a notice that its associated persons may conduct activity pursuant to the exception.[138] Further, the final rules provide a safe harbor from the limitation for any security-based swap if the relying entity reasonably determines at the time of execution of the security-based swap that its counterparty is neither another firm's registered entity nor an affiliate of such a registered entity.[139] For example, the Commission believes that it would be reasonable for a relying entity (or its affiliate) to determine a security-based swap is not a covered inter-dealer security-based swap if the relying entity or an affiliate requests at least quarterly, and diligently pursues, a list of affiliates from each registered entity whose name appears on the Commission's website and the relying entity determines at the time of execution of the security-based swap that the name of the counterparty to the security-based swap does not appear on any such list in the relying entity's possession at that time.[140] Further, the Commission believes that it would be reasonable for financial groups to produce and share a single list of their affiliates for use in connection with the $50 billion limit and in connection with determining eligibility for exceptions to the Commission's requirements for security-based swap dealers to collect initial margin from counterparties.[141]

The relying entity also must include in its calculation of covered inter-dealer security-based swap positions subject to the $50 billion limit all positions connected with dealing activity subject to the exception that its non-U.S. person affiliates engage in with another non-U.S. person that is either (i) a registered entity whose associated persons conduct ''arranging, negotiating, or executing'' activity pursuant to the exception or (ii) an affiliate of such a registered entity. The relying entity need not, however, include in this calculation the positions of its own non-U.S. person affiliate that is in the process of registering with the Commission as a security-based swap dealer.[142] This exclusion from the $50 billion limit ensures that a financial group does not lose the ability to make use of the exception as a result of the dealing activity of an entity that will register with the Commission. To assist the relying entity in obtaining information needed to determine the volume of its affiliates' transactions subject to the limit, and to assist the Commission in reviewing compliance with the limit, each registered entity whose associated persons may conduct ''arranging, negotiating, or executing'' activity pursuant to the exception must obtain from the relying entity documentation regarding the relying entity's compliance with the limit.[143] The registered entity must maintain this documentation for not less than three years following the ''arranging, negotiating, or executing'' activity subject to the exception, the first two years in an easily accessible place.[144]

(c) Impact of Breaching the Limit

Under the Commission's rules, a person not registered as a security-based swap dealer is deemed not to be a security-based swap dealer if the security-based swap dealing activity in which the person, or any other entity controlling, controlled by or under common control with that person, engages over the course of the immediately preceding twelve months falls below certain *de minimis* thresholds.[145] The exception serves to exclude certain transactions ''arranged, negotiated, or executed'' by U.S. personnel[146] from the list of transactions that an entity otherwise must count against these *de minimis* thresholds.[147] If a relying entity exceeds the $50 billion limit, two key consequences will result. First, as of the date the $50 billion limit is breached, new Rule 3a71–3(d)(6)(ii)(A) prohibits the relying entity from relying on the exception for future security-based swap transactions.[148] The exception will be unavailable for future security-based swap transactions without regard to whether the transaction is or is not a covered inter-dealer security-based swap. Second, as of the date that the $50 billion limit is breached, the relying entity would have to begin to count certain transactions subject to the exception against the *de minimis* thresholds. New Rule 3a71–3(d)(6)(ii)(B) requires the relying entity to count against the *de minimis* thresholds *all* covered inter-dealer security-based swap positions connected with dealing activity subject to the exception in which the entity or certain affiliates engaged over the course of the immediately preceding twelve months. This requirement applies to all of these covered inter-dealer security-based swap positions, including the portion that falls below the $50 billion limit.[149] Because each of the *de minimis* thresholds is significantly lower than $50 billion, as a practical matter a relying entity that exceeds $50 billion in relevant covered inter-dealer security-based swap positions over the immediately preceding twelve months also generally should breach one or more of the *de minimis* thresholds and be required to register with the Commission as a security-based swap dealer. As of the date that the $50 billion limit is breached, the relying entity would begin to include in its calculation of security-based swap positions subject to the *de minimis* thresholds all of the relevant covered inter-dealer security-based swaps subject to the exception engaged in over the course of the immediately preceding twelve months.[150]

[138] *See* Exchange Act Rule 3a71–3(d)(1)(vi). This notice must be filed before an associated person of the registered entity commences any ''arranging, negotiating, or executing'' activity pursuant to the exception. The notice must be submitted to the electronic mailbox described on the Commission's website at *www.sec.gov* at the ''ANE Exception Notices'' section. The Commission will post the notice on its website. A registered entity whose associated persons will no longer conduct ''arranging, negotiating, or executing'' activity pursuant to the exception may request that the Commission remove such notice from its website by sending a message to the same electronic mailbox.

[139] *See* Exchange Act Rule 3a71–3(a)(13).

[140] If a relying entity executes a security-based swap with a counterparty that, at the time of execution, the relying entity reasonably believes is not an affiliate of another firm's registered entity, the relying entity need not later re-characterize the security-based swap as a covered inter-dealer security-based swap, even if it later discovers that its counterparty is an affiliate of another firm's registered entity.

[141] The Commission's margin rules for non-bank security-based swap dealers include an exception from the requirement to collect initial margin for non-cleared security-based swaps when certain exposures of the security-based swap dealer and its affiliates to the counterparty and its affiliates do not exceed $50 million. *See* Exchange Act Rule 18a–3(c)(1)(iii)(H)(*1*), 17 CFR 240.18a–3(c)(1)(iii)(H)(*1*); *see also* Capital, Margin, and Segregation Adopting Release, 84 FR at 43925–26 & nn.522–523 (citing Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636, 697 (Jan. 6, 2016); Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840, 74901 (Nov. 30, 2015)).

[142] *See* Exchange Act Rule 3a71–3(d)(6)(i)(B).

[143] *See* Exchange Act Rule 3a71–3(d)(1)(iii)(B)(*2*). The Commission recognizes that a single group of affiliates may include more than one registered entity whose associated persons act pursuant to the exception. In such a case, the relying entity would need to consult with each such registered entity with which it is affiliated.

[144] *See* Exchange Act Rule 3a71–3(d)(1)(iii)(B)(*2*).

[145] *See* Exchange Act Rule 3a71–2(a)(1).

[146] *See* Exchange Act Rule 3a71–3(b)(1)(iii)(C).

[147] *See* Exchange Act Rule 3a71–3(d).

[148] *See* Exchange Act Rule 3a71–3(d)(6)(ii)(A).

[149] *See* Exchange Act Rule 3a71–3(d)(6)(ii)(B).

[150] *See* Exchange Act Rule 3a71–3(d)(6)(ii)(B). The relying entity would begin to count such positions against the *de minimis* thresholds on the date that the $50 billion limit is breached. The final rule does not require the relying entity to re-calculate its *de minimis* thresholds as of the dates

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Finally, under the Commission's existing rules governing the *de minimis* threshold, a person who can no longer take advantage of the *de minimis* exception is not subject to regulation as a security-based swap dealer for a transitional period of either two months after the end of the month in which the person becomes unable to rely on the de minimis exception or until the person submits a complete application for registration as a security-based swap dealer, if earlier.[151] These rules also have two important consequences for entities who rely on the exception. First, a relying entity that breaches the $50 billion limit and as a result also breaches a *de minimis* threshold need not seek to rely on the exception for transactions connected with dealing activity that occurs during this transitional period.[152] Second, Rule 3a71–3(d)(6)(i)(B) does not require a relying entity to count against the $50 billion limit the transactions of any affiliate that is deemed not to be a security-based swap dealer pursuant to Rule 3a71–2(b).[153] As a result, a relying entity need not count against the $50 billion limit the transactions of an affiliate that is in the process of registering as a security-based swap dealer.

(d) Impact of the Limitation on Reporting and Public Dissemination

As discussed in the statement regarding compliance with rules for security-based swap data repositories and Regulation SBSR in Part X.C below, all transactions connected with a relying entity's dealing activity that are arranged, negotiated, or executed by U.S. personnel in reliance on the exception will be required to be reported to a security-based swap data repository, and covered inter-dealer security-based swap transactions that at least one side of the transactions arranges, negotiates, or executes in reliance on the exception must also be publicly disseminated.

2. Compliance With Specific Security-Based Swap Dealer Requirements

(a) Proposed Approach

Both alternatives to the proposed exception were conditioned in part on the registered entity complying with certain security-based swap dealer requirements as if the counterparties to the non-U.S. person relying on the exception also were counterparties to the registered entity. Those ''as if'' requirements addressed: (1) Disclosure of risks, characteristics, material incentives and conflicts of interest (regarding the registered entity, as well as material incentives and conflicts of interest associated with the non-U.S. person relying on the exception) (the ''disclosure condition''); (2) suitability of recommendations (the ''suitability condition''); (3) fair and balanced communications (the ''communications condition''); (4) trade acknowledgment and verification (the ''trade acknowledgment and verification condition''); and (5) certain portfolio reconciliation requirements (the ''portfolio reconciliation condition'').[154]

Those proposed conditions reflected the fact that the registered entity that would engage in arranging, negotiating, or executing activity in the United States in connection with the transactions at issue would not be a contractual party to the security-based swaps resulting from that activity. Absent those conditions, the registered entity accordingly would not necessarily trigger certain requirements that are predicated on being a ''counterparty'' to the transaction.[155] The Commission preliminarily concluded that the compliance burdens associated with those conditions would be justified by associated counterparty protections, or by risk-related benefits or other benefits.[156]

Conversely, the proposal specified that the registered entity would not have to comply with ''counterparty''-related requirements that address: (1) Eligible counterparty (''ECP'') verification; (2) daily mark disclosure; (3) clearing rights disclosure; (4) ''know your counterparty'' checks; (5) portfolio compression; and (6) trading relationship documentation.[157] For certain of those requirements the Commission reasoned that it would be difficult for the registered entity to obtain requisite information, while for others the Commission concluded that the requirements would be inapposite given the nature of the registered entity's activities in connection with the transaction.[158]

The proposal also recognized that the registered entity would be subject to certain additional requirements by virtue of its registered status. For Alternative 1, the Commission noted that the entity would have to comply with additional requirements applicable to registered security-based swap dealers, including requirements related to supervision, chief compliance officers, books and records, and financial responsibility.[159] For Alternative 2, the Commission noted that a registered broker would have to comply with applicable broker-dealer requirements under the federal security laws and self-regulatory organization (''SRO'') rules.[160]

(b) Commission Action

The Commission continues to believe that the investor protection benefits of these conditions justify any burdens related to compliance with the conditions and is adopting the disclosure condition and trade acknowledgment and verification condition with additional guidance and the communications condition as proposed. The Commission is adopting the suitability condition with one modification and is not adopting the portfolio reconciliation condition. Accordingly, the exception is available only if the registered entity engaging in

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the dealing activity connected with such newly included positions occurred. Requiring such a re-calculation could cause a relying entity that breaches the $50 billion limit to determine that it breached a *de minimis* threshold on an earlier date and, as a result, to find itself out of compliance with the registration deadline in Rule 3a71–2(b). The Commission believes that imposing such a result could make the exception unworkable for market participants and, accordingly, is adopting a requirement for the relying entity to count such positions against the *de minimis* thresholds beginning on the date that the $50 billion limit is breached. However, counting such positions as of the date that the $50 billion limit is breached does not require the relying entity to attribute that date to the dealing activity connected to such positions. Rather, the relying entity would count such positions using the respective dates of the dealing activity connected to such positions and, accordingly, would count against the de minimis thresholds any such positions connected with dealing activity engaged in over the course of the immediately preceding twelve months.

[151] *See* Exchange Act Rule 3a71–2(b), 17 CFR 240.3a71–2(b).

[152] Further, a relying entity that breaches the $50 billion limit is not eligible to rely on the exception for additional transactions. *See* Exchange Act Rule 3a71–3(d)(1)(vii), (6)(ii)(A).

[153] *See* Exchange Act Rule 3a71–3(d)(6)(i)(B).

[154] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(ii)(A), (B). For Alternative 2, proposed paragraph (d)(1)(ii)(A) further would provide that the registered entity must comply with those requirements as if it also is registered as a security-based swap dealer, if it is not registered as a security-based swap dealer.

Those ''as if'' compliance conditions address the following security-based swap dealer requirements: (1) Exchange Act Section 15F(h)(3)(B)(i), (ii) and Exchange Act Rule 15Fh–3(b) provisions related to the disclosure of risks, characteristics, incentives and conflicts, and further specified that it would include material incentives and conflicts of interest associated with the non-U.S. person relying on the exception; (2) Rule 15Fh–3(f) suitability provisions; (3) Section 15F(h)(3)(C) and Rule 15Fh–3(g) fair and balanced communications provisions; (4) Rule 15Fi–1 and 15Fi–2 trade acknowledgment and verification provisions; and (5) proposed Rule 15Fi–3 portfolio reconciliation provisions, but only with respect to the initial reconciliation of the security-based swap resulting from the transaction.

[155] *See* Proposing Release, 84 FR at 24221.

[156] *See id.* at 24221–22.

[157] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(ii)(C).

[158] *See* Proposing Release, 84 FR at 24221.

[159] *See id.* at 24223.

[160] *See id.* at 24227.

the arranging, negotiating, or executing activity in the United States complies with certain disclosure, communications, trade acknowledgment and verification, and suitability requirements as if the counterparties to the non-U.S. person relying on the exception also were counterparties to the registered entity and, if the registered entity is a broker not registered as a security-based swap dealer, also as if it were a registered security-based swap dealer.[161] The discussion below considers each of these conditions in turn, as well as the interaction of the exception with substituted compliance and other requirements not applicable to the exception.

(1) Disclosure Condition

Disclosure of material information concerning the security-based swap in a manner reasonably designed to allow the counterparty to assess the material risks and characteristics of the security-based swap, as well as any material incentives or conflicts of interest the registered entity or the non-U.S. entity relying on the exception may have in connection with the security-based swap, will permit a counterparty to assess more effectively whether and under which terms to enter into a security-based swap transaction. The Commission does not agree with the commenter's suggestion that disclosures of material incentives and conflicts of interest should be limited to those of the registered entity but not of the non-U.S. entity relying on the exception.[162] A disclosure of material incentives and conflicts of interest would be meaningfully incomplete if it omitted those of the non-U.S. entity relying on the exception, because the relying entity is the counterparty to the transaction. As the Commission noted in the Proposing Release, though the compliance burdens associated with the disclosure condition ''may be significant, those burdens should be mitigated by the underlying provision stating that the [disclosure] requirement . . . will apply only when the registered security-based swap dealer knows the identity of the counterparty at a reasonably sufficient time prior to execution of the transaction.'' [163] The disclosure condition also requires disclosure of only material risks, characteristics, incentives, and conflicts of interest, and not disclosure of all risks, characteristics, incentives, and conflicts of interest.[164] Another commenter expressed the general view that the ''as if'' conditions ''are duplicative and may lead to the imposition of undue costs without commensurate regulatory benefits.'' [165] To avoid the potential for duplicative disclosures, registered entities may choose to delegate to the relying entity the tasks of delivering the required disclosures and creating (but not maintaining) books and records relating to those disclosures as required by Rule 3a71–3(d)(1)(iii)(B)(*1*). A registered entity that delegates these tasks to the relying entity would remain responsible for ensuring that all of the disclosures required by Rule 3a71–3(d)(ii)(B)(*1*) are delivered in the manner described in Rule 15Fh–3(b), for ensuring that books and records relating to these disclosures are created as required by Rule 3a71–3(d)(1)(iii)(B)(*1*), and for itself maintaining books and records relating to these disclosures as required by Rule 3a71–3(d)(1)(iii)(B)(*1*).[166]

(2) Communications Condition

Similarly, the Commission concludes that the requirement for the registered entity to communicate with counterparties in a fair and balanced manner also will promote investor protection by prohibiting registered entities from overstating the benefits or understating the risks of potential transactions to inappropriately influence counterparties' investment decisions. One commenter expressly supported the proposed communications condition.[167] In adopting the communications condition, the Commission is applying the same requirement [168] to the arranging, negotiating, or executing activity that the registered entity's U.S. personnel undertakes in connection with transactions not subject to the exception, thus minimizing any compliance burdens.

(3) Trade Acknowledgment and Verification Condition

The Commission believes that the trade acknowledgment and verification condition will help to ensure that there are definitive written records of the terms of the transactions that result from the registered entity's arranging, negotiating, or executing activity in the United States, as well as help to control legal and operational risks for the counterparties.[169] One commenter expressed the general view that the ''as if'' conditions ''are duplicative and may lead to the imposition of undue costs without commensurate regulatory benefits.'' [170] To avoid the potential for duplicative trade acknowledgments and verifications, registered entities may choose to delegate to the relying entity the tasks of delivering the required trade acknowledgment or verification and creating (but not maintaining) books and records relating to that trade acknowledgment or verification as required by Rule 3a71–3(d)(1)(iii)(B)(*1*). A registered entity that delegates these tasks to the relying entity would remain responsible for ensuring compliance with the requirements of Rules 15Fi–1 and 15Fi–2 as required by Rule 3a71–3(d)(ii)(B)(*4*), for ensuring that books and records relating to the trade acknowledgment or verification are created as required by Rule 3a71–3(d)(1)(iii)(B)(*1*), and for itself maintaining books and records relating to the trade acknowledgment or verification as required by Rule 3a71–3(d)(1)(iii)(B)(*1*).

One commenter requested an exemption from Exchange Act Rule 10b–10 for brokers that may serve as the registered entity for purposes of the

[161] *See* Exchange Act Rule 3a71–3(d)(1)(ii)(A). Following the adoption of the compliance date for SBS Entity registration described in Part XI.B, *infra,* staff understands that FINRA may review the application of its rules to security-based swap transactions and to SBS Entities who also are members of FINRA.

[162] *See* IIB/SIFMA letter at 8. The HSBC letter supported the recommendations of the IIB/SIFMA letter related to the proposed exception.

[163] *See* Proposing Release, 84 FR at 24221 (citing Exchange Act Rule 15Fh–3(b)). As also noted in the Proposing Release, circumstances in which the registered entity engaged in activity pursuant to the exception may not know the identity of the counterparty could include circumstances in which the registered entity provides only execution services, and does not arrange or negotiate the transaction, as well as circumstances where U.S. personnel specify a trading strategy or techniques carried out through algorithmic trading or automated electronic execution of security-based swaps. *See* Proposing Release, 84 FR at 24224 n.149.

[164] *See* Exchange Act Rule 3a71–3(d)(1)(ii)(B)(1) (referencing Exchange Act Section 15F(h)(3)(B)(i)–(ii) and Rule 15Fh–3(b)).

[165] *See* ISDA letter at 9–10.

[166] For the avoidance of doubt, whether or not the registered entity delegates this task to the relying entity, the disclosures of material incentives and conflicts of interest generally should make clear which material incentives and conflicts of interest apply to the registered entity and which apply to the relying entity.

[167] *See* IIB/SIFMA letter at 13–14. That comment also expressed support for two features of the proposed framework that are not ''as if'' conditions—the application of anti-fraud provisions to the transactions at issue, and restrictions on transactions with non-ECPs. *See id.* at 12.

[168] *See* Exchange Act Rule 3a71–3(d)(1)(ii)(B)(3) (referencing Exchange Act Section 15F(h)(3)(C) and Rule 15Fh–3(g)); FINRA Rule 2210.

[169] *See* Proposing Release, 84 FR at 24222 (citing Trade Acknowledgment and Verification of Security-Based Swap Transactions, Exchange Act Release No. 78011 (June 8, 2016), 81 FR 39808 (June 17, 2016) (''Trade Acknowledgment and Verification Adopting Release'')).

[170] *See* ISDA letter at 9–10.

exception.[171] As an initial matter, the Commission notes that Rule 10b–10 may not apply to every instance in which a broker serves as the registered entity for purposes of the exception, as Rule 10b–10 applies to ''transactions'' that involve ''customers.'' [172] For activity to which both the Rule 3a71–3(d)(1)(ii)(B)(*4*) trade acknowledgment and verification condition and Rule 10b–10 may apply, however, the Commission believes that duplicative requirements should be avoided. In adopting Rules 15Fi–1 and 15Fi–2, the SBS Entity trade acknowledgment and verification rules upon which the trade acknowledgment and verification condition is based, the Commission noted that an SBS Entity that is also a broker or dealer could be required to comply with both Rule 10b–10 and Rule 15Fi–2.[173] The Commission believed that these duplicative requirements could be overly burdensome and concluded that an exemption from Rule 10b–10 was appropriate to avoid such a result, and therefore included such an exemption in the rule.[174] However, the Commission also limited the exemption from Rule 10b–10 to principal transactions; Rule 10b–10 continues to apply to security-based swap brokerage transactions.[175]

The Commission believes that the potential application of both Rule 10b–10 and the trade acknowledgment and verification condition could result in partially duplicative disclosures, but also notes that some of the disclosures required by Rule 10b–10 may not be duplicated in the trade acknowledgment and verification condition.[176] If the ''arranging, negotiating, or executing'' activity triggers Rule 10b–10, these additional disclosures required by Rule 10b–10 provide the customer with important information regarding the brokerage activity.[177] The Commission thus is adopting an exemption [178] from Rule 10b–10 with respect to any ''arranging, negotiating, or executing'' activity conducted in accordance with the exception. To qualify for the exemption, the broker must comply with the trade acknowledgment and verification condition in connection with activity that is subject to the exception, and include any applicable disclosures required by Rule 10b–10(a)(2) (excluding Rule 10b–10(a)(2)(i)–(ii)) and Rule 10b–10(a)(8) either in the trade acknowledgment or verification or in another disclosure [179] delivered to the counterparty. To avoid the potential for duplicative disclosures, registered entities may choose to delegate to the relying entity the tasks of delivering these Rule 10b–10 disclosures and creating (but not maintaining) books and records relating to those disclosures as required by Rule 3a71–3(d)(1)(iii)(B)(*1*).

Similarly, the trade acknowledgment and verification condition would require a trade acknowledgment to be delivered to the counterparty promptly, but in any event by the end of the first business day following the day of execution of the security-based swap transaction,[180] while Rule 10b–10 requires a confirmation to be delivered at or before completion of the transaction.[181] The Commission recognizes that imposing two competing timing standards for similar types of disclosures could unnecessarily increase compliance burdens, and believes that the time and form standards required by the trade acknowledgment and verification condition adequately protect counterparties to security-based swap transactions subject to the exception because they are the same standards that apply to registered security-based swap dealers.[182]

(4) Suitability Condition

As proposed, the suitability condition would have required that if, as part of the registered entity's arranging, negotiating, or executing activity in the United States, the registered entity recommends a security-based swap or trading strategy involving a security-based swap to a counterparty of the non-U.S. entity relying on the exception, the registered entity must comply with the suitability requirements of Rule 15Fh–3(f)(1) as if the counterparty to the relying entity was its own counterparty. Accordingly, the registered entity would have to (1) undertake reasonable diligence to understand the potential risks and rewards associated with the recommended security-based swap or trading strategy involving a security-based swap (the ''objective prong'') and (2) have a reasonable basis to believe that a recommended security-based swap or trading strategy involving a security-based swap is suitable for the counterparty (the ''counterparty-specific prong'').[183] To satisfy the counterparty-specific prong as proposed, a security-based swap dealer would have to obtain relevant information regarding the counterparty, including the counterparty's investment profile, trading objectives, and its ability to absorb potential losses associated with the recommended security-based swap or trading strategy involving a security-based swap.[184]

The Commission is adopting the suitability condition with a modification that provides an alternative means of satisfying the counterparty-specific prong. Consistent with the condition as proposed, the suitability condition will apply to the exception only when the registered entity makes a recommendation to the counterparty.[185] Also consistent with the condition as proposed, the registered entity could choose to satisfy the counterparty-specific prong of the suitability condition by ensuring that it has a reasonable basis to believe that the recommended security-based swap or strategy involving a security-based swap is suitable for the counterparty, as required by Rule 15Fh–3(f)(1)(ii).[186]

The proposed rule provided an alternative means of satisfying the counterparty-specific prong for

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[171] *See* IIB/SIFMA letter at 13–14.

[172] *See* Exchange Act Rule 10b–10(a), 17 CFR 240.10b–10(a) (prohibiting a broker or dealer to effect for or with an account of a customer any transaction in, or to induce the purchase or sale by such customer of, a security unless the broker or dealer delivers a written confirmation at or before completion of the transaction).

[173] *See* Trade Acknowledgment and Verification Adopting Release, 81 FR at 39824.

[174] *See id.*

[175] *See id.* at 39824–25.

[176] While Rule 15Fi–2 requires a trade acknowledgment to disclose all terms of the security-based swap transaction, *see* Exchange Act Rule 15Fi–2(c), 17 CFR 240.15Fi–2(c), Rule 10b–10 includes provisions requiring disclosures that may not form part of the terms of the security-based swap transaction between the relying entity and its counterparty, including the capacity in which the broker (who would not be party to the transaction) is acting, *see* Exchange Act Rule 10b–10(a)(2), 17 CFR 240.10b–10(a)(2), and the fact that the broker is not a member of the Securities Investor Protection Corporation, if such is the case, *see* Exchange Act Rule 10b–10(a)(8), 17 CFR 240.10b–10(a)(8).

[177] For example, customers may use disclosures regarding the capacity in which the broker is acting and membership in the Securities Investor Protection Corporation to determine whether the broker is able to meet the customer's needs.

[178] *See* Exchange Act Rule 3a71–3(d)(5).

[179] For example, the Rule 10b–10 disclosures could be provided as part of the disclosures required pursuant to the disclosure condition in Rule 3a71–3(d)(1)(ii)(B)(*1*) discussed above.

[180] *See* Exchange Act Rule 15Fi–2(b), 17 CFR 240.15Fi–2(b).

[181] *See* Exchange Act Rule 10b–10(a), 17 CFR 240.10b–10(a).

[182] If the broker or dealer relying on this exemption from Rule 10b–10 makes a good faith effort to comply with the requirement to deliver these disclosures to the customer as and when required, the failure to do so will not make the exemption from Rule 10b–10 unavailable so long as the broker or dealer delivers the disclosures to the customer promptly after discovery of the defect in compliance. *See* Exchange Act Rule 3a71–3(d)(5).

[183] *See* Exchange Act Rule 3a71–3(d)(1)(ii)(B)(*2*); *see also* Exchange Act Rule 15Fh–3(f)(1), 17 CFR 240.15Fh–3(f)(1).

[184] *See* Exchange Act Rule 15Fh–3(f)(1), 17 CFR 240.15Fh–3(f)(1).

[185] *See id.*

[186] *See* Exchange Act Rule 3a71–3(d)(1)(ii)(B)(*2*) (referencing Exchange Act Rule 15Fh–3(f)).

institutional counterparties. This alternative means contained four main elements. First, as proposed, the alternative means would have required the registered entity to reasonably determine that the institutional counterparty, or an agent to which the counterparty has delegated decision-making authority, is capable of independently evaluating investment risks with regard to the relevant security-based swap or trading strategy involving a security-based swap.[187] The proposed rule would have allowed the registered entity to satisfy this requirement by obtaining certain written representations.[188] Second, as proposed, the alternative means would have required the registered entity to obtain from the institutional counterparty or its agent affirmative written representations that it is exercising independent judgment in evaluating the recommendations with regard to the security-based swap or trading strategy involving a security-based swap.[189] Third, as proposed, the alternative means would have required the registered entity to disclose that it is acting in its capacity as a counterparty, and is not undertaking to assess the suitability of the security-based swap or trading strategy involving a security-based swap.[190] Fourth, as proposed, the alternative means would have been available only when the counterparty in fact is an institutional counterparty.

The Commission believes that the counterparty-specific prong's investor protection benefit for institutional counterparties is unlikely to justify the burden on both the registered entity and the institutional counterparty to obtain from the counterparty the information and representations as described above, solely to make a recommendation in connection with ''arranging, negotiating, or executing'' activity eligible for the exception. The Commission further believes it appropriate to eliminate from the alternative means of satisfying the counterparty-specific prong the proposed disclosure to the institutional counterparty that the registered entity is acting in its capacity as a counterparty, as the registered entity would not be acting as counterparty in connection with the ''arranging, negotiating, or executing'' activity subject to the exception. For these reasons, in adopting Rule 3a71–3(d)(1)(ii)(B)(*2*), the Commission has tailored the suitability condition to allow the registered entity to comply with the counterparty-specific prong by reasonably determining that the counterparty to whom it makes a recommendation is an ''institutional counterparty'' as defined in Rule 15Fh–3(f)(4) and by disclosing to the counterparty that it is not undertaking to assess the suitability of the security-based swap or trading strategy involving a security-based swap for the counterparty.[191]

By allowing the counterparty-specific prong of the suitability condition to be satisfied by this disclosure when the registered entity makes a recommendation to a counterparty it reasonably determines is an institutional counterparty, the Commission also is partially addressing one commenter's suggestion to reduce both prongs of the suitability condition to a disclaimer when the registered entity does not have primary client responsibility for the counterparty.[192] This commenter expressed the view that the proposed suitability condition should be limited when the registered entity ''is not assigned primary client responsibility for a non-U.S. counterparty,'' so that the registered entity merely would have to disclose that it is acting in its capacity as agent of the non-U.S. person relying on the exception, and that neither entity ''is undertaking to assess the suitability of the SBS transaction or trading strategy.'' [193] The suitability condition would allow a disclaimer of the counterparty-specific prong, but not of the objective prong, when the registered entity reasonably determines that the counterparty is an institutional counterparty. The Commission does not agree with the commenter, however, that this alternative method of compliance should be available whenever the registered entity does not have primary client responsibility for the counterparty, or that the registered entity should be able to disclaim responsibility for understanding the potential risks and rewards of a particular product or strategy. Registered entities become involved in arranging, negotiating, or executing activity on behalf of a non-U.S. entity precisely because they are expected to have specialized knowledge and expertise regarding a particular security-based swap product or strategy, so the registered entity likely already possesses the information needed to comply with the objective prong of the suitability condition. Moreover, when these registered entities make a recommendation regarding such a product or strategy, counterparties are likely to expect that the recommendation is based on reasonable diligence to understand its potential risks and rewards, as, again, the registered entity's specialized knowledge and expertise are likely the reason it becomes involved in arranging, negotiating, or executing activity on behalf of its non-U.S. affiliate. Further, the limitations suggested by the commenter would allow the registered entity to make recommendations to a counterparty that the registered entity does not reasonably believe to be an institutional counterparty without ensuring that the recommendation is suitable for the counterparty. The Commission recognizes that the counterparty-specific prong of the suitability condition may entail significant compliance burdens in some instances in which the registered entity must obtain the counterparty information and make a suitability assessment using that information.[194] However, the Commission continues to believe those burdens, now tailored to apply in full only when the registered entity does not reasonably determine that the counterparty is an institutional counterparty, are justified by the importance of the counterparty protections provided by this requirement.

(5) Proposed Portfolio Reconciliation Condition

The Commission is not adopting the proposed portfolio reconciliation condition. Two commenters called for the removal of the proposed portfolio reconciliation condition.[195] The

[187] *See* proposed Exchange Act Rule 3a71–3(d)(1)(ii)(B)(*2*) (referencing Exchange Act Rule 15Fh–3(f)).

[188] *See id.*

[189] *See id.*

[190] *See id.*

[191] *See* Exchange Act Rule 3a71–3(d)(1)(ii)(B)(*2*).

[192] *See* IIB/SIFMA letter at 13.

[193] *See* IIB/SIFMA letter at 17 (also suggesting that the Commission work with FINRA ''to adopt a parallel exemption'' from a FINRA suitability rule).

[194] As noted in the Proposing Release, however, the Commission understands that in some cases U.S. personnel currently manage trading or sales relationships with counterparties and thus already may possess the information needed to comply with the counterparty-specific prong of the suitability condition. *See* Proposing Release, 84 FR at 24222.

[195] *See* ISDA letter at 8 (stating that the portfolio reconciliation condition is ''particularly problematic'' in that it would add a two-way documentation burden ''that would require extensive client-outreach and client responses within a short period of time''); IIB/SIFMA letter at 14 (stating that the condition likely would discourage non-U.S. counterparties from having interactions with U.S. personnel that could trigger the condition, and because the reconciliation process would be burdensome by encompassing non-economic terms of security-based swap transactions; arguing in the alternative that the Commission should permit the registered entity to comply with the condition if the non-U.S. person relying on the exception ''is subject to portfolio

Continued

Commission is persuaded by comments that the burdens of compliance with the proposed condition would not justify its benefits. In particular, one commenter stated that the costs of developing new systems to conduct portfolio reconciliation between the non-U.S. counterparty and the registered entity, together with the condition's requirement regarding agreement in writing on the terms of portfolio reconciliation, ''would likely discourage non-U.S. counterparties from having the interactions with U.S. personnel that could trigger the condition.'' [196] The Commission agrees that, in the context of transactions eligible for the exception, the costs of these requirements likely would have this effect on some non-U.S. counterparties, particularly given that the proposed condition would have prompted these costs in service of only one portfolio reconciliation between the counterparty and the registered entity. For these reasons, the Commission is not including the limited portfolio reconciliation requirement as a condition to the exception.

(6) Interaction of the Exception With Substituted Compliance

The Commission is not modifying the four adopted as-if conditions (disclosure condition, communications condition, trade acknowledgment and verification condition, and suitability condition) to allow them to be satisfied by substituted compliance or otherwise by compliance with the home-country requirements of the entity relying on the exception. One commenter argued that the Commission should generally allow for the use of substituted compliance in connection with those (and other) conditions.[197] Another commenter argued that the proposed trade acknowledgment and verification condition should be satisfied if the non-U.S. person relying on the exception ''provides written documentation of the SBS's terms to the counterparty in compliance with [the non-U.S. person's] home country confirmation requirements.'' [198]

Any entity relying on the exception would be, by definition, a non-U.S. person not registered with the Commission. The relying entity thus would not be eligible for substituted compliance, which is available only to registered SBS Entities, nor would it be covered by the ''MOU or other arrangement addressing supervision and enforcement''[199] that is a key condition precedent of a substituted compliance determination. The registered entity also would not necessarily be able to ascertain whether or not the relying entity had complied with its home-country regulations to which the registered entity is not subject. Allowing the relying entity to satisfy the ''as-if'' conditions by way of compliance with its home-country requirements could compromise the Commission's ability to both supervise the registered entity and ascertain the relying entity's compliance with the ''as-if'' conditions. Instead, in applying the ''as-if'' conditions to the registered entity, the Commission is striking a balance that will allow flexibility for market participants engaging in cross-border security-based swap activity, but also further Title VII's goals of counterparty protection.[200]

(7) Requirements Not Applicable to the Exception

As proposed, the exception included a list of certain other ''counterparty''-related requirements compliance with which would not be a condition to the availability of the exception. This proposed list included ECP verification requirements,[201] ''know your counterparty'' requirements,[202] clearing rights disclosure requirements,[203] daily mark disclosure requirements,[204] proposed portfolio compression requirements,[205] and proposed security-based swap trading relationship documentation requirements.[206] One commenter argued that the exception should not be subject to compliance with these requirements,[207] and the Commission agrees. In the case of the ECP verification requirements and ''know your counterparty'' requirements, the Commission continues to believe that in some circumstances the registered entity would have limited interaction with the counterparty to the transactions subject to the exception, making it difficult to obtain the information needed to satisfy those requirements. Nevertheless, existing limitations on entering into security-based swaps with non-ECPs will remain in effect.[208] Similarly, the Commission agrees that the exception should not be conditioned on compliance with clearing rights disclosure requirements because the transactions subject to the exception would not be expected to be subject to the underlying clearing rights as such rights apply only to transactions ''entered into'' by security-based swap dealers.[209] The Commission also continues to believe that the exception should not be conditioned on compliance with daily mark disclosure requirements because those requirements are predicated on there being an ongoing relationship between the registered entity and the counterparty that may not be present in connection with the transactions subject to the exception, and further would be linked to risk management functions that are likely to be associated with the entity in which the resulting security-based swap position is booked. Finally, the Commission is considering in a separate release final rules regarding portfolio compression and trading relationship documentation, and continues to believe that the exception should not be conditioned on compliance with those rules.

Although the Commission agrees that a party complying with the exception should not be required to comply with these requirements, the Commission believes that including a list of these requirements in Rule 3a71–3 could potentially cause confusion among

reconciliation requirements in its home jurisdiction'').

[196] *See* IIB/SIFMA letter at 14.

[197] *See* ISDA letter at 9–10.

[198] *See* IIB/SIFMA letter at 13–14 (also suggesting that if the registered entity is a broker-dealer, the Commission and FINRA should exempt the entity from compliance with Rule 10b–10 and the FINRA fixed income confirmation rule if the non-U.S. person provides that documentation to the counterparty and discloses that the registered entity is acting as agent).

[199] *See* Exchange Act Rule 3a71–6(a)(2)(ii), 17 CFR 3a71–6(a)(2)(ii).

[200] The Commission is mindful that the foreign blocking laws, privacy laws, secrecy laws, and other foreign legal barriers may limit or prohibit firms from providing books and records directly to the Commission. Similarly, such laws may impede the transfer of relevant records among affiliates for the purposes of complying with the exception. The exception is not available in situations in which such impediments to transferring information preclude compliance with conditions that require the relying entity to transfer information to the registered entity: The disclosure condition, the trade acknowledgment and verification condition, and conditions requiring the registered entity to obtain from the relying entity certain books and records. *See also* Proposing Release, 84 FR at 24222 n.126 & 24223–24 n.143.

[201] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(ii)(C)(*1*).

[202] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(ii)(C)(*4*).

[203] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(ii)(C)(*3*).

[204] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(ii)(C)(*2*).

[205] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(ii)(C)(*5*).

[206] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(ii)(C)(*6*).

[207] *See* IIB/SIFMA letter at 12.

[208] *See* Exchange Act Section 6(l), 15 U.S.C. 78f(l) (requiring security-based swaps with non-ECPs to be effected on a national securities exchange); Securities Act of 1933 Section 5(e), 15 U.S.C. 77e(e) (requiring registration of the offer and sale of security-based swaps to non-ECPs). The registered entity might use information obtained from its non-U.S. affiliate to verify that a counterparty to the security-based swap is in fact an ECP.

[209] *See* Exchange Act Section 3C(g)(5), 15 U.S.C. 78c–3(g)(5).

market participants. As proposed, this list of requirements was described as a list of Exchange Act provisions and rules and regulations thereunder to which the ''compliance obligation described in paragraph (d)(1)(ii)(A) [of Rule 3a71–3] does not apply.'' [210] However, paragraph (d)(1)(ii)(A) of Rule 3a71–3 states only that, in connection with transactions subject to the exception, the registered entity must ''compl[y] with the requirements described in paragraph (d)(1)(ii)(B) [of Rule 3a71–3] as if the counterparties to the non-U.S. person relying on this exception also were counterparties to the registered entity.'' [211] Paragraph (d)(1)(ii)(B) of Rule 3a71–3, in turn, lists the requirements that together comprise the ''as-if'' conditions discussed above. The Commission therefore does not believe it is necessary to include in Rule 3a71–3 the proposed list of requirements with which the registered entity need not comply.

3. Commission Access to Relevant Books, Records and Testimony, and Related Obligations

(a) Proposed Approach

The proposal would require the non-U.S. person relying on the conditional exception, upon request, to promptly provide the Commission or its representatives with any information or documents within the non-U.S. person's possession, custody or control related to transactions under the exception, to make its foreign associated persons [212] available for testimony, and to provide assistance in taking the evidence of other persons, wherever located, related to those transactions.[213]

The proposal further would require that the registered entity engaged in the arranging, negotiating or executing activity in the United States create and maintain all required books and records relating to the transactions at issue.[214] That registered entity further would be required to obtain, from the non-U.S. person relying on the exception, and maintain documentation encompassing all terms governing the trading relationship between the non-U.S. person and its counterparty relating to the transactions subject to the exception.[215] The registered entity also would have to obtain, from the non-U.S. person relying on the exception, written consent to service of process for any civil action brought by or proceeding before the Commission.[216]

Those proposed requirements were intended to ''help provide the Commission with a comprehensive view of the dealing activities connected with transactions relying on the proposed exception, and facilitate the Commission's ability to identify fraud and abuse in connection with transactions that have been arranged, negotiated, or executed in the United States.'' [217]

(b) Commission Action

The Commission is adopting these books and records-related conditions, including the definition of ''foreign associated person'' with modifications.[218] As discussed in Part II.C.1 above, the Commission also is adopting a requirement for each registered entity whose associated persons may conduct ''arranging, negotiating, or executing'' activity pursuant to the exception to obtain from the relying entity, and maintain, documentation regarding the relying entity's compliance with the $50 billion limit on the availability of the exception.[219] Further, to ensure that registered entity is able to make relevant records available to the Commission as needed, and to provide greater certainty to market participants who conduct activity pursuant to the exception, the Commission also is adopting record retention requirements in new Rule 3a71–3(d)(1)(iii)(B)(*2*)–(*4*). One commenter expressed the view that the Commission's access should be limited to the books and records of the registered entity, and should not extend to books and records of the non-U.S. person relying on the exception, because ''the Commission's regulatory nexus or interest in the transaction does not go beyond the 'arranging' or 'negotiating' activities conducted in the United States.'' [220] The Commission's ability to access books and records, and obtain relevant testimony, of the relying entity is key to the Commission's ability to evaluate compliance with the exception. These conditions will help to provide the Commission with information about the dealing activities connected with transactions relying on the exception and will help to demonstrate whether the relying entity properly classified transactions as eligible for the exception. The conditions also will facilitate the Commission's ability to enforce against fraud and abuse in connection with transactions subject to the exception that have been arranged, negotiated, or executed in the United States.[221]

4. Notices to Counterparties

(a) Proposed Approach

The proposed exception was conditioned on the registered entity notifying the counterparty of the non-U.S person relying on the exception that the non-U.S. person is not registered as a security-based swap dealer, and that certain Exchange Act provisions or rules addressing the regulation of security-based swaps would not be applicable in connection with the transaction, including provisions affording clearing rights to counterparties (the ''notification condition'').[222] The

[210] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(ii)(C).

[211] *See* Exchange Act Rule 3a71–3(d)(1)(ii)(A).

[212] Proposed paragraph (a)(11) of Rule 3a71–3 defined the term ''foreign associated person'' as a natural person domiciled outside the United States that is a partner, officer, director, or branch manager of the non-U.S. person relying on the exception (or any person occupying a similar status or performing similar functions); any employee of that non-U.S. person; or any person that directly or indirectly controls, is controlled by, or is under common control with that non-U.S. person.

[213] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(iii)(A). That proposed condition further would provide that if, despite the non-U.S. person's best efforts, the non-U.S. person is prohibited by applicable foreign law or regulations from providing such access to the Commission, the non-U.S. person may continue to rely on the exception until the Commission issues an order modifying or withdrawing an associated ''listed jurisdiction'' determination. The proposed provisions relating to the ''listed jurisdiction'' condition to the exception in part would permit the Commission to withdraw a listed jurisdiction determination if the jurisdiction's laws or regulations have had the effect of preventing the Commission or its representatives from accessing such information, documents and testimony. *See* Part II.C.5, *infra.*

[214] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(iii)(B)(*1*).

[215] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(iii)(B)(*2*). These would include terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, allocation of any applicable regulatory reporting obligations, governing law, valuation, and dispute resolution.

[216] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(iii)(B)(*3*).

[217] Proposing Release, 84 FR at 24224.

[218] *See* Exchange Act Rule 3a71–3(a)(13), (d)(1)(iii).

[219] *See* Exchange Act Rule 3a71–3(d)(1)(iii)(B)(*2*).

[220] *See* ISDA letter at 9.

[221] As explained in the Proposing Release, and consistent with Exchange Act Rules 17a–3, 17a–4, 18a–5, and 18a–6, the registered entity would create, obtain and/or maintain the following types of records related to the ''arranging, negotiating, or executing'' activity subject to the exception: Records of communications; written agreements; copies of trade acknowledgments and verifications; records related to transactions not verified in a timely manner; and documents related to compliance with security-based swap dealer business conduct standards. Other types of records addressed in Rules 17a–3, 17a–4, 18a–5, and 18a–6—*e.g.,* inclusion of trades in financial ledgers—would not appear to be required for the registered entity in connection with ''arranging, negotiating, or executing'' activity subject to the exception. *See* Proposing Release, 84 FR at 24223 n.141.

[222] *See* Proposing Release, 84 FR at 24224.

proposal required the registered entity to provide this information contemporaneously with and in the same manner as the arranging, negotiating, or executing activity that is the subject of the exception, and did not require the notice to be made if the registered entity does not know the identity of the counterparty at a reasonably sufficient time prior to the execution of the transaction.[223] The Commission intended this condition ''to help guard against counterparties assuming that the involvement of U.S. personnel in an arranging, negotiating, or executing capacity as part of the transaction would be accompanied by all of the safeguards associated with Title VII security-based swap dealer regulation.'' [224]

(b) Commission Action

The Commission is adopting the notification condition with a modification that provides an alternative means of satisfying the condition. Consistent with the proposal, the final rules require the registered entity to notify the counterparty that the entity relying on the exception is not registered as a security-based swap dealer and that certain Exchange Act provisions or rules do not apply to the transaction.[225] Like the proposal, this notification is not required when the registered entity does not know the counterparty's identity at a reasonably sufficient time prior to the execution of the transaction to permit the notification.[226] Two commenters argued that, if the Commission adopts this condition, the registered entity should be able to make the required notice one time to cover the entire relationship with the counterparty; these commenters cited the difficulty of making and documenting the notice contemporaneously with every counterparty contact.[227] The Commission believes that a single notice given at the first arranging, negotiating, or executing activity that is subject to the exception is sufficient to cover all subsequent arranging, negotiating, or executing activity of a registered entity that has no other customer or counterparty relationship with the counterparty. When the registered entity does have a separate customer or counterparty relationship with the counterparty, the need to identify transactions to which the full protection of the U.S. securities laws does not apply becomes more acute. In these situations, the Commission believes that a contemporaneous notice made in the same manner as the arranging, negotiating, or executing activity subject to the exception best fulfills the condition's investor protection goals. Accordingly, the final rules provide that, during a period in which the counterparty is not a customer [228] of the registered entity or a counterparty to a security-based swap with the registered entity, the notice need only be provided contemporaneously with, and in the same manner as, the first arranging, negotiating, or executing activity with that counterparty, rather than with each such activity during the period in which the counterparty is not such a customer or counterparty. Because this single notice is permitted only during a period in which the counterparty is not a customer of the registered entity or a counterparty to a security-based swap with the registered entity, the final rules would require the registered entity to resume providing the notice contemporaneously with, and in the same manner as, each arranging, negotiating, or executing activity at issue if the counterparty later becomes a customer of the registered entity or a counterparty to a security-based swap with the registered entity. In adopting this change, the Commission is balancing commenters' concerns regarding the practical challenges of repeating the notice contemporaneously with each arranging, negotiating, or executing activity subject to the exception with the need to avoid confusion among counterparties regarding the applicability of U.S. securities laws to transactions arranged, negotiated, or executed by personnel located in the United States.

5. Applicability of Financial Responsibility Requirements of a Listed Jurisdiction

(a) Proposed Approach

Finally, the proposed exception would be conditioned on the requirement that the non-U.S. person relying on the exception be subject to the margin and capital requirements of a ''listed jurisdiction'' when engaging in the transactions at issue (the ''listed jurisdiction condition'').[229] This condition was intended ''to help avoid creating an incentive for dealers to book their transactions into entities that solely are subject to the regulation of jurisdictions that do not effectively require security-based swap dealers or comparable entities to meet certain financial responsibility standards.'' [230] The Commission proposed corresponding amendments to Rule 0–13 to provide a mechanism for applications for designation as a listed jurisdiction.[231]

The proposal specified that the Commission conditionally or unconditionally may determine ''listed jurisdictions'' by order, in response to applications or upon the Commission's own initiative.[232] In considering a jurisdiction's potential status as a ''listed jurisdiction,'' the Commission would consider whether an order would be in the public interest, based on factors such as the jurisdiction's applicable margin and capital requirements, and the effectiveness of the foreign regime's supervisory compliance program and enforcement authority in connection with those

[223] *See id.*

[224] *See id.*

[225] *See* Exchange Act Rule 3a71–3(d)(1)(iv).

[226] *See id.* As noted in the Proposing Release, circumstances in which the registered entity engaged in activity pursuant to the exception may not know the identity of the counterparty could include circumstances in which the registered entity provides only execution services, and does not arrange or negotiate the transaction, as well as circumstances where U.S. personnel specify a trading strategy or techniques carried out through algorithmic trading or automated electronic execution of security-based swaps. *See* Proposing Release, 84 FR at 24224 n.149.

[227] *See* ISDA letter at 9; IIB/SIFMA letter at 14–15.

[228] The term ''customer'' is defined consistent with the definition of the term in Rule 15c3–3, the customer protection rule that applies to brokers and dealers. *See* Exchange Act Rule 15c3–3(a)(1), 17 CFR 240.15c3–3(a)(1).

[229] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(v). Under the proposal, the term ''listed jurisdiction'' was defined to mean any jurisdiction which the Commission by order has designated as a listed jurisdiction for purposes of the exception. *See* proposed Exchange Act Rule 3a71–3(a)(12).

[230] *See* Proposing Release, 84 FR at 24225. The Commission further explained: Absent this type of condition, the exception from the *de minimis* counting requirement could provide a competitive advantage to non-U.S. persons that conduct security-based swap dealing activity in the United States without being subject to sufficient financial responsibility standards. More generally, the proposed condition is consistent with the belief the Commission expressed when it adopted the ''arranged, negotiated, or executed'' *de minimis* counting rule, that applying capital and margin requirements to such transactions between two non-U.S. persons can help mitigate the potential for financial contagion to spread to U.S. market participants and to the U.S. financial system more generally.*Id.*

[231] *See* Proposing Release, 84 FR at 24290–91.

[232] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(2).

The proposal further provided that applications for a listed jurisdiction order may be made by a party or group of parties that potentially would seek to rely on the exception from the *de minimis* counting requirement, or by a foreign financial regulatory authority supervising such a party or its security-based swap activities. *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(2)(i). The rule also specified that applications must be filed pursuant to the procedures set forth in Exchange Act Rule 0–13 (which as adopted addresses substituted compliance applications), and the Commission proposed to amend Rule 0–13 to also address listed jurisdiction applications.

requirements, including in the cross-border context.[233]

The proposal further specified that the Commission might modify [234] or withdraw a listed jurisdiction determination, after notice and opportunity for comment, if the Commission determines that continued listed jurisdiction status would not be in the public interest. That could be based on the above factors regarding the jurisdiction's margin and capital requirements and associated supervisory and enforcement practices, or it could be based on consideration of whether the jurisdiction's laws or regulations have had the effect of preventing the Commission or its representatives from promptly being able to obtain information regarding the non-U.S. persons relying on the exception.[235]

The Commission also addressed the distinction between ''listed jurisdiction'' determinations and determinations for substituted compliance, and clarified that listed jurisdiction status would not be predicated on the foreign jurisdiction's financial responsibility regime being comparable to Title VII requirements.[236]

In proposing the ''listed jurisdiction'' condition, the Commission recognized that commenters to the Commission's earlier proposal for the ''arranged, negotiated, or executed'' counting requirement suggested that potential concerns regarding the outcome that the condition was intended to avoid could be addressed by conditioning a broker-dealer based alternative to the counting rule on the non-U.S. entity being regulated in a ''local jurisdiction recognized by the Commission as comparable,'' or in a G–20 jurisdiction or in a jurisdiction where the entity would be subject to Basel capital requirements. The Commission stated, however, that it did not believe that those concerns would be addressed adequately by a ''one size fits all'' approach that was linked simply to a jurisdiction's membership in the G–20 or compliance with Basel standards, with no further opportunity to consider relevant regulatory practices and requirements.[237]

The proposal also preliminarily stated, based on the Commission's understanding of relevant margin and capital requirements, an initial set of listed jurisdictions and that the Commission might issue a set of listed jurisdiction orders in conjunction with its final action on the proposed exception.[238]

(b) Commission Action

The Commission is adopting the listed jurisdiction condition, together with the related amendments to Rule 0–13, as proposed.[239] The listed jurisdiction condition is intended to deter dealers from attempting to avoid Title VII by simply booking their transactions to entities in jurisdictions that do not effectively require security-based swap dealers or comparable entities to meet certain financial responsibility standards.[240] Without the requirement, the exception could ''provide a competitive advantage to non-U.S. persons that conduct security-based swap dealing activity in the United States without being subject to sufficient financial responsibility standards.'' [241] More generally, the condition is consistent with the view that applying capital and margin requirements to transactions between two non-U.S. persons that have been arranged, negotiated, or executed in the United States can help mitigate the potential for financial contagion to spread to U.S. market participants and to the U.S. financial system more generally.[242]

In making its determination as to whether a foreign jurisdiction warrants a ''listed jurisdiction'' designation, in addition to the other requirements of the exception, the Commission may consider ''factors relevant for purposes of assessing whether such a designation would be in the public interest.'' [243] Two such factors included in the rule are the jurisdiction's applicable margin and capital requirements [244] and the effectiveness of the relevant foreign financial regulatory authority's supervisory compliance program and enforcement authority in connection with those requirements, including in the cross-border context.[245] As part of assessing whether a designation would be in the public interest, the Commission also expects to consider whether a foreign jurisdiction has a security-based swaps market that demonstrates both a potential need for designation as a listed jurisdiction and an incentive for the relevant foreign financial regulatory authorities to oversee that market. With these factors in mind, the Commission may not designate all G–20 jurisdictions as listed jurisdictions as one commenter

[233] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(ii).

[234] The proposal explained that the Commission may modify a listed jurisdiction determination when: (1) Certain market participants or classes of market participants in the jurisdiction are not required to comply with the relevant financial responsibility requirements; (2) the jurisdiction's supervisory or enforcement practices oversee certain market participants or classes of market participants differently than others; or (3) the jurisdiction's barriers to data access apply to certain market participants or classes of market participants but not others. The Commission further noted that, in practice, the use of this authority may cause the exception to be unavailable to certain groups of market participants in a jurisdiction, or to individual market participants. *See* Proposing Release, 84 FR at 24225–26.

[235] *See* Alternatives 1 and 2—proposed Exchange Act Rule 3a71–3(d)(1)(iii). As the Commission explained, those latter criteria reflected the importance of the proposed exception's information access condition, as well as the conclusion that it would be appropriate to modify or withdraw listed jurisdiction status if, in practice, the Commission or its representatives have been prevented from accessing information required under the exception due to the jurisdiction's laws or regulations. *See* Proposing Release, 84 FR at 24225.

[236] As the Commission explained, listed jurisdiction applications and substituted compliance applications would arise in distinct contexts, and ''the different purposes of these proposed exclusions and a substituted compliance determination mean that the Commission may reach different conclusions regarding these issues when considering a substituted compliance determination than it does when considering listed status.'' *See* Proposing Release, 84 FR at 24226.

[237] *See* Proposing Release, 84 FR at 24225. The proposal further explained:

The Commission is mindful that a jurisdiction's membership in the G–20 or its compliance with Basel standards can be a positive indicator regarding the effectiveness of the jurisdiction's margin and capital regimes. At the same time, the Commission also recognizes that implementation and oversight practices may vary even among those jurisdictions. Accordingly, the Commission preliminarily believes that the proposed individualized ''listed jurisdiction'' assessment would provide us an appropriate degree of discretion to consider whether the jurisdiction has implemented appropriate financial responsibility standards and exercises appropriate supervision in connection with those standards, and whether the Commission as necessary could access relevant information.

Id.

[238] *See* Proposing Release, 84 FR at 24226.

[239] *See* Exchange Act Rule 3a71–3(d)(1)(v); Rule 0–13.

[240] *See* Proposing Release, 84 FR at 24225.

[241] *Id.*

[242] *Id.*

[243] Exchange Act Rule 3a71–3(d)(2)(ii).

[244] In assessing a jurisdiction's applicable margin and capital requirements, the Commission would expect to consider whether the margin and capital requirements at issue would apply to entities who transact in security-based swaps. For example, in a jurisdiction where heightened margin and capital requirements for OTC derivatives are only applicable to certain types of entities, such as banks, the Commission may limit a listed jurisdiction order to entities covered by such requirements.

[245] *Id.* The Commission does not consider impediments to information access as part of its initial listed jurisdiction determination. However, the Commission may modify or withdraw listed jurisdiction status in the event that, in practice, among other things, the Commission or its representatives have been prevented from accessing information due to the jurisdiction's laws and regulations. Exchange Act Rule 3a71–3(d)(2)(iii)(B). The Commission also may modify or withdraw listed jurisdiction status, if the Commission otherwise finds that continued listing jurisdiction status is no longer in the public interest based on any factor the Commission determines to be relevant. *See* Exchange Act Rule 3a71–3(d)(2)(iii).

suggested.[246] The implementation of margin and capital requirements, as well as supervision and enforcement of them, varies significantly across G–20 jurisdictions.[247] Moreover, many G–20 jurisdictions do not have substantial security-based swap markets and as such may not necessarily have comparable incentives or resources to oversee those markets. By separate order, taking into account the factors described above and the other requirements of new paragraph (d)(2) to Rule 3a71–3, the Commission has designated Australia, Canada, France, Germany, Japan, Singapore, Switzerland, and the United Kingdom as listed jurisdictions.

Finally, designation as a listed jurisdiction serves a purpose distinct from, and is subject to substantially different requirements than, those of a substituted compliance order. As noted above, designation as a listed jurisdiction helps to avoid a competitive advantage for non-U.S. persons that might otherwise conduct security-based swap dealing activity in the United States ''without being subject to sufficient financial responsibility standards.'' [248] Also as noted above, the Commission may consider whether designation as a listed jurisdiction is in the public interest in light of the relevant jurisdiction's applicable margin and capital requirements, but these requirements need not be comparable to U.S. requirements.[249] Similarly, the Commission may consider, as a factor in determining listed jurisdiction status, the effectiveness of the relevant foreign financial regulatory authority's supervisory compliance program and enforcement authority in connection with those requirements, including in the cross-border context, but this effectiveness need not require an MOU or other arrangement with the foreign financial regulatory authorities addressing supervisory and enforcement cooperation.[250] By contrast, a substituted compliance determination in part requires [251] the Commission to assess the comparability of a foreign financial regulatory system to Exchange Act requirements [252] and to enter into a supervisory and enforcement memorandum of understanding and/or other arrangement with the relevant foreign financial regulatory authorities addressing supervisory and enforcement cooperation arising under the substituted compliance determination.[253] As a result, while a listed jurisdiction application may raise issues that are similar to those that would accompany applications for substituted compliance, the Commission expects to evaluate applications for designation as a listed jurisdiction independently of those regarding substituted compliance, and may reach different conclusions regarding a substituted compliance application than it does regarding a listed jurisdiction application.

One commenter criticized the proposed listed jurisdiction condition on the grounds that the proposal would not require the foreign regime to be comparable to U.S. regulation, and that the Commission's consideration of financial responsibility criteria would be optional.[254] However, the Commission believes that, unlike in the context of substituted compliance, designation as a listed jurisdiction need not require comparability of capital and margin requirements to serve its intended purpose to deter non-U.S. entities relying on the exception from conducting dealing activity in the United States without being subject to sufficient financial responsibility standards. Further, the final rule does not require the Commission to consider applicable margin and capital requirements but, rather, lists these requirements as a factor that the Commission may consider relevant for purposes of assessing whether a listed jurisdiction order would be in the public interest. In the Commission's view, this flexibility in the rules is warranted because different regulatory systems may be able to further the goal of the listed jurisdiction condition through other financial responsibility measures. In assessing listed jurisdiction status, the Commission may need to take into account the manner in which the jurisdiction's regulatory system is informed by local business and market practices. While recognizing the commenter's desire to require an assessment of the jurisdiction's applicable capital and margin requirements, in this circumstance the Commission believes that the listed jurisdiction assessments will turn upon relevant facts and circumstances in a manner such that it would not be practicable to impose such a requirement.

III. Amendment to Rule 15Fb2–1 and Guidance on the Certification and Opinion of Counsel Requirements

A. General

Exchange Act Rule 15Fb2–4 requires that nonresident SBS Entities seeking to register with the Commission certify that they can, as a matter of law, and will provide the Commission with access to their books and records and submit to onsite examination. The rule also requires that nonresident SBS Entities submit with their Forms SBSE, SBSE–A, or SBSE–BD, as appropriate, an opinion of counsel determining that they can, as a matter of law, provide the Commission with access to their books and records and submit to onsite examination.

As discussed in the Proposing Release,[255] after the adoption of the registration rules for SBS Entities, the Commission staff received a number of questions regarding the scope of the certification and opinion of counsel requirement in Exchange Act Rule 15Fb2–4.[256] Some of the questions related to issues raised by foreign blocking laws, privacy laws, secrecy laws and other foreign legal barriers that may limit or prohibit firms from: (i) Providing books and records directly to

[246] *See* IIB/SIFMA letter at 15 (citing the G–20 jurisdictions' ''progress toward adopting capital and margin requirements consistent with international standards''; further stating that ''the concentration of the SBS markets in the G20 jurisdictions limits the negative consequences'' of the listed jurisdiction condition, and that ''the swaps markets in emerging markets are significantly larger''). The same commenter also generally supported the listed jurisdiction condition. *See id.*

[247] *See, e.g.,* Financial Stability Board, OTC Derivatives Market Reforms: Thirteenth Progress Report on Implementation (Oct. 15, 2019), available at *https://www.fsb.org/wp-content/uploads/P151019.pdf.*

[248] *See* Proposing Release, 84 FR at 24225.

[249] *See* Exchange Act Rule 3a71–3(d)(2)(ii).

[250] *See id.*

[251] *See* Exchange Act Rule 3a71–6(a)(2), 17 CFR 240.3a71–6(a)(2) (''The Commission shall not make a substituted compliance determination . . . unless the Commission [satisfies certain conditions].'')

[252] *See* Exchange Act Rule 3a71–6(a)(2)(i), 17 CFR 240.3a71–6(a)(2)(i).

[253] *See* Exchange Act Rule 3a71–6(a)(2)(ii), 17 CFR 240.3a71–6(a)(2)(ii).

[254] *See* AFR letter at 4 (''However, the Proposal is explicit that the Commission would not be required to find that the regulatory regime in a listed jurisdiction is comparable to U.S. regulation. Instead, designation as a listed jurisdiction is completely at the discretion of the Commission, which ''may conditionally or unconditionally determine'' which jurisdictions qualify based on a vague public interest standard. While a few criteria are set forward, such as the existence (but not the stringency) of capital and margin standards in the jurisdiction, and the effectiveness of the supervisory compliance program in the jurisdiction, Commission consideration of these factors is completely optional. Thus, by no means would regulation in a listed jurisdiction guarantee regulatory protections comparable to U.S. oversight under Title VII of Dodd-Frank.'' (footnote omitted)).

[255] *See* Proposing Release, 84 FR at 24233–38.

[256] *See, e.g.,* letter from Briget Polichene, Chief Executive Officer, Institute of International Bankers, and Kenneth E. Bentsen, President and CEO, SIFMA, dated August 26, 2016 (available at *https://www.sec.gov/comments/s7-05-14/s70514-18.pdf*), and email from Sarah A. Miller, Chief Executive Officer, Institute of International Bankers, dated November 16, 2016 (available at *https://www.sec.gov/comments/s7-05-14/s70514-19.pdf*).

the Commission; or (ii) submitting to an onsite inspection or examination by SEC staff.[257] In general, the firms requested guidance as to whether the certification and opinion of counsel could take into account different approaches available under foreign blocking laws, privacy laws, secrecy laws or other legal barriers that may facilitate firms' ability to provide books and records to the Commission and submit to an examination or inspection by Commission staff in a manner consistent with a particular foreign legal requirement.

1. Proposed Approach

As indicated in the Proposing Release, the Commission recognizes that foreign blocking laws, privacy laws, secrecy laws or other legal barriers may vary in purpose and scope, among other aspects. In recognition of the differences among foreign laws, the Commission proposed guidance to firms seeking clarification as to the requirement, in Rule 15Fb2–4, that a non-resident SBS Entity applicant provide the Commission with a certification and opinion of counsel. In particular, and as discussed in more detail below, the Commission proposed guidance to Exchange Act Rule 15Fb2–4 regarding: (1) The foreign laws that must be covered by the certification and opinion of counsel; (2) the scope of the books and records that are the subject of the certification and opinion of counsel, namely that the certification and opinion of counsel need only address: (i) Records that relate to the ''U.S. business'' (as defined in Exchange Act Rule 3a71–3(a)(8)) of the nonresident SBS Entity; and (ii) financial records necessary for the Commission to assess the compliance of the nonresident SBS Entity with capital and margin requirements under the Exchange Act and rules promulgated by the Commission thereunder, if these capital and margin requirements apply to the nonresident SBS Entity; (3) predication of a firm's certification and opinion of counsel, as necessary, on the nonresident SBS Entity obtaining prior consent of the persons whose information is or will be included in the books and records to allow the firm to promptly provide the Commission with direct access to its books and records and to submit to on-site inspection and examination; (4) applicability of the certification and opinion of counsel to contracts entered into prior to the date on which the SBS Entity submits an application for registration pursuant to Section 15F(b); and (5) whether the certification and opinion of counsel submitted by a nonresident SBS Entity can take into account approvals, authorizations, waivers or consents provided by local regulators. The Commission also proposed to amend Rule 15Fb2–1 to provide additional time for an SBS Entity to submit the certification and opinion of counsel required under Rule 15Fb2–4(c)(1).

2. Commission Action

In response to the Commission's proposals, the commenters that addressed this issue recommended that the Commission eliminate the certification and opinion of counsel requirement, or eliminate the opinion of counsel requirement and modify the certification requirement, or revise or clarify the proposed guidance regarding the scope of the certification and opinion of counsel requirement.[258] The commenters stated that doing so would: harmonize with CFTC requirements; [259] level the playing field for U.S. and non-U.S. firms (which both operate internationally and are likely subject to the same foreign privacy, blocking and other laws); [260] reduce compliance costs;[261] reduce the market impacts of the possible withdrawal of participants unable to provide the certification and opinion [262] and address concerns that the requirement, which would apply only with respect to nonresident SBS Entities, would violate national treatment principles.[263] Commenters also described foreign laws that would make it impossible for nonresident SBS Entities to comply with the rule.[264]

Some commenters urged the Commission to eliminate the certification and opinion of counsel requirement altogether.[265] One commenter recommended that the Commission eliminate the opinion of counsel requirement and adopt exclusions from the certification for competing blocking, privacy, or secrecy laws—similar to what the CFTC has done.[266] This approach was also suggested by another commenter as an alternative to elimination of the requirements.[267] Similarly, another commenter suggested that the Commission consider limiting the requirement to a certification of a senior officer, based on reasonable due diligence, that the SBS Entity will provide access to its U.S. business-related books and records to the Commission upon request.[268]

Upon consideration of the comments, the Commission is retaining the certification and opinion of counsel requirement of Exchange Act Rule 15Fb2–4 because, as we explained when we adopted the requirement, we believe that significant elements of an effective regulatory regime are the Commission's ability to access registered SBS Entities' books and records and to inspect and examine the operations of registered SBS Entities.[269] At the same time, the Commission is mindful of the concerns raised by commenters and therefore, as described below, is amending Rule 15Fb2–1 to: (1) Permit an SBS Entity to provide a conditional certification and opinion of counsel; and (2) upon the provision of such a conditional certification and opinion of counsel in connection with an otherwise complete application, conditionally register the SBS Entity. Furthermore, the Commission is also providing guidance regarding the application of the certification and opinion of counsel requirement (including the conditional

[257] *See* Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48964, 48981 (Aug. 14, 2015) (''Registration Adopting Release'').

[258] *See* EBF letter at 2; letter from Manuel Rybach, Managing Director, Credit Suisse, and Jeffrey Samuel, Managing Director, UBS, dated July 23, 2019 (''Credit Suisse/UBS letter''); at 2; ISDA letter at 10; IIB/SIFMA letter at 18–20.

[259] *See* EBF letter at 2; Credit Suisse/UBS letter at 2.

[260] *See* ISDA letter at 10; Credit Suisse/UBS letter at 2.

[261] *See* IIB/SIFMA letter at 19; Credit Suisse/UBS letter at 2.

[262] *See* IIB/SIFMA letter at 19; Credit Suisse/UBS letter at 2.

[263] *See* IIB/SIFMA letter at 20.

[264] *See, e.g.,* Credit Suisse/UBS letter at 2:

In principle, Swiss administrative law requires foreign authorities to seek administrative assistance when requesting data provision from Switzerland or on-site inspections in Switzerland. Additionally, Switzerland has a number of laws that are intended to protect the privacy of its customers and employees. These Swiss domestic laws may conflict with the Commission's Proposal. Most notably, Article 47 of the Swiss Federal Banking Act, to the extent customers have not waived such right, protects customer-related data from disclosure to any third-parties and applies to all banking institutions in Switzerland. Article 271 of the Swiss Criminal Code also prevents ''official acts'' from being performed on behalf of a foreign authority on Swiss soil and poses an obstacle to the cross-border transmission of data located in Switzerland, in cases where the transmission of data has not been approved by Swiss authorities or the requirements of Article 42c and Article 42 Paragraph 2 of the Swiss Financial Market Supervision Act (''FINMASA'') or the other administrative assistance requirements are not met. Finally, any on-site inspections performed in Switzerland on FINMA supervised entities by non-Swiss authorities are subject to the requirements of Article 43 FINMASA, and will always require varying degrees of FINMA involvement.

[265] *See* EBF letter at 2; Credit Suisse/UBS letter at 2; ISDA letter at 10.

[266] *See* IIB/SIFMA letter at 20.

[267] *See* Credit Suisse/UBS letter at 2.

[268] *See* ISDA letter at 10.

[269] Registration Adopting Release, 80 FR at 48981.

certification and opinion of counsel under Rule 15Fb2–1, as amended).

B. Amendment to Rule 15Fb2–1 Providing for a Conditional Certification and Opinion of Counsel

1. Proposed Approach

In the Proposing Release the Commission acknowledged that a nonresident SBS Entity may be unable to provide the certification or opinion of counsel required under Rule 15Fb2–4(c)(1) [270] by the time the entity would be required to register because efforts to address legal barriers to the Commission's access to books and records are still ongoing.[271] The Commission recognized, in the Proposing Release, that absent relief such nonresident SBS Entities could bear the cost of lowering or restructuring their market activities below the annual thresholds that would trigger registration requirements, an outcome that could create significant market disruptions.[272]

Given that, the Commission proposed to amend Exchange Act Rule 15Fb2–1 to provide additional time for a nonresident SBS Entity to submit the certification and opinion of counsel required under Rule 15Fb2–4(c)(1). Specifically, the Commission proposed new paragraphs (d)(2) and (e)(2) of Exchange Act Rule 15Fb2–1. Proposed paragraph (d)(2) would have provided that a nonresident applicant that is unable to provide the certification and opinion of counsel required under Rule 15Fb2–4(c)(1) shall be conditionally registered for up to 24 months after the compliance date for Rule 15Fb2–1 if the applicant submits a Form SBSE–C and a Form SBSE, SBSE–A or SBSE–BD, as applicable, that is complete in all respects but for the failure to provide the certification and the opinion of counsel required by Rule 15Fb2–4(c)(1). Proposed paragraph (e)(2) would have provided that if a nonresident SBS Entity became conditionally registered in reliance on paragraph (d)(2) and provides the certification and opinion of counsel required by Rule 15Fb2–4(c)(1) within 24 months of the compliance date for Rule 15Fb2–1, the firm would remain conditionally registered until the Commission acts to grant or deny ongoing registration, and that if the nonresident SBS Entity fails to provide the certification and opinion of counsel within 24 months of the compliance date for Rule 15Fb2–1, the Commission may institute proceedings to determine whether ongoing registration should be denied. The Registration Adopting Release noted that once an SBS Entity was conditionally registered, all of the Commission's rules applicable to registered SBS Entities would apply to the entity and it must comply with them.[273]

2. Commission Action

Only one commenter specifically addressed the proposed amendment, and that commenter did so in support of the proposal.[274] However, that commenter also requested that where a provisionally-registered SBS Entity has demonstrated best efforts but is nonetheless unable to furnish the certification and opinion of counsel within the 24-month grace period, the Commission should provide SBS Entities additional time in which to provide the certification and opinion of counsel.[275] More generally, as noted above, commenters have identified concerns with the certification and opinion of counsel requirement, and recommended that the Commission eliminate the requirement altogether, or else eliminate the opinion of counsel requirement and modify the certification requirement, or revise or clarify the proposed guidance regarding the scope of the certification and opinion of counsel requirement.[276] The commenters stated that doing so would, among other things, harmonize with CFTC requirements.[277] Commenters have expressed that the problem is not one of willingness to provide the certification and opinion of counsel at the time of registration, but rather the effect of privacy, blocking and secrecy laws, the EU General Data Protection Regulation (''GDPR'') and other legal impediments on the ability of a nonresident SBS Entity to provide the certification and opinion of counsel required by Rule 15Fb2–4(c). The CFTC addressed this issue by creating an exception for ''applicable blocking, privacy or secrecy laws'' from its requirement that an applicant produce books and records in a timely fashion.

Accordingly, the Commission is adopting a modified approach, which is intended to achieve the same goal as the proposed amendment—providing relief to SBS Entities that are unable to provide the certification or opinion of counsel required under Rule 15Fb2–4(c)(1) by the time the entity would be required to register—but in a manner that more broadly addresses the concerns regarding the application of the certification and opinion of counsel requirement raised by commenters.[278]

Under Rule 15Fb2–1(d)(2) as adopted, a nonresident SBS Entity that is unable to provide the certification and opinion of counsel required by Rule 15Fb2–4(c) by the time the entity is required to register shall instead provide a conditional certification and opinion of counsel that identifies and is conditioned upon the occurrence of a future action that would provide the Commission with adequate assurances of prompt access to the books and records of the nonresident SBS Entity, and the ability of the nonresident SBS Entity to submit to onsite inspection and examination by the Commission. As set forth in Rule 15Fb2–1(d)(3), such future action could include: (1) Entry by the Commission and the foreign financial regulatory authority of the jurisdiction(s) in which the nonresident SBS Entity maintains the books and records that are addressed by the certification and opinion of counsel required by Rule 15Fb2–4 into a memorandum of understanding, agreement, protocol, or other regulatory arrangement providing the Commission with adequate assurances of (i) prompt access to the books and records of the nonresident SBS Entity, and (ii) the ability of the nonresident SBS Entity to submit to onsite inspection and examination by the Commission; (2) issuance by the Commission of an order granting substituted compliance in accordance with Rule 3a71–6 based on adequate assurances by the foreign financial authority in the jurisdiction(s) in which the nonresident SBS Entity maintains the books and records that are addressed by the certification and opinion of counsel required by Rule

[270] As described in the Registration Adopting Release, an SBS Entity is conditionally registered with the Commission when it submits a complete application on Form SBSE, SBSE–A, or SBSE–BD, as appropriate, and the Form SBSE–C senior officer certifications (*see* 17 CFR 240.15Fb2–1(d)). To be complete, a Form SBSE, SBSE–A, or SBSE–BD submitted by a nonresident SBS Entity would generally need to include the Schedule F certification and opinion of counsel.

[271] *See* Proposing Release, 84 FR at 24237. For example, the relevant regulatory authority in the foreign jurisdiction where the nonresident SBS Entity maintains its covered books and records may be in the process of (i) issuing an approval, authorization, waiver or consent or (ii) negotiating an MOU or other arrangement with the Commission.

[272] *See* Registration Adopting Release, 80 FR at 49008.

[273] *See id.* at 48970 n.52.

[274] *See* ISDA letter at 10.

[275] *See id.* at n.24.

[276] *See* EBF letter at 2; Credit Suisse/UBS letter at 2; ISDA letter at 10; IIB/SIFMA letter at 18–20.

[277] *See* EBF letter at 2; Credit Suisse/UBS letter at 2.

[278] *See* Proposing Release at 24236 (noting that an SBS Entity may be unable to provide the certification and opinion of counsel required by Exchange Act Rule 15Fb2–4(c))(1) by the time the entity is required to register because efforts to address legal barriers to Commission access are still ongoing).

15Fb2–4(c)(1); [279] or (3) any other action that would provide the Commission with assurances regarding prompt access to books and records and the ability to conduct onsite inspection and examination of the nonresident SBS Entity. Such ''any other action'' could be premised on, and take into account, the guidance the Commission is providing below and could include, for example, the subsequent receipt by the nonresident SBS Entity of consents on which it could premise a certification and opinion of counsel under Rule 15Fb2–4(c). The Commission is providing guidance below regarding the foreign laws to be addressed, and the scope of the books and records to be covered by the certification and opinion of counsel required by Rule 15Fb2–4(c)(1).

A nonresident SBS Entity that submits a conditional certification and opinion of counsel, in connection with an application that is complete in all respects but for the failure to provide the certification and the opinion of counsel required by Rule 15Fb2–4(c)(1), shall be conditionally registered. A nonresident SBS Entity that has become conditionally registered in reliance on this section will remain conditionally registered until the Commission acts to grant or deny ongoing registration. If none of the future actions that are included in an applicant's conditional certification and opinion of counsel occurs within 24 months of the compliance date for Rule 15Fb2–1, and there is not otherwise a basis for concluding that the Commission will have the necessary access and ability to conduct onsite inspection and examination,[280] the Commission may institute proceedings thereafter to determine whether ongoing registration should be denied, in accordance with paragraph (e)(1) of the rule as amended.[281]

C. Foreign Laws to Be Addressed by the Certification and Opinion of Counsel

1. Proposed Guidance

The Commission proposed to provide guidance that it would be appropriate for the certification and opinion of counsel to address only the laws of the jurisdiction or jurisdictions in which a nonresident SBS Entity maintains its covered books and records as described in Part III.D. below (''covered books and records'').[282] The certification and opinion of counsel would not need to cover every jurisdiction where customers or counterparties of the nonresident SBS Entity may be located or where the nonresident SBS Entity may have additional offices or conduct business. Instead, they would only need to cover the jurisdiction(s) where the nonresident SBS Entity maintains its covered books and records, provided that the laws of the jurisdiction where the firm is incorporated or jurisdictions in which it is doing business would not prevent the Commission from having direct access to the covered books and records, nor prevent the nonresident SBS Entity from promptly furnishing them to the Commission or opening them up to the Commission for an onsite inspection or examination.

2. Commission Action

Commenters expressed concerns that it could be difficult or costly for an SBS Entity to provide a certification and an opinion of counsel regarding the absence of any jurisdiction's requirements that could prevent the SBS Entity from providing the Commission with prompt access to its records or to submit to onsite inspection and examination.[283] The Commission also recognizes that U.S. SBS Entities with operations in other countries may face similar issues but are not required to provide negative assurances regarding the ability of these other jurisdictions to affect Commission access to books and records. Given this, an SBS Entity's certification and opinion of counsel need address only the jurisdiction(s) where the nonresident SBS Entity maintains its covered books and records (as discussed below). In this regard, the certification and opinion of counsel would need to address the laws of the jurisdiction(s) where the nonresident SBS Entity maintains its covered books and records. If a nonresident SBS Entity maintains copies of the required records in multiple jurisdictions, the SBS Entity can elect to provide a certification and opinion of counsel with respect to laws of a single jurisdiction where the necessary access can be supported.[284]

The Commission notes that Exchange Act Section 15F(f)(1)(C) requires that an SBS Entity ''shall keep books and records. . . . open to inspection and examination by any representative of the Commission.'' Similarly, Exchange Act Rule 18a–6(g) provides that a nonresident SBS Entity ''must furnish promptly to a representative of the Commission legible, true, complete, and current copies'' of its books and records.[285] These obligations are independent of, and in addition to, the certification and opinion of counsel requirement.

D. Covered Books and Records

1. Proposed Guidance

In the Proposing Release, the Commission proposed to provide guidance that the certification and opinion of counsel need only address: (1) Books and records that relate to the ''U.S. business'' of the nonresident SBS Entity (as defined in 17 CFR 240.3a71–3(a)(8)); and (2) financial records necessary for the Commission to assess the compliance of the nonresident SBS Entity with capital and margin requirements under the Exchange Act and rules promulgated by the Commission thereunder, if these capital and margin requirements apply to the nonresident SBS Entity. The Commission stated that this guidance could help firms understand the scope of what is covered by the certification and opinion of counsel.

The Commission stated that it would be appropriate to tie the scope of the books and records covered by the certification and opinion of counsel to a firm's ''U.S. business'' and relevant financial records to encompass those transactions that appear particularly likely to affect the integrity of the security-based swap market in the United States and the U.S. financial markets more generally or that raise concerns about the protection of participants in those markets.[286] The Commission indicated that following this approach would tailor the

[279] Under Exchange Act Rule 3a71–6(c)(3), a foreign financial regulatory authority seeking a substituted compliance determination must provide ''adequate assurances that no law or policy of any relevant foreign jurisdiction would impede the ability of any entity that is directly supervised by the foreign financial regulatory authority and that may register with the Commission as [an SBS Entity] to provide prompt access to such entity's books and records or to submit to onsite inspection or examination by the Commission.''

[280] While not required, an applicant that is conditionally registered may amend its application if it subsequently becomes able to provide the certification and opinion of counsel contemplated by Exchange Act Rule 15Fb2–4(c).

[281] *See* Exchange Act Rule 15Fb2–1(e)(2). If there are extenuating circumstances such as, for example, where the foreign regulator has taken steps to issue an approval, authorization, waiver or consent or to enter into an MOU or other arrangement with the Commission, but has not yet completed that process, or the Commission has not yet completed its review of a substituted compliance application, the Commission would expect to take such circumstances into account when considering whether to institute such proceedings.

[282] Proposing Release, 84 FR at 24234.

[283] *See* EBF letter at 3–4; ISDA Letter at 11; IIB/SIFMA letter at 20–21.

[284] *See* EBF letter at 3; ISDA letter at 11–12.

[285] *See* Exchange Act Rule 18a-6(g) and discussion in Recordkeeping and Reporting Adopting Release.

[286] *See* Proposing Release, 84 FR at 24235 n.211 (citing Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30065 (May 13, 2016) (''Business Conduct Adopting Release'').

certification and opinion of counsel to the types of records the Commission would need to review, inspect or examine to determine compliance with applicable substantive requirements.

2. Commission Action

The Commission is providing guidance largely as proposed, with additional clarifications to respond to commenters. Thus, an SBS Entity's certification and opinion of counsel need only address the following records: (1) Books and records that relate to the ''U.S. business'' of the nonresident SBS Entity (as defined in 17 CFR 240.3a71–3(a)(8)); and (2) financial records necessary for the Commission to assess the compliance of the nonresident SBS Entity with applicable capital and margin requirements under the Exchange Act and rules promulgated by the Commission thereunder. The commenters that addressed this aspect of the proposed guidance asked that the certification and opinion of counsel not be required to cover any records maintained by a nonresident SBS Entity's U.S. registered broker-dealer or U.S. security-based swap dealer affiliate.[287] Upon consideration of the comments, we believe it would be appropriate to further clarify that the certification and opinion of counsel need not cover any books and records that are held in the United States, either directly, for example, in an office of the nonresident SBS Entity, or by an associated person of the nonresident SBS Entity or third party in accordance with Rule 18a–6(f).[288] To the extent books and records are maintained in the United States in accordance with Commission rules, the Commission should able to promptly access those records from the U.S. entity, and so there would be no need for the staff to seek to obtain them from the nonresident SBS Entity. The SBS Entity's certification and opinion of counsel would not need to address access to such books and records, except to represent that they are kept in the United States in accordance with Commission rules, but would still need to address the ability of the SBS Entity to submit to onsite inspections and examinations with respect to those books and records.

The Commission is not, however, accepting a suggestion to ''exclude from the definition of covered books and records the financial records of a non-U.S. [security-based swap dealer] that is subject to the Commission's margin and capital requirements but relying on a substituted compliance determination with respect to [its] home country margin and capital requirements.'' [289] Substituted compliance is an alternative means of satisfying the Commission's capital and margin requirements. The Commission retains full authority over registered SBS Entities vis-à-vis the nonresident SBS Entity's compliance with those alternative margin and capital requirements, and Commission staff may need access to the relevant books and records to examine and assess the SBS Entity's compliance with applicable requirements. Accordingly, if a nonresident SBS Entity is subject to the Commission's margin and capital requirements, it is important that the certification and opinion of counsel address access to the covered books and records of that SBS Entity, even if the SBS Entity is relying on a substituted compliance determination with respect to its home country margin and capital requirements.

E. Consents

1. Proposed Guidance

As explained in the Proposing Release, firms had noted that certain jurisdictions' laws may permit a firm to promptly provide access to books and records and to submit to an onsite inspection and examination, if the SBS Entity were to obtain consent from the natural person whose information is documented in the SBS Entity's books and records.[290] In response, the Commission stated its ''preliminary belief'' that it would be appropriate for an SBS Entity's certification and opinion of counsel to be predicated, as necessary, on the SBS Entity obtaining the prior consent of the persons whose information is or will be included in the SBS Entity's books and records. The Proposing Release identified a number of concerns if an SBS Entity were to seek to rely on consents, and proposed guidance that a nonresident SBS Entity seeking to rely on consents, should obtain such consents prior to registering as an SBS Entity, and continue to obtain consents, as necessary, on an ongoing basis so that it would be able to continue to provide the Commission with access to books and records. The Commission noted that it is the SBS Entity's decision whether to rely on consents, and that a nonresident SBS Entity may also want to explore whether an alternative basis exists under the foreign privacy laws that would permit the nonresident SBS Entity to collect and maintain the necessary data and to provide the information directly to Commission staff.[291]

Finally, the Commission stated that a nonresident SBS Entity should, before registering with the Commission, assess whether it would be able to meet the obligation to provide the Commission with access to its books and records, and take appropriate steps to ensure that, if registered, it would be able to comply with them. For example, if a nonresident SBS Entity is unable to obtain consent from a customer or counterparty or if a customer or counterparty provides a consent then later withdraws that consent, the firm may need to cease conducting a security-based swap business with that person in order to comply with the Exchange Act and the Commission's rules thereunder or to seek an alternative basis under the foreign law(s) that allows the nonresident SBS Entity to satisfy its obligations under the federal securities laws.[292]

2. Commission Action

Commenters expressed concern with various aspects of the proposed guidance, in particular that: (1) Requiring SBS Entities to obtain consents prior to registration would be problematic, and the Commission should allow SBS Entities more time (one commenter suggested 24 months after registration) to obtain the required consents; [293] (2) the reliance on consents may not be a viable path forward due to the rules and guidance established under the GDPR and similar member

[287] *See* EBF letter at 3; ISDA letter at 12; IIB/SIFMA letter at 22.

[288] Exchange Act Rule 18a–6(f) provides:

(f) If the records required to be maintained and preserved pursuant to the provisions of §§ 240.18a–5 and 240.18a–6 are prepared or maintained by a third party on behalf of the security-based swap dealer or major security-based swap participant, the third party must file with the Commission a written undertaking in a form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the security-based swap dealer or major security-based swap participant and will be surrendered promptly on request of the security-based swap dealer or major security-based swap participant and including the following provision:

With respect to any books and records maintained or preserved on behalf of [SBSD or MSBSP], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete, and current hard copies of any or all or any part of such books and records.

Agreement with an outside entity will not relieve such security-based swap dealer or major security-based swap participant from the responsibility to prepare and maintain records as specified in this section or in § 240.18a–5.

[289] *See* IIB/SIFMA letter at 22.

[290] *See* Proposing Release, 84 FR at 24235.

[291] *Id.*

[292] *See id.*

[293] *See* EBF letter at 2, 5; ISDA letter at 13; IIB/SIFMA letter at 28.

state rules, because those consents must be given freely with the ability to withdraw the consent at any time; [294] (3) the Commission should not impose requirements regarding the method and frequency in which consent must be obtained, and SBS Entities should be able to obtain consent on a one-time basis through a protocol or disclosure-based regime and not be required to obtain consents on a transaction-by-transaction basis; [295] and (4) a withdrawal of consent by a counterparty should not affect transactions a security-based swap dealer had entered into with such counterparty when the counterparty's initial consent was in force.[296]

Nothing in the Exchange Act or the rules thereunder, or the guidance, requires an SBS Entity to obtain consents of the persons whose information is or will be included in its books and records. To the extent, however, such consents would allow the nonresident SBS Entity to promptly provide the Commission with access to its books and records and submit to on-site inspection and examination in the relevant jurisdiction, the Commission is providing guidance that the certification and opinion of counsel of a nonresident SBS Entity may be predicated upon the receipt of such consents.

The Commission is mindful of the concerns raised by commenters, but believes that, in addition to the requirements of Rule 15Fb2–4, the reliance on consents in providing the required certification and opinion of counsel regarding its covered books and records may implicate the underlying requirements of both Exchange Act Section 15F(f)(1)(C), which requires that an SBS Entity ''shall keep books and records . . . open to inspection and examination by any representative of the Commission,'' and Exchange Act Rules 17a–4(j) and 18a–6(g), as relevant, under which a nonresident SBS Entity must ''furnish promptly to a representative of the Commission legible, true, complete, and current copies'' of its books and records. Accordingly, the Commission is clarifying that, when an SBS Entity is relying on consents in providing the required certification and opinion of counsel regarding its covered books and records, the SBS Entity should obtain consents in a time and manner consistent with the representations made in the certification and opinion of counsel (such as, prior to entering into a transaction with counterparties for which the SBS Entity is relying on consents in providing the required certification and opinion of counsel regarding its covered books and records), in order to ensure Commission prompt access to books and records, regardless of whether the entity is conditionally or permanently registered.[297]

Similarly, to the extent an SBS Entity is relying on consents in providing the required certification and opinion of counsel regarding its covered books and records, it is not the Commission's intent that the withdrawal of consent by a counterparty should affect the validity of transactions entered into when the counterparty's consent was in force.[298] Nor does the Commission believe that a counterparty's withdrawal of consent would necessarily require amendment of an SBS Entity's certification and opinion of counsel under Rule 15Fb2–4(c)(2).[299] That said, the SBS Entity would still need to comply with the underlying requirements of Exchange Act Section 15F(f)(1)(C) and of Exchange Act Rule 18a-6(g), as discussed.[300] For that reason, as noted in the Proposing Release, a nonresident SBS Entity may also want to explore whether an alternative basis exists under the foreign privacy laws that would permit the nonresident SBS Entity to collect and maintain the necessary data and to provide the information to Commission staff.[301]

F. Open Contracts

1. Proposed Guidance

In the Proposing Release, the Commission stated that it preliminarily believed that the certification and opinion of counsel would not need to address the books and records of security-based swap transactions that were entered into prior to the date on which a nonresident SBS Entity submits an application for registration pursuant to Section 15F(b) of the Exchange Act and the rules thereunder.[302] The Commission indicated that it recognizes there may be practical impediments to obtaining consents with respect to open contracts,[303] and that any potential application of these rules to open contracts could undermine the expectations that the parties had when entering into the security-based swap.

2. Commission Action

The Commission is providing the guidance as proposed.[304] Thus, a nonresident SBS Entity's certification and opinion of counsel need not address records relating to security-based swap transactions entered into prior to the date on which a nonresident SBS Entity submits an application for registration pursuant to Section 15F(b) of the Exchange Act and the rules thereunder which the nonresident SBS Entity continues to hold on its books and records and under which it may have continuing obligations.

G. Memoranda of Understanding, Agreements, Protocols, or Other Regulatory Arrangements With Foreign Financial Regulatory Authorities

1. Proposed Approach

The Commission stated in the Proposing Release that firms have indicated that while local laws or rules in some foreign jurisdictions may prevent a nonresident SBS Entity from providing the Commission with direct access to its books and records or submitting to onsite inspections or examinations, in some cases the relevant foreign financial regulatory authority may have entered into an MOU or other arrangement with the Commission to facilitate Commission access to records of nonresident SBS

[294] *See* EBF letter at 3; IIB/SIFMA letter at 23. One commenter asked the Commission to exempt EU-based registrants from obtaining employee consents because GDPR may prevent nonresident SBSDs from obtaining such consents. *See* ISDA letter at 13.

[295] *See* ISDA letter at 13–14.

[296] *See* IIB/SIFMA letter at 27–28.

[297] The Commission is not addressing the method and frequency in which consent must be obtained.

[298] *See* IIB/SIFMA letter at 27–28.

[299] Exchange Act Rule 15Fb2–4(c)(2) requires a nonresident SBS Entity to re-certify and submit a revised opinion of counsel within 90 days after any changes in the legal or regulatory framework that would impact the SBS Entity's ability to provide, or the manner in which it provides the Commission prompt access to its books and records, or would impact the Commission's ability to inspect and examine the SBS Entity. If the SBS Entity is able to continue to meet its obligations notwithstanding the withdrawal of consent, such as for example if there is an MOU between the Commission and the relevant foreign financial regulator, a withdrawal of consent may not implicate Rule 15Fb2–4(c)(2).

[300] Because the final rules do not require an SBS Entity to obtain consents, the Commission is not adopting the commenter's suggestion that it exempt EU-based registrants from obtaining employee consents. *See* ISDA letter at 13.

[301] *See* Proposing Release, 84 FR at 24235.

[302] *See id. See also* Business Conduct Adopting Release, 81 FR at 29969, in which the Commission stated that the business conduct rules generally would not apply to any security-based swap entered into prior to the compliance date of the rules, and generally would apply to any security-based swap entered into after the compliance date of these rules, including a new security-based swap that results from an amendment or modification to a pre-existing security-based swap.

[303] For purposes of the proposed guidance, the term ''open contracts'' would have included any contract entered into by the SBS Entity prior to the date on which an SBS Entity submits an application for registration which the SBS Entity continues to hold on its books and records and under which it may have continuing obligations.

[304] The one commenter that addressed this issue indicated that it supported this proposed guidance. *See* IIB/SIFMA letter at 24.

Entities located in the jurisdiction.[305] Those firms requested guidance regarding whether the certification and opinion of counsel submitted by a nonresident SBS Entity could rely on MOUs or other arrangements foreign financial regulatory authorities may have entered into with the Commission to facilitate Commission access to records at the request of the SBS Entity.

In the Proposing Release, the Commission stated that it preliminarily believes that it would be appropriate for the certification and opinion of counsel to take into account whether the relevant regulatory authority in the foreign jurisdiction has: (i) Issued an approval, authorization, waiver or consent; or (ii) entered into an MOU or other arrangement with the Commission facilitating direct access to the books and records of SBS Entities located in that jurisdiction, including the Commission's inspections and examinations at the offices of SBS Entities located in that jurisdiction, provided that such an approval, authorization, waiver, consent or MOU or arrangement is necessary to address legal barriers to the Commission's direct access to books and records of the SBS Entities in that jurisdiction.[306] However, the Commission noted that consideration of such an approval or MOU would need to be consistent with the Commission's registration program.

The Commission further stated in the Proposing Release that it would be appropriate to take into consideration an MOU or other arrangement that provided for consultation or cooperation with a foreign regulatory authority in conducting onsite inspections and examinations at the foreign offices of nonresident SBS Entities.[307] The Commission further noted that it also believed it would be consistent with its registration program if the Commission is required to notify the relevant foreign regulatory authority of its intent to conduct an onsite inspection or examination and staff from the foreign regulatory authority can accompany the Commission when it visits the foreign office of the nonresident SBS Entity.[308] However, the Commission indicated that it would not be consistent with its interpretation of the requirement to rely on an MOU or other arrangement if, whether by the terms of any relevant agreement, under provisions of local law, or in light of prior practice, consultation or cooperation with the foreign regulatory authority restricts the Commission's ability to conduct timely inspections and examinations of the books and records in the foreign office of the nonresident SBS Entity.[309]

2. Commission Action

The commenters that addressed the issue supported the proposition that the certification and opinion of counsel could take into account MOUs with and others actions of the relevant foreign regulatory authorities.[310] In particular, commenters suggested that MOUs could help to facilitate the needed access to books and records. One commenter noted that ''some conflicts with blocking and secrecy laws can be successfully addressed [with arrangements with home country regulators], resulting in direct access to records,'' [311] while another recommended that the Commission allow the certification and opinion to rely on MOUs and similar tools because ''the SEC may still obtain personal data through MOUs and other similar tools, which are permitted under GDPR.'' [312] A third commenter stated that the ''Commission should address [. . .] conflicts with personal data protection laws through MOUs with the appropriate foreign regulatory agencies'' because the MOUs would provide the Commission with ''access to protected personal data.'' [313]

After consideration of these comments, the Commission is providing guidance, consistent with the standard we are adopting in Rule 15Fb2–1, as discussed above, that a nonresident SBS Entity's certification and opinion of counsel may take into account whether the relevant regulatory authority in a foreign jurisdiction has entered into a memorandum of understanding, agreement, protocol, or other regulatory arrangement providing the Commission with adequate assurances of (1) prompt access to the books and records of the nonresident SBS Entity, and (2) the ability of the nonresident SBS Entity to submit to onsite inspection or examination by the Commission. The certification and opinion of counsel may also take into account an applicant's understanding of the general experience with the foreign jurisdiction's application of the relevant local law or rule. Accordingly, if an applicant reasonably believes that there is nothing in local law that would interfere with the Commission's ability to examine the applicant, the applicant may take into account that experience as well in making the certification or obtaining the opinion of counsel. An applicant could form a reasonable belief, for example, if it had been able to provide access to Commission staff or other U.S. regulators without difficulty in the past, and there have been no changes in local law that would materially alter the circumstances surrounding the applicant's past experience.

Again consistent with the standard we are adopting in Rule 15Fb2–1, the Commission believes that it is appropriate as well for a nonresident SBS Entity's certification and opinion of counsel to take into account a Commission determination granting substituted compliance, in accordance with Rule 3a71–6(c)(3), to a jurisdiction in which the SBS Entity maintains its covered books and records.

H. Requests for Substituted Compliance

1. Proposed Approach

As noted in the Proposing Release, the guidance regarding the certification and opinion of counsel requirements in Rule 15Fb2–4 also would be relevant to Exchange Act Rule 3a71–6, which allows SBS Entities to comply with certain requirements under Section 15F of the Exchange Act through substituted compliance.[314] Paragraph (c)(2)(ii) of Rule 3a71–6 provides that substituted compliance requests by parties or groups of parties—other than foreign financial regulatory authorities—must include the certification and opinion of counsel required in connection with SBS Entity registration as if such party were subject to that requirement at the time of the request.[315] By contrast, substituted compliance requests submitted by foreign regulatory authorities are not required to be accompanied by a certification or opinion of counsel.[316] Rather, foreign financial regulatory authorities may make substituted compliance requests only if they provide adequate assurances that no law or policy of any relevant foreign jurisdiction would impede the ability of any entity that is directly supervised by the foreign financial regulatory authority and that may register with the Commission as an SBS Entity to provide the Commission with prompt access to the entity's books or records, or to submit to on-site inspection and examination by the

[305] *See* Proposing Release, 84 FR at 24235–36 n. 201, citing memoranda of meetings between Commission staff and market intermediaries.

[306] Proposing Release, 84 FR at 24236.

[307] *Id.*

[308] *Id.*

[309] *Id.*

[310] *See* EBF letter at 2–3; ISDA letter at 12; IIB/SIFMA letter at 23–24.

[311] *See* EBF Letter at 2–3.

[312] *See* ISDA Letter at 12.

[313] *See* IIB/SIFMA Letter at 24.

[314] Exchange Act Rule 3a71–6; *see also* Proposing Release, 84 FR at 24233–34.

[315] Exchange Act Rule.3a71–6(c)(2)(ii).

[316] Exchange Act Rule 3a71–6(c)(3).

Commission.[317] The Commission further explained in the Proposing Release that the guidance outlined in Parts III.C.1, III.D.1, III.E.1, III.F.1, and III.G.1 above regarding the application of the certification and opinion of counsel requirements would inform the Commission's assessment of any certification and opinion of counsel, or assurances from a foreign financial regulatory authority, submitted in connection with a substituted compliance request.[318]

In the Proposing Release, the Commission noted the time needed to consider substituted compliance requests and welcomed submission of substituted compliance requests with respect to any of its final rules for which substituted compliance is potentially available.[319] The Commission noted that it would consider all such requests, including those submitted without a certification or opinion of counsel, though a request by parties or groups of parties who are not foreign regulatory authorities would not be considered complete until a certification and opinion are filed.[320] Accordingly, the Commission encouraged potential applicants to begin the process of requesting substituted compliance as soon as practicable.[321] The Commission cautioned, however, that this did not mean that the Commission would grant any application for substituted compliance until any required certification and opinion of counsel are filed.[322]

2. Commission Action

The Commission continues to believe that the guidance outlined in Parts III.C to III.G above regarding the scope and content of the certification and opinion of counsel requirement in Rule 15Fb2–4 also should be relevant to any certification and opinion of counsel from a registrant or potential registrant pursuant to Exchange Act Rule 3a71–6(c)(2)(ii) in connection with a substituted compliance request. The certification and opinion of counsel required in connection with a substituted compliance request submitted by a party or group of parties other than a foreign financial regulatory authority are identical to the certification and opinion of counsel required in connection with SBS Entity registration.[323]

Some commenters urged the Commission to revise Rule 3a71–6 so as to eliminate the requirement for a certification and opinion (in the case of substituted compliance requests made by parties or groups of parties who are not foreign financial regulatory authorities) and for adequate assurances (in the case of substituted compliance requests made by foreign financial regulatory authorities).[324] These commenters argued that the Commission no longer needs this certification and opinion or assurances, given the Commission's proposed 24-month grace period for delivery of the certification and opinion required in connection with registration of a non-resident SBS Entity, as discussed above in Part III.B.[325] Nevertheless, the certification, opinion of counsel, and assurances required in connection with substituted compliance applications remain relevant despite the Commission's adoption of changes to Exchange Act Rule 15Fb2–1. These requirements serve to assure the Commission regarding its ability to evaluate a registrant's compliance with the federal securities laws. For any requirements for which the Commission permits the use of substituted compliance, compliance with the federal securities laws would be measured by reference to the registrant's compliance with a foreign financial regulatory system. Any impediments to the Commission's ability to access a registrant's books and records thus could impede its ability to evaluate the registrant's compliance with the foreign requirements. Further, unlike in the context of SBS Entity registration, Exchange Act Rule 3a71–6(a)(2)(ii) requires the Commission to enter into supervisory and enforcement cooperation arrangements as a necessary component of substituted compliance. In the substituted compliance context, impediments to the Commission's ability to access a registrant's books and records have the potential to impede effective cooperation with the relevant foreign financial regulatory authority. As the Commission noted when it proposed the substituted compliance framework, these cooperation arrangements were intended to express the commitment of the Commission and the foreign financial regulatory authority or authorities to cooperate with each other to fulfill their respective regulatory mandates.[326] This commitment, as expressed through the substituted compliance cooperation arrangement, is critical for the Commission to be able to interpret, evaluate, and enforce requirements for which substituted compliance is available. The Commission thus is retaining the certification, opinion, and adequate assurances requirements of Rule 3a71–6.

Commenters also argued that, if the Commission is unable to issue final substituted compliance determinations ahead of the compliance date for registration of SBS Entities, the Commission should issue temporary substituted compliance determinations for the same foreign requirements for which the CFTC has issued comparability determinations and related no-action relief regarding certain swap dealer requirements.[327] One commenter further suggested that all requests for substituted compliance submitted at least six months before the compliance date for SBS Entity registration and not adjudicated before that date should be deemed granted until 18 months after the Commission completes its review.[328] As discussed below in Part X.B, the Commission has considered commenters' concerns regarding the time needed to plan for SBS Entity registration, and is providing potential registrants more than 18 additional months to prepare for the compliance date for SBS Entity

[317] *Id.*

[318] *See* Proposing Release, 84 FR at 24233 & n.206.

[319] *See* Proposing Release, 84 FR at 24233–34.

[320] *See id.* at 24234. For the avoidance of doubt, Rule 15Fb2–1(d)(2) is not relevant to substituted compliance requests.

[321] *See id.*

[322] *See id.*

[323] *See* Exchange Act Rule 3a71–6(c)(2)(ii). Similarly, the Commission continues to believe that relevant aspects of the guidance outlined in Parts III.D to III.F above should inform the Commission's assessment of whether a foreign financial regulatory authority has provided the assurances required pursuant to Exchange Act Rule 3a71–6(c)(3) in connection with a substituted compliance request submitted by a foreign financial regulatory authority.

[324] *See* EBF letter at 5–6 (arguing that the Commission no longer requires assurances regarding access to substituted compliance users' books and records given the Commission's proposal to permit a delay in the delivery of the certification and opinion of counsel required in connection with SBS Entity registration); IIB/SIFMA letter at 25 (arguing that the certification, opinion of counsel and assurances requirements served only to prevent the Commission from having to consider substituted compliance requests from a jurisdiction with legal barriers that prevent access to registrants' books and records); ISDA letter at 14–15 (arguing that the issues that would warrant delaying delivery of the certification and opinion of counsel required in connection with SBS Entity registration also would impede delivery of a certification and opinion of counsel in connection with substituted compliance requests).

[325] *See* EBF letter at 5–6; IIB/SIFMA letter at 25; ISDA letter at 14–15.

[326] *See* Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30968, 31088 (May 23, 2013) (''Cross-Border Proposing Release'').

[327] *See* EBF letter at 6; IIB/SIFMA letter at 32; ISDA letter at 15; Credit Suisse/UBS letter at 2–3.

[328] *See* IIB/SIFMA letter at 32.

registration. The Commission believes that this time period also is sufficient for it to complete consideration of substituted compliance applications, and thus aims to complete consideration of timely substituted compliance applications in advance of the compliance date for SBS Entity registration. To achieve that goal, the Commission welcomes requests for substituted compliance ahead of the compliance date for SBS Entity registration, including those submitted without a certification or opinion of counsel, and encourages potential applicants to begin the process of requesting substituted compliance as soon as practicable.[329] The Commission expects to work closely with applicants for substituted compliance, including both potential registrants and relevant foreign financial regulatory authorities. Because the Commission does not expect its consideration of timely substituted compliance applications to be delayed beyond the compliance date for SBS Entity registration, the Commission believes it unnecessary to adopt a framework for provisional substituted compliance. Should the Commission determine that, despite diligent efforts of the staff, potential registrants, and authorities, it requires additional time to complete consideration of a substituted compliance application, appropriate relief tailored to specific circumstances may be considered.

I. Other

Rule 15Fb2–4(c)(2) requires a nonresident SBS Entity to re-certify within 90 days after any changes in the legal or regulatory framework that would impact the ability of the SBS Entity to provide, or the manner in which it would provide prompt access to its books and records, or would impact the ability of the Commission to inspect and examine the SBS Entity. The SBS Entity would be required as well to submit a revised opinion of counsel describing how, as a matter of law, the SBS Entity will continue to meet its obligations. Commenters have identified concerns with the rule as drafted, and provided thoughtful suggestions regarding steps the Commission could take to address the underlying concern of ensuring the Commission's continued prompt access to books and records and the ability of the SBS Entity to submit to onsite inspection and examination by the Commission.[330] In this regard, the Commission will continue to remain available to provide assistance regarding issues that may arise in connection with the SBS Entity's obligation to update its certification and opinion of counsel upon changes in the relevant foreign laws.

IV. Amendment to Commission Rule of Practice 194

A. Proposed Approach

Commission Rule of Practice 194 [331] governs the process by which SBS Entities may apply to the Commission for relief from the statutory disqualification prohibition set forth in Section 15F(b)(6) of the Exchange Act.[332] As outlined in the proposal, the Commission proposed new paragraph (c)(2) of Rule of Practice 194 to both (1) address concerns raised by commenters before and after the Commission adopted its SBS Entity registration rules relating to the application of the prohibition in Exchange Act Section 15F(b)(6) to associated persons of SBS Entities who are not U.S. persons and who do not interact with U.S. persons,[333] and (2) to harmonize the Commission's rules more closely with the CFTC's approach to statutory disqualification as it applies to the activities of non-U.S. associated persons.[334] As proposed, paragraph (c)(2) of Rule of Practice 194 would provide an exclusion, subject to certain limitations, from the statutory disqualification prohibition in Section 15F(b)(6) of the Exchange Act for an SBS Entity with respect to an associated person who is a natural person who (1) is not a U.S. person and (2) does not effect and is not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons, other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person.[335]

The Commission also proposed that an SBS Entity would not be able to avail itself of the exclusion from the prohibition in Exchange Act Section 15F(b)(6) set forth in proposed paragraph (c)(2) with respect to an associated person if that associated person is currently subject to an order described in subparagraphs (A) and (B) of Section 3(a)(39) of the Exchange Act,[336] with the limitation that an order by a foreign financial regulatory authority described in subparagraphs (B)(i) and (B)(iii) of Section 3(a)(39) shall only apply to orders by a foreign financial regulatory authority in the jurisdiction where the associated person is employed or located.[337]

B. Commission Action

In soliciting comments on proposed new paragraph (c)(2), the Commission noted that in the Registration Adopting Release, the Commission included an interpretation of the scope of the phrase ''involved in effecting security-based swaps,'' as that phrase is used in Exchange Act Section 15F(b)(6).[338] The Commission stated in the Registration Adopting Release that the term ''involved in effecting security-based swaps'' generally means engaged in functions necessary to facilitate the SBS Entity's security-based swap business, including, but not limited to the following activities: (1) Drafting and negotiating master agreements and confirmations; (2) recommending security-based swap transactions to counterparties; (3) being involved in executing security-based swap transactions on a trading desk; (4) pricing security-based swap positions; (5) managing collateral for the SBS Entity; and (6) directly supervising

[329] *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43957.

[330] *See* IIB/SIFMA at 26–27. Among other things, IIB/SIFMA suggests that the Commission should clarify what would constitute a reasonable approach for a nonresident security-based swap dealer to identify changes in the laws covered by its certification and opinion of counsel, and that the nonresident security-based swap dealer conduct its review of applicable law in connection with the compliance review that would take place in connection with annual reports of the Chief Compliance Office under Exchange Act Rule 15Fk–1(c). Under this approach, a nonresident security-based swap dealer would be required to notify the Commission of any issue within 90 days of the annual review and in connection with such notice, to propose a plan for addressing the issue.

[331] *See* Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons To Effect or Be Involved in Effecting Security-Based Swaps,'' Exchange Act Release No. 84858 (Dec. 19, 2018), 84 FR 4906–47. (Feb. 19, 2019) (''Rule of Practice 194 Adopting Release'').

[332] *See* 15 U.S.C. 78o–10(b)(6)), which provides that, ''[e]xcept to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, if the security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.''

[333] *See* Proposing Release, 84 FR at 24238 n.235.

[334] *See id.* at 24238–39.

[335] *See id.* at 24238–42, 24290.

[336] Generally, Exchange Act Section 3(a)(39) defines the circumstances that would subject a person to a statutory disqualification with respect to membership or participation in, or association with a member of, an SRO. *See* 15 U.S.C. 78c(a)(39).

[337] *See* Proposing Release, 84 FR at 24238–42, 24290.

[338] *See id.* at 24242 (Question 7).

persons engaged in the above-described activities.[339] The Commission requested comment on whether, based on the above-mentioned interpretation: (1) There are additional categories of non-U.S. associated persons of an SBS Entity that should be excluded from the statutory disqualification prohibition in Section 15F(b)(6); and, (2) if so, to describe the functions carried out by such non-U.S. associated persons of an SBS Entity and why commenters believe those functions do not present the types of concerns addressed by the prohibition on associating with a statutorily disqualified person.[340]

Certain commenters addressed proposed Rule of Practice 194(c)(2) specifically.[341] Although all such commenters supported proposed Rule of Practice 194(c)(2), these commenters also expressed that the scope of non-U.S. associated persons subject to the Commission's statutory disqualification prohibition and questionnaire recordkeeping requirement is still overly broad.[342] These commenters requested that the Commission further narrow the scope of non-U.S. persons subject to these requirements to include only non-U.S. front-office associated persons who solicit or accept security-based swaps with U.S. persons or who supervise such persons and, in turn, to exclude non-U.S. middle- or back-office associated persons.[343] In general, the commenters state that including middle- and back-office functions within the scope of the statutory disqualification provision would sweep in numerous additional associated persons as compared to the CFTC's approach to the parallel statutory disqualification provision under the CEA.[344] These commenters suggest that, by modifying proposed Rule of Practice 194(c)(2) to more closely track the CEA definition of ''associated person of a swap dealer or major swap participant,'' [345] the Commission could exclude non-U.S. middle- or back-office associated persons from the statutory disqualification prohibition and thus the questionnaire recordkeeping requirement.[346] They state that this approach would more closely harmonize the Commission's statutory disqualification prohibition with the CFTC's approach to its analogous statutory disqualification prohibition.[347]

For example, one commenter argues that including middle- and back-office functions within the scope of the statutory disqualification provision would sweep in ''a great number of additional persons . . . because financial institutions tend not to organize those functions to be focused on a single jurisdiction such as the United States (*e.g.,* when negotiating global master agreements), but rather serve the entire swap business holistically, and which tend to be harder to canvas under home country laws, given that they have no trading authority.'' [348] Similarly, another commenter argues that, with respect to these middle- or back-office associated persons, ''[t]heir discretion is frequently constrained in respects that make the potential for bad acts that could harm counterparties very limited, not only through detailed procedures but also multiple layers of controls.'' [349] According to that commenter, while the benefits of subjecting these middle- or back-office associated persons to the statutory disqualification requirement in Section 15F(b)(6) would be relatively low, the costs of extending this requirement to these associated persons, on the other hand, would be quite high.[350] This same commenter also states that the number of associated persons implicated by the Commission's current interpretation would be ''significant,'' that many of them would be located outside the United States, and that these associated persons frequently perform functions for a broad range of products not limited to security-based swaps.[351]

In response to the proposal, European Commission staff asked certain EBF members to provide estimates of the number of associated persons that may be potentially impacted under four different scenarios: (Scenario 1) if proposed Rule of Practice 194(c)(2) is not adopted (*i.e.,* the status quo without proposed paragraph (c)(2)); (Scenario 2) if proposed Rule of Practice 194(c)(2) is adopted, as proposed, without modification; (Scenario 3) if proposed Rule of Practice 194(c)(2) is adopted, as proposed, but modified to also exclude associated persons involved in drafting and negotiating master agreements and confirmations and managing collateral for the SBS Entity; and (Scenario 4) if proposed Rule of Practice 194(c)(2) is adopted, as proposed, but modified to exclude all associated persons identified in Scenario 3, as well as associated persons involved in structuring or supervisory functions (*i.e.,* only sales and trading associated persons would be considered ''involved in effecting'' security-based swap transactions).[352] European Commission staff provided estimates from six unspecified EBF member firms, which show that adopting the amendment as proposed may reduce the number of associated persons impacted by the statutory prohibition by approximately 54%, with a range of estimates between 20% and 85%, as well as further reductions in the number of associated persons impacted by the prohibition for Scenarios 3 and 4, which are discussed below.[353]

After considering the commenters' views, the Commission is adopting Rule of Practice 194(c)(2) as proposed. As a threshold matter, in response to the commenters' general suggestion that the Commission modify proposed Rule of Practice 194(c)(2) to more closely track the CEA definition of ''associated person of a swap dealer or major swap

[339] *See id.* at 24242, n. 268 (citing Registration Adopting Release, 80 FR at 48974, 48976); *see also id.* at 24213, n. 61.

[340] *See id.* at 24242.

[341] *See* EBF letter at 6; IIB/SIFMA letter at 5, 29–30; ISDA letter at 3, 16; *see also* email from Tilman Lueder, Head of Securities Markets Unit, European Commission, dated Sept. 10, 2019 (''European Commission email'') (providing estimates from six unspecified EBF member firms on the number of associated persons potentially impacted under four possible scenarios, including adopting Rule of Practice 194(c)(2) as proposed or with further modifications to exclude certain middle- or back-office functions).

[342] *See* EBF letter at 6; IIB/SIFMA letter at 5, 30; ISDA letter at 3, 16.

[343] *See* EBF letter at 6; IIB/SIFMA letter at 5, 30; ISDA letter at 3, 16.

[344] *See* EBF letter at 6; IIB/SIFMA letter at 5, 30; ISDA letter at 3, 16. CEA Section 4s(b)(6) parallels the statutory disqualification prohibition under Exchange Act Section 15F(b)(6). *See* 7 U.S.C. 6s(b)(6); *see also* CFTC Regulation 23.22 (promulgating the statutory disqualification prohibition in CEA Section 4s(b)(6) under the CFTC's regulations).

[345] 7 U.S.C § 1a(4) (with respect to the CEA, ''[t]he term 'associated person of a swap dealer or major swap participant' means a person who is associated with a swap dealer or major swap participant as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation or acceptance of swaps; or (ii) the supervision of any person or persons so engaged''); *see also* 17 CFR 1.3 (CEA Regulation defining associated person of a swap dealer or major swap participant).

[346] *See* EBF letter at 6; IIB/SIFMA letter at 30; ISDA letter at 16.

[347] *See* EBF letter at 6; IIB/SIFMA letter at 30; ISDA letter at 16.

[348] EBF Letter at 6.

[349] IIB/SIFMA Letter at 30; *see also id.* (also suggesting that if the Commission does not adopt the commenter's recommendation, the Commission should instead adopt an exclusion for associated persons ''who neither engage in these front office functions nor exercise managerial or other discretionary, supervisory authority over the'' security-based swap business of an SBS Dealer in order to be consistent with FINRA's approach to operations professionals as provided in FINRA Rule 1220(b)(3)).

[350] *See id.* This commenter did not provide supporting data regarding the magnitude of these purported benefits or costs.

[351] *Id.* This commenter did not provide supporting data regarding the number of associated persons impacted by its recommendation.

[352] *See* European Commission email.

[353] *See id.*

participant,'' [354] it is important to note that Exchange Act Section 3(a)(70) generally defines the term ''persons associated with'' an SBS Entity more broadly than the CEA defines associated person of a swap dealer or major swap participant.[355] The Exchange Act definition includes, among other persons, any employee of an SBS Entity,[356] while the CEA definition is limited to persons acting in any capacity that involves the solicitation or acceptance of swaps or the supervision of any person or persons so engaged.[357] However, the Exchange Act definition generally excludes persons performing functions that are solely clerical or ministerial, which would include middle- or back-office associated persons of SBS Entities solely performing such functions.[358]

Additionally, while the Commission adopted an exclusion for associated person entities in Rule of Practice 194(c)(1),[359] the Commission continues to believe that replacing an associated person that is a natural person that is effecting or involved in effecting security-based swap transactions because of a statutory disqualification would not create the same practical issues and possible market disruption as moving the services, such as cash and collateral management services, provided by an associated person entity to another entity.[360] Further, the Commission is not revising its prior interpretation of the scope of the phrase ''involved in effecting security-based swaps,'' as it is used in Exchange Act Section 15F(b)(6), by adopting the modifications to the proposal recommended by commenters.[361] Revising the Commission's prior interpretation to either carve out all [362] or some [363] middle- or back-office functions would be inconsistent with the Commission's analogous interpretation of the term ''effecting transactions'' in the context of securities transactions.[364] As the Commission explained, effecting transactions in securities includes more than just executing trades or forwarding orders for execution.[365] Generally, effecting securities transactions also can include, for example, participating in the transactions through a number of activities such as screening potential participants in a transaction for creditworthiness, facilitating the execution of a transaction, and handling customer funds and securities.[366]

Moreover, revising the Commission's interpretation as these commenters suggest would narrow the scope of the term ''involved in effecting'' such that it would have the same meaning as the term ''effect.'' However, as the Commission observed in the Registration Adopting Release, the statutory provision on disqualification in Section 15F(b)(6) of the Exchange Act includes the phrase ''involved in effecting,'' separately and in addition to ''effecting.'' [367] The Commission stated previously that it understands that the inclusion of two separate terms in Section 15F(b)(6) to mean that the terms have different meanings, and that the term ''involved in effecting'' includes a broader range of activities than simply ''effecting'' security-based swap transactions.[368] Accordingly, the Commission explained that ''it would be inappropriate to focus solely on the persons that effect transactions and not also on those that are involved more broadly in these key aspects of the process necessary to facilitate transactions, because persons involved in these key aspects of the process have the ability, through their conduct (intentional or unintentional), to increase risks to investors, counterparties and the markets.'' [369]

In addition, if any of the modifications recommended by these commenters are adopted, it would create an inconsistent application of the statutory prohibition for associated persons involved in effecting security-based swap transactions with or for counterparties that are U.S. persons. That inconsistency would result in certain associated persons being excluded from the statutory prohibition—even though they are involved in the security-based swap market in the United States—simply because those persons are located outside the United States and their firms have organized their back-offices to service the entire swap and security-based swap business irrespective of jurisdiction.

As discussed in Part VI.C below, this inconsistency may result in competitive disparities between U.S. and non-U.S. statutorily disqualified persons in middle- and back-office functions. Indeed, based on the estimates provided to the European Commission by EBF member firms, the potential for competitive disadvantage is not trivial. For example, and as outlined in Part VI.C, two of the alternative scenarios provided by EBF member firms may reduce the scope of application of the statutory prohibition with respect to non-U.S. associated persons—even though they may be involved in the security-based swap market in the United States—by an average of 38%, for Scenario 3 relative to the proposal (with estimates ranging between 20% and 80% for Scenario 3), and by an average of 66% for Scenario 4 relative to the proposal (with estimates ranging of between 45% and 87% for Scenario 4).[370]

We also note that, even without the modification recommended by these commenters, the amendments to Rule 18a–5 as adopted, which are discussed below,[371] will reduce the burden on firms with respect to the questionnaire requirements for non-U.S. associated persons. For example, subparagraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) to Rule 18a–5, as adopted, provide that a questionnaire or application for employment executed by an associated person who is not a U.S. person need not include all of the information described in paragraphs (a)(10)(i)(A) through (H) and (b)(8)(i)(A) through (H) of Rule 18a–5, unless the SBS Entity (1) is required to obtain such information under applicable law in the jurisdiction in which the associated person is employed or located or (2) obtains such information in conducting a background check that is customary for such firms in that jurisdiction, and the creation or

[354] *See* note 345, *supra.*

[355] *Compare* 15 U.S.C. 78c(a)(70) *with* 7 U.S.C § 1a(4).

[356] *See* 15 U.S.C. 78c(a)(70).

[357] *See* 7 U.S.C § 1a(4).

[358] *See* 15 U.S.C. 78c(a)(70)(B).

[359] *See* 17 CFR 201.194(c).

[360] *See* Rule of Practice 194 Adopting Release, at 4911; *see also* Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons To Effect or Be Involved in Effecting Security-Based Swaps, Exchange Act Release No. 75612 (Aug. 5, 2015), 80 FR 51684, 51695 (Aug. 25, 2015) (proposing release).

[361] *See* EBF letter at 6; IIB/SIFMA letter at 5, 29–30; ISDA letter at 3, 16.

[362] *See* EBF letter at 6; IIB/SIFMA letter at 5, 29–30; ISDA letter at 3, 16.

[363] *See* European Commission email (suggesting in Scenario 3, outlined above, excluding associated persons involved in drafting and negotiating master agreements and confirmations and managing collateral for the SBS Entity).

[364] *See* Registration Adopting Release, 80 FR at 48976, n. 99 (citing, for example, Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 44291 (May 11, 2001), 66 FR 27760, 27772–73 (May 18, 2001)).

[365] *See id.*

[366] *See id.* The Commission notes that we are not addressing broker-dealer registration here. As a general matter, broker-dealer registration will depend on the specific facts and circumstances of each particular situation.

[367] *See* Registration Adopting Release, 80 FR at 48976.

[368] *See id.*

[369] *See id.*

[370] *See* Part VI.C.3.f (Table 4, Panel B, of the Economic Analysis).

[371] *See generally* Part V.

maintenance of records reflecting that information would not result in a violation of applicable law in the jurisdiction in which the associated person is employed or located.[372]

Finally, and most importantly, the Commission believes that the modification recommended by these commenters would undermine important investor protections provided by the statutory disqualification provision in Section 15F(b)(6) of the Exchange Act. As the Commission noted in the Rule of Practice 194 Adopting Release, Exchange Act Section 15F(b)(6) is designed to limit the potential that associated persons who have engaged in certain types of ''bad acts'' will be able to negatively affect the security-based swap market and the participants in that market.[373] The Commission has also stated that it is concerned principally with those transactions that appear likely to affect the integrity of the security-based swap market in the United States and the U.S. financial markets more generally or that raise concerns about the protection of participants in those markets.[374] The Commission has also noted that the risk of fraud and other misconduct may be increased and the counterparty protection benefits of the disqualification provision may be reduced if, for instance, persons involved in structuring security-based swaps, facilitating execution, or handling customer funds and securities are excepted from the statutory disqualification provision.[375] For example, and as also discussed in Part VII.D below, allowing statutorily disqualified associated persons to manage the collateral for an SBS Entity in connection with security-based swap transactions with or for counterparties that are U.S. persons may give rise to higher compliance and counterparty risks to U.S. counterparties and, thus, the U.S. security-based swap market.[376]

The data outlined by the Commission in the Rule of Practice 194 Adopting Release suggests that, based on analogous disqualification review processes in swap and broker-dealer settings, individuals engaged in misconduct are more likely to engage in repeated misconduct.[377] Similarly, the Commission noted that, although there is a dearth of evidence of misconduct in swap and security-based swap markets, the Commission recognizes research in other settings reflecting that: (1) Past misconduct may predict future misconduct risk; (2) markets may penalize some disclosed misconduct, and (3) market participants engaging in misconduct generally suffer reputational costs.[378] As a result, the Commission believes that the statutory disqualification and the inability to continue associating with SBS Entities may create disincentives for engaging in misconduct.

Accordingly, for the reasons discussed above, the Commission is adopting Rule of Practice 194(c)(2) as proposed.

V. Modifications to Rule 18a–5

A. Proposed Approach

In the Proposing Release the Commission proposed to modify proposed Rule 18a–5.[379] Exchange Act 18a–5 was originally proposed in the Recordkeeping and Reporting Proposing Release, which proposed recordkeeping, reporting, and notification requirements applicable to SBS Entities, securities count requirements applicable to certain SBS Entities, and additional recordkeeping requirements applicable to broker-dealers to account for their security-based swap and swap activities.[380] Rule 18a–5 has since been adopted.[381] As described in the Recordkeeping and Reporting Proposing Release, the Commission originally proposed Exchange Act Rule 18a–5 (patterned after Exchange Act Rule 17a–3, the recordkeeping rule for registered broker-dealers), to establish recordkeeping standards for stand-alone and bank SBS Entities.[382] As adopted, paragraphs (a)(10) and (b)(8) of Rule 18a–5 require that a stand-alone or bank SBS Entity, respectively, make and keep current a questionnaire or application for employment for each associated person who effects or is involved in effecting security-based swaps on the SBS Entity's behalf.[383] Rule 18a–5 requires that the questionnaire or application for employment include the associated person's identifying information, business affiliations for the past ten years, relevant disciplinary history, relevant criminal record, and place of business, among other things.[384]

Based on comments received in response to the Recordkeeping and Reporting Proposing Release and the Cross-Border Proposing Release, the Commission proposed, in the Proposing Release, to modify proposed Rule 18a–5 to provide flexibility with respect to the questionnaire requirement as applied to certain associated persons of both stand-alone and bank SBS Entities.[385] Thus, the Commission proposed to modify proposed Rule 18a–5 by adding two subparagraphs to provide separate exemptions under both paragraph (a)(10) and paragraph (b)(8).

1. Exemption Based on the Exclusion From the Prohibition Under Section 15F(b)(6)

As described in the Proposing Release, the questionnaire requirement is intended to serve as a basis for a background check of the associated person to verify that the person is not subject to statutory disqualification under Section 15(b)(6) of the Exchange Act, and so to support the certification required under Rule 15Fb6–2(b). The addition of subparagraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) would provide that a stand-alone or bank SBS Entity is not required to make and keep current a questionnaire or application for employment with respect to an associated person if the stand-alone or bank SBS Entity is excluded from the prohibition in Section 15F(b)(6) of the Exchange Act with respect to that associated person. These proposed modifications were designed to complement the Commission's proposed amendments to Rule of Practice 194, which would have provided an exclusion from the prohibition in Section 15F(b)(6) of the Exchange Act with respect to an associated person who is not a U.S. person and does not effect and is not involved in effecting security-based

[372] *See id.* As discussed below, these subparagraphs would apply to an associated person who is not a U.S. person (as defined in Exchange Act Rule 3a71–3(a)(4)(i)(A)) that effects or is involved in effecting security-based swaps transactions on behalf of an SBS Entity with certain U.S persons.

[373] *See* Rule of Practice 194 Adopting Release, 84 FR at 4909.

[374] *See* Proposing Release, 84 FR at 24215 n. 79 (citing Business Conduct Adopting Release, 81 FR at 30065); *see also id.* at 24235, 24240 (discussing the same).

[375] *See* Registration Adopting Release, 80 FR at 49011.

[376] *See, e.g., id.* at 48976.

[377] *See* Rule of Practice 194 Adopting Release, 84 FR at 4928–33.

[378] *See id.* at 4923.

[379] *See* Proposing Release, 84 FR at 24242.

[380] *See* Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers, Exchange Act Release No. 91958 (Ap. 13, 2014), 79 FR at 25205 (May 2, 2014) ''Recordkeeping and Reporting Proposing Release'').

[381] *See* Recordkeeping and Reporting Adopting Release.

[382] *See* Recordkeeping and Reporting Proposing Release, 79 FR at 25205

[383] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68558 (''these associated person recordkeeping requirements apply to natural persons and not to legal entities that may be associated persons.'').

[384] *See* Exchange Act Rule 18a–5(a)(10) and (b)(8), Recordkeeping and Reporting Adopting Release, 84 FR at 68558.

[385] *See* Proposing Release, 84 FR at 24242.

swap transactions with or for counterparties that are U.S. persons, other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person, subject to certain conditions.

As a result, under proposed subparagraphs (a)(10)(iii)(A) and (b)(8)(iii)(A), a stand-alone or bank SBS Entity generally would not be required to obtain the questionnaire or application for employment, otherwise required by Rule 18a–5, with respect to any associated person who is not a U.S. person and who does not effect and is not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons (other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person), subject to certain conditions. More specifically, proposed subparagraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) would have provided that a stand-alone or bank SBS Entity would not be required to make and keep current a questionnaire or application for employment with respect to any associated person if the SBS Entity is excluded from the prohibition in Exchange Act 15F(b)(6) with respect to that associated person.

2. Exemption Based on Local Law

The Commission also proposed to modify Rule 18a–5 by adding subparagraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) to address situations where the law of a non-U.S. jurisdiction in which an associated person is employed or located may prohibit a stand-alone or bank SBS Entity from receiving, creating or maintaining a record of any of the information mandated by the questionnaire requirement. These subparagraphs would apply to an associated person who is not a U.S. person (as defined in Exchange Act Rule 3a71–3(a)(4)(i)(A)),[386] and who effects or is involved in effecting security-based swaps transactions on behalf of an SBS Entity. As proposed, the addition of subparagraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) to Rule 18a–5 would have permitted the exclusion of certain information mandated by the questionnaire requirement with respect to those associated persons if the receipt of that information, or the creation or maintenance of records reflecting such information, would result in a violation of applicable law in the jurisdiction in which the associated person is employed or located.[387] As explained in the Proposing Release, rather than fully excluding these associated persons from the questionnaire requirement, the exclusion would provide that the stand-alone or bank SBS Entity need not record information mandated by the questionnaire requirement with respect to such associated persons if the receipt of that information, or the creation or maintenance of records reflecting such information, would result in a violation of applicable law in the jurisdiction in which the associated person is employed or located.[388]

The Commission explained that this proposed change was designed to address commenters' concerns, and would provide stand-alone and bank SBS Entities with flexibility to not record information that might result in a violation of the law in the jurisdiction in which the associated person is employed or located, while continuing to require that they record information not restricted by the law in that jurisdiction. In addition, the Commission stated that stand-alone and bank SBS Entities should still make and keep current information included in the questionnaire requirement that would not result in a violation of local law.

B. Commission Action

The Commission solicited comment on all aspects of these proposed modifications to Rule 18a–5. Two commenters wrote in support of this proposed rule change.[389] One commenter requested that the Commission further clarify that, in performing reasonable due diligence, SBS Entities are not expected to take actions that would violate applicable privacy laws in the jurisdiction where the associated person is located or employed.[390]

For the reasons discussed in the proposal,[391] and after consideration of the comments, the Commission is adopting these new subparagraphs to Rule 18a–5, but is modifying subparagraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) to provide that a questionnaire or application for employment executed by an associated person who is not a U.S. person need not include the information described in paragraphs (a)(10)(i)(A) through (H) and (b)(8)(i)(A) through (H) of Rule 18a–5, unless the SBS Entity (1) is required to obtain such information under applicable law in the jurisdiction in which the associated person is employed or located or (2) obtains such information in conducting a background check that is customary for such firms in that jurisdiction, and the creation or maintenance of records reflecting that information would not result in a violation of applicable law in the jurisdiction in which the associated person is employed or located. We modified these paragraphs to provide greater clarity as to what information, generally required by 18a–5(a)(10)(i) and (b)(8)(i), an SBS Entity could exclude from an employee's questionnaire or application.

Every SBS Entity must still comply with Section 15F(b)(6) of the Exchange Act and Rule 15Fb6–2 with respect to every associated person who effects or is involved in effecting security-based swaps on behalf of the SBS Entity absent an exclusion from the statutory disqualification prohibition in Section 15F(b)(6) of the Exchange Act, in which case, as set forth in subparagraphs (a)(10)(iii)(A) and (b)(8)(iii)(A), the SBS Entity is not required to make and keep current a questionnaire or application for employment executed by an associated person. The questionnaire requirement is, in part, designed to serve as a basis for a background check of the associated person who is a natural person and who effects or is involved in effecting security-based swap transactions on the SBS Entity's behalf to verify that the person is not subject to statutory disqualification. As we explained in the Registration Adopting Release, the rules do not specify what steps an SBS Entity should take to perform a background check.[392] While the required employment questionnaire or application includes a significant amount of information that can be helpful to determine whether an associated person may be subject to a statutory disqualification, we believe financial institutions already take steps to verify the background of their employees.[393] Firms have flexibility in the manner in which they perform background checks, as long as those checks provide them with sufficient comfort to certify that none of the SBS

[386] Exchange Act Rule 3a71–3(a)(4)(i)(A) defines the term U.S. person to mean, with respect to natural persons, ''a natural person resident in the United States.''

[387] The SBS Entity would still need to record, on the questionnaire or application, information that would not violate local law (an associated person's name, address, *etc.*).

[388] To the extent an nonresident SBS Entity is able to rely on either paragraph (a)(10)(iii)(A) or (b)(8)(iii)(A) with respect to a particular associated person, the Commission explained that firm would not need to also rely on the relief provided under (a)(10)(iii)(B) or (b)(8)(iii)(B) because the firm would be exempt from the questionnaire requirement with respect to that associated person. *See* Proposing Release, 84 FR at 24243, n.281.

[389] *See* EBF letter at 6–7; IIB/SIFMA letter at 30.

[390] *See* EBF letter at 7.

[391] *See* Proposing Release, 84 FR at 24243–4.

[392] Registration Adopting Release, 80 FR at 48977.

[393] *Id.*

Entity's employees who effect or are involved in effecting security-based swaps on the SBS Entity's behalf is subject to a statutory disqualification, except as specifically permitted by rule, regulation or order of the Commission.[394]

We further believe that such background checks conducted using procedures that are either legally required or customary in the relevant non-U.S. jurisdictions, as outlined above in new subparagraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) to Rule 18a–5,[395] would constitute reasonable due diligence on which a Chief Compliance Officer (or his or her designee) [396] could rely, in the absence of red flags that are in the firm's possession, when signing the associated person certification required by Rule 15Fb6–2.[397]

VI. Economic Analysis

The Commission is mindful of the economic effects, including the costs and benefits, of the adopted amendments and guidance. Section 3(f) of the Exchange Act provides that whenever the Commission is engaged in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[398] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[399] Exchange Act Section 23(a)(2) also provides that the Commission shall not adopt any rule which would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The analysis below addresses the likely economic effects of the adopted amendments, including the anticipated and estimated benefits and costs of the amendments and their likely effects on efficiency, competition, and capital formation. The Commission also discusses the potential economic effects of certain alternatives to the approaches taken in this release. The Commission is providing guidance and interpretive positions in this release. Any comments on the substance of the guidance and interpretations are discussed above.[400] To the extent that a regulated person would have acted differently than what is provided in the interpretations, there may be economic consequences attached to the rules as interpreted.

Many of the benefits and costs discussed below are difficult to quantify. For example, the Commission cannot quantify the costs that potentially could result from competitive disparities associated with the exception to Rule 3a71–3 because these costs will depend, in part, on foreign regulatory requirements applicable to non-U.S. entities. This is because the extent to which a non-U.S. entity would need to develop or modify systems to allow it and its majority-owned affiliate to meet the conditions of the exception likely depends on the extent to which the non-U.S. entity's local regulatory obligations differ from analogous conditions of the exception. These potential costs could also depend on the business decisions of non-U.S. persons that may avail themselves of the exception. Furthermore, the likelihood of a non-U.S. entity availing itself of the exception depends on whether the non-U.S. entity is regulated in a listed jurisdiction, a determination that, in turn, depends on the foreign regulatory regime. Also, in connection with the amendments to Commission Rule of Practice 194, the Commission has no data or information allowing us to quantify the number of disqualified non-U.S. employees transacting with foreign counterparties or foreign branches of U.S. counterparties on behalf of U.S. and non-U.S. SBS Entities; the direct costs of relocating disqualified U.S. personnel outside of the United States for U.S. and non-U.S. SBS Entities; or reputational and compliance costs of U.S. and non-U.S. SBS Entities from continuing to transact through disqualified non-U.S. associated persons with foreign counterparties and foreign branches of U.S. counterparties. Therefore, while the Commission has attempted to quantify economic effects where possible, much of the discussion of economic effects is qualitative in nature.

A. Baseline

To assess the economic effects of the amendments, the Commission is using as the baseline the security-based swap market as it exists at the time of this release, including applicable rules the Commission has already adopted, but excluding rules the Commission has proposed but not yet finalized. The analysis includes the statutory provisions that currently govern the security-based swap market pursuant to the Dodd-Frank Act and rules adopted in the Intermediary Definitions Adopting Release,[401] the Cross-Border Adopting Release, the SDR Rules and Core Principles Adopting Release,[402] and the Rule of Practice 194 Adopting Release.[403] Additionally, the baseline includes rules that have been adopted but for which compliance is not yet required, including the ANE Adopting Release, Registration Adopting Release,[404] Regulation SBSR Amendments Adopting Release,[405]

[394] *Id.*

[395] Exchange Act Rule 18a–5 requires that SBS Entities maintain records that provide a basis for assessing compliance with the statutory disqualification prohibition set forth in Section 15F(b)(6) of the Exchange Act and related Exchange Act Rule 15Fb6–2. *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68558. Accordingly, and as provided in new subparagraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) of Rule 18a–5, if an SBS Entity is (1) required to obtain the information described in paragraphs (a)(10)(i)(A) through (H) and (b)(8)(i)(A) through (H) under applicable law in the jurisdiction in which the associated person is employed or located or (2) obtains such information in conducting a background check that is customary for such firms in that jurisdiction, Rule 18a–5 requires such SBS Entity to create and maintain a record reflecting that information, unless the creation or maintenance of records reflecting that information would result in a violation of applicable law in the jurisdiction in which the associated person is employed or located.

[396] Exchange Act Rule 15Fb6–2(b) requires that a registrant's Chief Compliance Officer ''or his or her designee'' must review and sign the questionnaire or application for employment. While the designee could be a person who reports directly to the Chief Compliance Officer, the Chief Compliance Officer also could designate a person such as a person in the registrant's Human Resources or other, similar department.

[397] Exchange Act Rule 15Fb6–2(b) provides: ''(b) To support the certification required by paragraph (a) of this section, the security-based swap dealer's or major security-based swap participant's Chief Compliance Officer, or his or her designee, shall review and sign the questionnaire or application for employment, which the security-based swap dealer or major security-based swap participant is required to obtain pursuant to the relevant recordkeeping rule applicable to such security-based swap dealer or major security-based swap participant, executed by each associated person who is a natural person and who effects or is involved in effecting security based swaps on the security-based swap dealer's or major security-based swap participant's behalf. The questionnaire or application shall serve as a basis for a background check of the associated person to verify that the person is not subject to statutory disqualification.''

[398] *See* 15 U.S.C. 78c(f).

[399] *See* 15 U.S.C. 78w(a)(2).

[400] *See* Parts II and III, *supra.*

[401] *See* Intermediary Definitions Adopting Release, 77 FR at 30596.

[402] *See* Security-Based Swap Data Repository Registration, Duties, and Core Principles, Exchange Act Release No. 74246 (Feb. 11, 2015), 80 FR 14438 (Mar. 19, 2015) (''SDR Rules and Core Principles Adopting Release'').

[403] *See* Rule of Practice 194 Adopting Release, 84 FR at 4906.

[404] *See* Registration Adopting Release, 80 FR 48964.

[405] *See* Reporting and Dissemination of Security-Based Swap Information, Exchange Act Release No. 78321 (Jul. 14, 2016), 81 FR 53546, 53590–91 (Aug. 12, 2016) (''Regulation SBSR Amendments Adopting Release'').

Business Conduct Adopting Release,[406] Capital, Margin, and Segregation Adopting Release,[407] and the Recordkeeping and Reporting Adopting Release [408] as these final rules—even if compliance is not yet required—are part of the existing regulatory landscape that market participants expect to govern their security-based swap activity. The following sections discuss available data from the security-based swap market, security-based swap market participants and dealing structures, market-facing and non-market-facing activities of dealing entities, security-based swap market activity, global regulatory efforts, other markets and existing regulatory frameworks, estimates of persons that may use the exception to Rule 3a71–3, estimates of persons for which the Market Color Guidance may be relevant, statutory disqualification, certification, opinion of counsel, and employee questionnaires.

1. Available Data From the Security-Based Swap Market

The Commission's understanding of the market is informed, in part, by available data on security-based swap transactions, though the Commission acknowledges that limitations in the data limit the extent to which it is possible to quantitatively characterize the market.[409] The Commission's analysis of the current state of the security-based swap market is based on data obtained from the DTCC Derivatives Repository Limited Trade Information Warehouse (''TIW''), especially data regarding the activity of market participants in the single-name CDS market during the period from 2008 to 2017. The details of this data set, including its limitations, have been discussed in a prior release.[410]

2. Security-Based Swap Market: Market Participants and Dealing Structures

(a) Security-Based Swap Market Participants

Activity in the security-based swap market is concentrated among a relatively small number of entities that act as dealers in this market. In addition to these entities, thousands of other participants appear as counterparties to security-based swap contracts in the TIW sample, and include, but are not limited to, investment companies, pension funds, private (hedge) funds, sovereign entities, and industrial companies. A discussion of security-based swap market participants can be found in a prior release.[411]

(b) Security-Based Swap Market Participant Domiciles

The security-based swap market is global in nature with participants from different countries transacting with one another. A discussion of the domicile of security-based swap market participants can be found in a prior release.[412]

(c) Market Centers

A market participant's domicile, however, does not necessarily correspond to where it engages in security-based swap activity. In particular, non-U.S. persons engaged in security-based swap dealing activity operate in multiple market centers and carry out such activity with counterparties around the world.[413] Many market participants that are engaged in dealing activity prefer to use traders and manage risk for security-based swaps in the jurisdiction where the underlying security is traded. Thus, although a significant amount of the dealing activity in security-based swaps on U.S. reference entities involves non-U.S. dealers, the Commission understands that these dealers tend to carry out much of the security-based swap trading and related risk-management activities in these security-based swaps within the United States.[414] Some dealers have explained that being able to centralize their trading, sales, risk management, and other activities related to U.S. reference entities in U.S. operations (even when the resulting transaction is booked in a foreign entity) improves the efficiency of their dealing business.

Consistent with these operational concerns and the global nature of the security-based swap market, the available data appear to confirm that participants in this market are in fact active in market centers around the globe. Although, as noted above, the available data do not permit us to identify the location of personnel in a transaction, TIW transaction records supplemented with legal entity location data indicate that firms that are likely to be security-based swap dealers operate out of branch locations in key market centers around the world, including New York, London, Paris, Zurich, Tokyo, Hong Kong, Chicago, Sydney, Toronto, Frankfurt, Singapore, and the Cayman Islands.[415]

Given these market characteristics and practices, participants in the security-based swap market may bear the financial risk of a security-based swap transaction in a location different from the location where the transaction is arranged, negotiated, or executed, or where economic decisions are made by managers on behalf of beneficial owners. Market activity may also occur in a jurisdiction other than where the market participant or its counterparty books the transaction. Similarly, a participant in the security-based swap market may be exposed to counterparty risk from a counterparty located in a jurisdiction that is different from the market center or centers in which it participates.

(d) Common Business Structures

A non-U.S. person that engages in a global security-based swap dealing business in multiple market centers may choose to structure its dealing business in a number of different ways. This structure, including where it books the transactions that constitute that business and how it carries out market-facing activities that generate those transactions, reflects a range of business and regulatory considerations, which each non-U.S. person may weigh differently.

A non-U.S. person may choose to book all of its security-based swap transactions, regardless of where the transaction originated, in a single, central booking entity. That entity generally retains the risk associated with that transaction, but it also may lay off that risk to another affiliate via a back-to-back transaction or an assignment of the security-based swap.[416] Alternatively, a non-U.S. person may book security-based swaps arising from its dealing business in separate affiliates, which may be located in the jurisdiction where it originates the risk associated with the security-based swap, or, alternatively, the jurisdiction where it manages that risk. Some non-U.S. persons may book transactions originating in a particular region to an affiliate established in a

[406] *See* Business Conduct Adopting Release.

[407] *See* Capital, Margin, and Segregation Adopting Release, 84 FR 43872.

[408] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68550.

[409] The Commission also relies on qualitative information regarding market structure and evolving market practices provided by commenters and knowledge and expertise of Commission staff.

[410] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68623–24.

[411] *See* Rule of Practice 194 Adopting Release, 84 FR at 4925.

[412] *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43972.

[413] *See* ANE Adopting Release, 81 FR at 8604 n.56.

[414] *See id.* n.58.

[415] TIW transaction records contain a proxy for the domicile of an entity, which may differ from branch locations, which are separately identified in the transaction records. The legal entity location data are from Avox.

[416] *See* ANE Adopting Release, 81 FR at 8604.

jurisdiction located in that region.[417] A non-U.S. person may choose to book its security-based swap transactions in one jurisdiction in part to avoid triggering regulatory requirements associated with another jurisdiction.

Regardless of where a non-U.S. person determines to book its security-based swaps arising out of its dealing activity, it is likely to operate offices that perform sales or trading functions in one or more market centers in other jurisdictions. Maintaining sales and trading desks in global market centers permits the non-U.S. person to deal with counterparties in that jurisdiction or in a specific geographic region, or to ensure that it is able to provide liquidity to counterparties in other jurisdictions,[418] for example, when counterparty's home financial markets are closed. A non-U.S. person engaged in a security-based swap dealing business also may choose to manage its trading book in particular reference entities or securities primarily from a trading desk that can utilize local expertise in such products or that can gain access to better liquidity, which may permit it to more efficiently price such products or to otherwise compete more effectively in the security-based swap market. Some non-U.S. persons prefer to centralize risk management, pricing, and hedging for specific products with the personnel responsible for carrying out the trading of such products to mitigate operational risk associated with transactions in those products.

The non-U.S.-person affiliate that books these transactions may carry out related market-facing activities, whether in its home jurisdiction or in a foreign jurisdiction, using either its own personnel or the personnel of an affiliated or unaffiliated agent. For example, the non-U.S. person may determine that another of its affiliates employs personnel who possess expertise in relevant products or who have established sales relationships with key counterparties in a foreign jurisdiction, making it more efficient to use the personnel of the affiliate to engage in security-based swap market-facing activity on its behalf in that jurisdiction. In these cases, the affiliate that books these transactions and its affiliated agent may operate as an integrated dealing business, each performing distinct core functions in carrying out that business.

Alternatively, the non-U.S.-person affiliate that books these transactions may in some circumstances determine to engage the services of an unaffiliated agent through which it can engage in market-facing activity. For example, a non-U.S. person may determine that using an interdealer broker may provide an efficient means of participating in the interdealer market in its own, or in another, jurisdiction, particularly if it is seeking to do so anonymously or to take a position in products that trade relatively infrequently.[419] A non-U.S. person may also use unaffiliated agents that operate at its direction. Such an arrangement may be particularly valuable in enabling a non-U.S. person to service clients or access liquidity in jurisdictions in which it has no security-based swap operations of its own.

The Commission understands that non-U.S.-person affiliates (whether affiliated with U.S.-based non-U.S. persons or not) that are established in foreign jurisdictions may use any of these structures to engage in dealing activity in the United States, and that they may seek to engage in dealing activity in the United States to transact with both U.S.-person and non-U.S.-person counterparties. In transactions with non-U.S.-person counterparties, these foreign affiliates may affirmatively seek to engage in dealing activity in the United States because the sales personnel of the non-U.S.-person dealer (or of its agent) in the United States have existing relationships with counterparties in other locations (such as Canada or Latin America) or because the trading personnel of the non-U.S.-person dealer (or of its agent) in the United States have the expertise to manage the trading books for security-based swaps on U.S. reference securities or entities. The Commission understands that some of these foreign affiliates engage in dealing activity in the United States through their personnel (or personnel of their affiliates) in part to ensure that they are able to provide their own counterparties, or those of non-U.S.-person affiliates in other jurisdictions, with access to liquidity (often in non-U.S. reference entities) during U.S. business hours, permitting them to meet client demand even when the home markets are closed. In some cases, such as when seeking to transact with other dealers through an interdealer broker, these foreign affiliates may act, in a dealing capacity, in the United States through an unaffiliated, third-party agent.

3. Market-Facing and Non-Market-Facing Activities

As discussed in the Proposing Release, the activities of a security-based swap dealer involve both market-facing activities and non-market-facing activities.[420] Market-facing activities would include arranging, negotiating, or executing a security-based swap transaction. The terms ''arrange'' and ''negotiate'' indicate market-facing activity of sales or trading personnel in connection with a particular transaction, including interactions with counterparties or their agents. The term ''execute'' refers to the market-facing act that, in connection with a particular transaction, causes the person to become irrevocably bound under the security-based swap under applicable law. Non-market-facing activities include processing trades and other back-office activities; designing security-based swaps without engaging in market-facing activity in connection with specific transactions; preparing underlying documentation including negotiating master agreements (as opposed to negotiating with the counterparty the specific economic terms of a particular security-based swap transaction); and clerical and ministerial tasks such as entering executed transactions on a non-U.S. person's books.

4. Security-Based Swap Market Activity

As already noted, firms that act as dealers play a central role in the security-based swap market. These dealers transact with hundreds or a thousand or more counterparties. A discussion of activity in the security-based swap market is available in a prior release.[421]

5. Global Regulatory Efforts

The amendments and guidance relate to non-U.S.-person dealers that may be subject to foreign regulations of their security-based swap activities that are similar to regulations that may apply to them pursuant to Title VII. A discussion

[417] There is some indication that this booking structure is becoming increasingly common in the market. *See, e.g.,* Catherine Contiguglia, ''*Regional Swaps Booking Replacing Global Hubs,*'' *Risk.net,* Sept. 4, 2015, *http://www.risk.net/risk-magazine/feature/2423975/regional-swaps-booking-replacing-global-hubs.* Such a development may be reflected in the increasing percentage of new entrants that have a foreign domicile, as described above.

[418] These offices may be branches or offices of the booking entity itself, or branches or offices of an affiliated agent, such as, in the United States, a registered broker-dealer.

[419] The Commission understands that interdealer brokers may provide voice or electronic trading services that, among other things, permit dealers to take positions or hedge risks in a manner that preserves their anonymity until the trade is executed. These interdealer brokers also may play a particularly important role in facilitating transactions in less liquid security-based swaps.

[420] *See* Proposing Release, 84 FR at 24215.

[421] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68625–27.

of foreign regulatory efforts, including margin and capital requirements, is available in a prior release.[422]

6. Other Markets and Existing Regulatory Frameworks

The numerous financial markets are integrated, often attracting the same market participants that trade across corporate bond, swap, and security-based swap markets, among others. A discussion of other markets and existing regulatory frameworks can be found in a prior release.[423]

7. Estimates of Persons That May Use the Exception to Rule 3a71–3

To analyze the economic effects of the exception to Rule 3a71–3, the Commission has analyzed 2017 TIW data to identify persons that may use the exception. The Commission believes that these persons fall into several categories, which are discussed below.

(a) Non-U.S. Persons Seeking to Reduce Assessment Costs

One category of persons that may use the exception are those non-U.S. persons that may need to assess the amount of their market-facing activity against the *de minimis* thresholds solely because of the inclusion of security-based swap transactions between two non-U.S. persons that are arranged, negotiated, or executed by personnel located in the U.S. for the purposes of the *de minimis* threshold analysis. These non-U.S. persons may have an incentive to rely on the exception as a means of avoiding assessment[424] and business restructuring if the cost of compliance associated with the exception is less than assessment costs and the costs of business restructuring. In the ANE Adopting Release, the Commission provided an estimate of this category of persons.[425] However, in light of the reduction in security-based swap market activity since the publication of the ANE Adopting Release,[426] the Commission believes that it would be appropriate to update that estimate to more accurately identify the set of persons that potentially may use the exception. Analyses of the 2017 TIW data indicate that approximately five non-U.S. persons,[427] beyond those non-U.S. persons likely to incur assessment costs in connection with the other cross-border counting rules that the Commission previously had adopted in the Cross-Border Adopting Release,[428] are likely to exceed the $2 billion threshold[429] the Commission has previously employed to estimate the number of persons likely to incur assessment costs under Exchange Act Rule 3a71–3(b). These non-U.S. persons may have an incentive to rely on the exception as a means of avoiding assessment if the cost of compliance associated with the exception is less than the assessment costs.

(b) Non-U.S. Persons Seeking To Avoid Security-Based Swap Dealer Regulation

Another category of persons that potentially may use the exception are those non-U.S. persons whose dealing transaction volume would have fallen below the $3 billion *de minimis* threshold if their transactions with non-U.S. counterparties were not counted toward the *de minimis* threshold under the current ''arranged, negotiated, or executed'' counting requirement, but absent the exception, would have dealing transactions in excess of that threshold.[430] Such non-U.S. persons may choose to use the exception if they expect the compliance cost associated with the exception to be lower than the compliance cost associated with being subject to the full set of security-based swap dealer regulation and the cost of business restructuring. The Commission's analysis of 2017 TIW data indicates that there is one non-U.S. person whose transaction volume would have fallen below the $3 billion *de minimis* threshold if that person's transactions with non-U.S. counterparties were not counted toward the *de minimis* threshold under the current ''arranged, negotiated, or executed'' counting requirement.[431]

(c) U.S. Dealing Entities Considering Changes to Booking Practices

A third category of persons that potentially may use the exception are those U.S. dealers that use U.S. personnel to arrange, negotiate, or execute transactions with non-U.S. counterparties. Such dealers may consider booking future transactions with non-U.S. counterparties to their non-U.S. affiliates, while still using U.S. personnel to arrange, negotiate, or execute such transactions. These U.S. dealers may have an incentive to engage in such booking practices in order to utilize the exception to the extent that they wish to continue using U.S. personnel to arrange, negotiate, or execute transactions with non-U.S. counterparties and the compliance cost associated with the exception is less than the cost of compliance with Title VII requirements (if they choose not to book transactions to avail themselves of the exception) and the cost of business restructuring (if they choose to both book transactions to their non-U.S. affiliates and also refrain from using U.S. personnel to arrange, negotiate, or execute such transactions).[432] The Commission's analysis of 2017 TIW data indicates that there are six U.S. dealers who transact with non-U.S. counterparties, who are likely to register as security-based swap dealers,[433] and have non-U.S. affiliates that also transact in the CDS market. To the extent that these U.S. dealers anticipate booking future transactions with non-U.S. counterparties that are arranged, negotiated, or executed by U.S. personnel to their non-U.S. affiliates, the Commission believes that these U.S. dealers may potentially make use of the exception.

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[422] *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43979–80.

[423] *See* Rule of Practice 194 Adopting Release, 84 FR at 4927.

[424] These non-U.S. persons may incur assessment costs to determine whether their covered inter-dealer security-based swap positions exceed the $50 billion cap (*see* Part II.C.1, *supra*). However, these non-U.S. persons may not find it necessary to count toward the $50 billion threshold if their total covered inter-dealer security-based swap positions is less than $50 billion or they restructure their security-based swap business to avoid engaging in such covered positions. To the extent that this is true, it may still benefit these non-U.S. persons to rely on the exception to avoid assessing the amount of security-based swap transactions between two non-U.S. persons that are arranged, negotiated, or executed by personnel located in the U.S. for the purposes of the *de minimis* threshold analysis.

[425] *See* ANE Adopting Release, 81 FR at 8627.

[426] *See* Part VI.A.4, *supra.*

[427] Adjustments to these statistics from the ANE Adopting Release reflect further analysis of the TIW data. *Cf.* ANE Adopting Release, 81 FR at 8627 (providing an estimate of 10 additional non-U.S. persons based on 2014 TIW data).

[428] *See* Proposing Release, 84 FR at 24208 n.13.

[429] *See* ANE Adopting Release, 81 FR at 8626.

[430] The $3 billion threshold is being used to help identify potential impacts of the exception. A phase-in threshold of $8 billion currently is in effect. *See* Exchange Act Rule 3a71–2(a)(1).

[431] The analysis begins by considering the single-name CDS transactions of each of the non-U.S. persons against both U.S.-person and non-U.S.-person counterparties. The Commission then excluded transactions involving these non-U.S. persons and their non-U.S. person counterparties. For this analysis, we assume that all transactions between non-U.S. person dealers and non-U.S. counterparties are arranged, negotiated, or executed using U.S. personnel.

[432] The Commission recognizes that this potential use of the exception by U.S. dealing entities is distinct from the rationale underlying the exception, which is to help avoid market fragmentation and operational risks resulting from the relocation of U.S. personnel by non-U.S. dealers. *See* Proposing Release, 84 FR at 24231. Nonetheless, such changes in booking practices by U.S. dealing entities might be a consequence of the exception.

[433] To the extent that U.S. persons with transaction volumes that are insufficient to trigger dealer registration potentially might also make use of the exception, this estimate would be a lower bound estimate of the number of U.S. persons that potentially may make use of the exception.

(d) Additional Considerations and Summary

The economic analysis of the exception depends, in part, on whether non-U.S. persons that might make use of the exception have U.S. affiliates that are likely to register as security-based swap dealers or are registered broker-dealer affiliates.[434] Of the six non-U.S. persons discussed above,[435] four have majority-owned affiliates that are registered broker-dealers. Of the same six non-U.S. persons, one has a majority-owned affiliate that is likely to register as a security-based swap dealer. Of the six U.S. persons discussed above, all have majority-owned affiliates that are registered broker-dealers, and all have majority-owned affiliates that are likely to register as security-based swap dealers. Of these 12 persons, eight are banks, and three are affiliated with banks. These estimates are summarized in Table 1 below. The Commission's analysis of the security-based swap market[436] indicates that these 12 persons transacted with 807 non-U.S. counterparties, of which 558 participate in the swap markets and 249 do not.

TABLE 1—AFFILIATES OF PERSONS THAT MAY USE THE EXCEPTION

Persons identified in TIW data that may use the exception	Non-U.S.	U.S.
Estimate	6	6
Breakdown:		
Has majority-owned registered broker-dealer affiliate	4	6
Has majority-owned affiliate likely to become registered security-based swap dealer	1	6
Is a bank	4	4
Is a bank affiliate	1	2

In summary, the Commission's analysis of 2017 TIW data indicates that 12 persons[437] may make use of the exception. In light of the uncertainty associated with this estimate[438] and to account for potential growth of the security-based swap market, and consistent with the approach in the ANE Adopting Release, the Commission believes that it is reasonable to increase this estimate by a factor of two.[439] As a result, the Commission estimates that up to 24 persons potentially may make use of the exception. The Commission also doubles the number of non-U.S. counterparties discussed above and estimates that persons that may make use of the exception may transact with up to 1,614 non-U.S. counterparties, of which 1,116 participate in the swap markets and 498 do not.[440] In response to a commenter who noted the absence of an estimate of the security-based swap transaction activity potentially implicated by the exception,[441] the Commission is providing an estimate of the security-based swap transactions that the 24 persons may engage in with non-U.S. counterparties. The Commission estimates that these 24 persons may transact up to 97,894 security-based swap transactions with an aggregate notional amount of $554 billion[442] with the 1,614 non-U.S. counterparties. The Commission estimates that these transactions make up between 4.7% and 13.1%[443] of the U.S. security-based swap market.

8. Statutory Disqualification

In the Rule of Practice 194 Adopting Release, the Commission analyzed, among others, data on the number of natural persons associated with SBS Entities, applications for review under parallel review processes, and relevant research on statutory disqualification. In that release, the Commission estimated that SBS Entities may file up to five applications per year with respect to their associated natural persons. A more detailed discussion of these data and estimates can be found in that release.[444] If associated natural persons who become statutorily disqualified are located outside of the U.S. and effect or are involved in effecting transactions solely with foreign counterparties and foreign branches of U.S. counterparties, the amendment may decrease the number of these applications for relief and corresponding direct costs.

[434] As discussed in Part VI.B.1, *infra,* non-U.S. persons that already have an affiliated registered security-based swap dealer or affiliated registered broker-dealer likely would use their existing registered affiliates to rely on the exception rather than register new entities. For these non-U.S. persons, the costs of complying with the conditions associated with the exception likely would be lower than the per-entity costs reported in Table 3, which are based on the de novo formation of a security-based swap dealer or broker-dealer.

[435] Calculated as the 5 non-U.S. persons seeking to reduce assessment costs (*see* Part VI.A.7.a, *supra*) + 1 non-U.S. person seeking to avoid security-based swap dealer regulation (*see* Part VI.A.7.b, *supra*) = 6 non-U.S. persons.

[436] The analysis uses 2017 TIW data.

[437] Calculated as 5 non-U.S. persons seeking to reduce assessment costs (*see* Part VI.A.7.a, *supra*) + 1 non-U.S. person seeking to avoid security-based swap dealer regulation (*see* Part VI.A.7.b, *supra*) + 6 U.S. persons considering changes to booking practices (*see* Part VI.A.7.c, *supra*) = 12 persons.

[438] The estimate may be overinclusive, as it is unlikely that all transactions between two non-U.S. persons are arranged, negotiated, or executed by personnel located in a U.S. branch or office; it may also be underinclusive, as our TIW data do not include single-name CDS transactions between two non-U.S. entities written on non-U.S. underliers, some of which may be arranged, negotiated, or executed by personnel located in a U.S. branch or office, or transactions on other types of security-based swaps (including equity swaps) whether on U.S. or non-U.S. underliers. *See* ANE Adopting Release, 81 FR at 8627.

[439] *See id.* The Commission does not believe increasing the estimate by a factor of two is arbitrary, as suggested by a commenter (*see* AFR letter at 4). The security-based swap market could grow in the future such that the number of persons that may use the exception could exceed the 12 persons that the Commission estimated from the 2017 TIW data. Further, as discussed in note 438, *supra,* there is uncertainty associated with the estimate of 12 persons due to limitations of the TIW data, which suggests that the number of persons that may use the exception could exceed 12. In light of these considerations and consistent with the approach in the ANE Adopting Release, the Commission believes that it is reasonable to increase the estimate by a factor of two.

[440] *See* Part VI.B.3.a, *infra,* where we use these estimates to calculate certain costs associated with an additional alternative.

[441] *See* AFR letter at 4.

[442] The Commission estimates that the 12 persons identified in the 2017 TIW data engaged in 48,947 single-name CDS transactions with an aggregate notional amount of $277 billion with their non-U.S. counterparties. To address potential growth in the market and data related uncertainty, and consistent with the approach in the ANE Adopting Release, the Commission has doubled the number of transactions and aggregate notional amount to, respectively, 97,894 transactions and $554 billion. *See* Part VI.A.4, *supra.*

[443] In the 2017 TIW data, the Commission estimates that there are 372,445 single-name CDS transactions with an aggregate notional amount of $5,962 billion. To address potential growth in the market and data related uncertainty, and consistent with the approach in the ANE Adopting Release, the Commission estimates that there are 372,445 × 2 = 744,890 security-based swap transactions with an aggregate notional amount of $5,962 billion × 2 = $11,924 billion in the U.S. security-based swap market. In terms of transaction count, the set of security-based swap transactions that may be subject to the conditional exception makes up 97,894/744,890 × 100 = 13.1% of the U.S. security-based swap market. In terms of aggregate notional amount, this set of transactions makes up 554/11,924 × 100 = 4.7% of the U.S. security-based swap market.

[444] *See* Rule of Practice 194 Adopting Release, 84 FR at 4925.

The Commission has received comments [445] concerning the potential impact of the proposed approach on the number of associated persons subject to the statutory prohibition relative to the baseline, as summarized in Table 2 below.

TABLE 2—ESTIMATES OF ASSOCIATED PERSONS AFFECTED BY THE PROPOSAL [446]

[Panel A. Market Participant Estimates of the Number of Associated Persons Affected by the Proposal]

Estimate	Bank 1	Bank 2	Bank 3	Bank 4	Bank 5	Bank 6
Baseline [447]	3,750	2,150–2,250	2,100	2,100	1,340	>6,800
Proposal [448]	1,125	1,350–1,400	700–800	[449] 1,680	650–750	>1,000

[Panel B. Percentage Reduction in Associated Persons Based on Data Provided by 6 Market Participants] [450]

Estimate	Average	Minimum	Maximum	
Proposal	54%	20%	85%	

In the proposing release, the Commission estimated that the exclusion may reduce the number of applications under Rule of Practice 194 by between zero and two applications. As summarized in Panel B of Table 2, the Commission has received estimates that the proposal may reduce the scope of associated persons subject to the statutory prohibition by an average of 54%, with a range of between 20% and 85%. In the Rule 194 Adopting Release that forms part of this economic baseline, the Commission estimated that there may be as many as 5 applications per year under Rule of Practice 194.[451] Using the estimate of 5 applications per year under the baseline and the above range of between 20% and 85% reduction in the scope of natural persons subject to the statutory prohibition relative to baseline, the Commission now estimates that adopting the proposed approach may reduce the number of applications under Rule of Practice 194 by between one and four applications.[452]

9. Certification, Opinion of Counsel, and Employee Questionnaires

As a baseline matter, SBS Entity Registration rules, including Rule 15Fb2–1 and the certification and opinion of counsel requirements in Rule 15Fb2–4, have been adopted but compliance with registration rules is not yet required.

In addition, Rule 17a–3(a)(12) requires all broker-dealers, including broker-dealers that may seek to register with the Commission as SBS Entities, to make and keep current a questionnaire or application for employment for each associated person. In the Recordkeeping and Reporting Adopting Release, the Commission adopted a parallel requirement, in Rule 18a–5, for stand-alone and bank SBS Entities. The Commission is adopting modifications to Rule 18a–5(a)(10) and Rule 18a–5(b)(8). Based on 2017 TIW data, of 22 non-U.S. persons that may register with the Commission as security-based swap dealers, the Commission estimates that approximately 12 security-based swap dealers will be foreign banks and another 3 will be foreign stand-alone security-based swap dealers that may be affected by these modifications.

B. Amendment to Rule 3a71–3

This section discusses the potential costs and benefits associated with the amendment to Rule 3a71–3 and the effects of the amendment on efficiency, competition, and capital formation.

Under the adopted alternative, each person that engages in arranging, negotiating, and executing activity with non-U.S. counterparties using affiliated U.S.-based personnel would have two possible options for complying with the Commission's Title VII regulations regarding the cross-border application of the ''security-based swap dealer'' definition. The first option would be for the persons to follow current security-based swap dealer counting requirements without regard for the exception afforded by the amendment. Specifically, a person could opt to incur the assessment costs to determine (i) whether any portion of their security-based swap transaction activities must be counted against the dealer *de minimis* thresholds, and (ii) whether the total notional amount of relevant transaction activities exceeds the *de minimis* threshold.[453] If the amount of its activities crosses the *de minimis* thresholds, then the person would have to register as a security-based swap dealer and become subject to Title VII security-based swap dealer requirements. A person that chooses to comply in this manner would experience no incremental economic effects under the exception as compared to the baseline.

The second option would be to rely on the exception afforded by the amendment. Under the amendment, a person could register one entity as a security-based swap dealer or broker-dealer [454] to arrange, negotiate, or execute transactions with non-U.S. counterparties on its behalf using personnel located in a U.S. branch or office. Doing so could allow it to avoid the direct regulation of itself (or multiple affiliated entities) as a security-based swap dealer. A person that chooses to use this exception and incur the associated costs to meet the conditions of this exception, detailed below, likely would not incur assessment costs with respect to

[445] *See* European Commission email, summarized in Table 4 below and showing that 6 market participants estimated that the proposal may reduce the scope of associated persons within the statutory prohibition by an average of approximately 54%, with a range of estimates between 20% and 85%.

[446] *See* European Commission email.

[447] Range of associated persons if global SBS associated persons are taken into account, with broad definition and accounting for back office.

[448] Remaining range of associated persons after accounting for potential reduction of this number when removing personnel with no U.S. person contacts.

[449] This figure represents an estimate of ''only those associated persons authorized to communicate directly with U.S. persons.''

[450] *See* European Commission email. Where a market participant provided a range, the percentage reduction was calculated using a midpoint of that range. When a market participant provided an estimate using ''over,'' the percentage reduction assumed the figure was exactly as reported, which may under-estimate the magnitude of the reduction relative to baseline.

[451] *See* Rule of Practice 194 Adopting Release, 84 FR at 4925.

[452] This estimate is calculated as follows: $5 \times 0.2 = 1$ application; $5 \times 0.85 = 4.25$ or, approximately, 4 applications.

[453] *See* Part II.A, *supra.*

[454] Registration may not be required if, as discussed in Part VI.A.7, *supra,* persons who may take advantage of this exception already have affiliates that are registered and choose to use these registered entities to take advantage of the exception. *See also* Part VI.B.1.a, *infra.*

security-based swap transactions with non-U.S. counterparties that are arranged, negotiated, or executed by personnel located in the United States.

As discussed above, the Commission believes that up to 24 [455] persons potentially may use the exception to the extent that the compliance costs associated with the exception are lower than the compliance costs in the absence of the exception.

1. Costs and Benefits of the Amendment

The Commission believes that the amendment would provide increased flexibility to security-based swap market participants to comply with the Title VII framework while preserving their existing business practices. This could reduce their compliance burdens, while supporting the Title VII regime's benefit of mitigating risks in foreign security-based swap markets that may flow into U.S. financial markets through liquidity spillovers. The Commission also believes that the amendments could reduce market fragmentation and associated distortions. At the same time, and as detailed later in this section, the Commission acknowledges that the amendment potentially limits certain other programmatic benefits of the Title VII regime by excusing security-based swap market participants that elect to use the exception from some of the Title VII requirements that would otherwise apply to their activity. The Commission believes that the amendment will result in compliance costs for persons that elect to use the exception, as described below. However, the Commission expects that persons will elect to incur those costs only where it would be less costly than either complying with the Title VII framework or restructuring to avoid using U.S. personnel to arrange, negotiate, or execute transactions with non-U.S. counterparties.

(a) Costs and Benefits for Persons That May Use the Amendment

The primary benefit of the amendment is that it would permit a person further flexibility to opt into a Title VII compliance framework that is compatible with its existing business practices. While the registered U.S. person would be the entity adhering to most of the conditions set forth in the amendment and the non-U.S. person would be responsible for complying with some of the other conditions,[456] for the purposes of this analysis, the Commission assumes that the costs of complying with these conditions will be passed on to the non-U.S.-person affiliate. In the absence of the amendment, a non-U.S. person could incur the cost of registering as a security-based swap dealer, and a financial group may incur the cost of registering at least one security-based swap dealer [457] due to the ''arranged, negotiated, or executed'' counting test. The non-U.S. person or group accordingly would incur the cost necessary for compliance with the full set of security-based swap dealer requirements by one or more registered security-based swap dealers. These burdens, contingent on exceeding the *de minimis* threshold, are in addition to the assessment costs that the non-U.S. person would incur to identify and count relevant market-facing activity toward the *de minimis* threshold.

As discussed in the ANE Adopting Release, such a non-U.S. person could respond to these costs by restructuring its security-based swap business to avoid using U.S. personnel to arrange, negotiate, or execute transactions with non-U.S. counterparties. Such a strategy would allow the non-U.S. person to avoid counting transactions between the non-U.S. person and its non-U.S. counterparties toward the non-U.S. person's *de minimis* threshold. In addition to reducing the likelihood of incurring the programmatic costs associated with the full set of security-based swap dealer requirements under Title VII, this response to current requirements could reduce the assessment costs associated with counting transactions toward the *de minimis* threshold and fully abrogate the need to identify transactions with non-U.S. counterparties that involve U.S. personnel.[458]

However, the Commission also noted in the ANE Adopting Release that restructuring is itself costly. To reduce the costs of assessment and potential dealer registration, a non-U.S. person may need to incur costs to ensure that U.S. personnel are not involved in arranging, negotiating, or executing transactions with non-U.S. counterparties. The Commission was able to quantify some, but not all of the costs of restructuring in the ANE Adopting Release.[459] As discussed above in Part VI.A.2.d, non-U.S. persons may make their location decisions based on business considerations such as maintaining 24-hour operations or the value of local market expertise. Thus, restructuring business lines or relocating personnel (or the activities performed by U.S. personnel) to avoid the United States could result in less efficient operations for non-U.S. persons active in the security-based swap market.

The exception would benefit non-U.S. persons by offering them an alternative to costly relocation or restructuring that would still permit them to avoid some of the costs associated with assessing their market-facing activity while also reducing the likelihood that their market-facing activity crosses the *de minimis* threshold. As discussed in detail below, the availability of the exception would be conditioned on the use of a registered entity and compliance with certain Title VII requirements designed to protect counterparties but not all Title VII requirements. To the extent that the costs of compliance with these conditions are lower than the compliance costs in the absence of the amendment and the costs of business restructuring, the exception could reduce the regulatory cost burden for the non-U.S. person or group.

The Commission recognizes that U.S.-based dealing entities may use the exception by booking transactions with non-U.S. counterparties into non-U.S. affiliates, thereby avoiding the application of the full set of security-based swap dealer requirements to those transactions and the associated security-

[455] *See* Part VI.A.7, *supra.*

[456] *See, e.g.,* Exchange Act Rule 3a71–3(d)(1)(iii)(A).

[457] The available data limit the Commission's ability to discern the multiple different legal entities each of which engages in security-based swap market-facing activity at levels above the *de minimis* thresholds because the way in which non-U.S. persons organize their dealing business may not align with the way their transaction volumes are accounted for in TIW. In particular, it is possible that some of the 10 non-U.S. persons identified in the TIW data as potential registrants aggregate transaction volumes of multiple non-U.S.-person dealers. In such cases, the exclusion of transactions between these non-U.S.-person dealers and non-U.S. counterparties from the *de minimis* calculations may result in multiple non-U.S.-person dealers no longer meeting the *de minimis* threshold.

[458] In 2016, the Commission estimated a cost of $410,000 per entity to establish systems to identify market-facing activity arranged, negotiated, or executed using U.S. personnel and $6,500 per entity per year for training, compliance and verification costs. *See* ANE Adopting Release, 81 FR at 8627. Adjusted for inflation, these amounts are respectively approximately $443,292 and $7,028 in 2019 dollars. Unless otherwise stated, cost estimates in Part VI of this release are adjusted for CPI inflation using data from the Bureau of Labor Statistics through June 2019, where applicable.

[459] In 2016, the Commission estimated it would cost approximately $28,300 per entity to establish policies and procedures to restrict communication between personnel located in the United States employed by non-U.S. persons or their agents, and other personnel involved in market-facing activity. *See* ANE Adopting Release, 81 FR at 8628. Adjusted for inflation, this is approximately $30,598. The foregoing is one of the ways in which a non-U.S. person might choose to restructure its business activities. Other restructuring methods, such as the relocation of U.S. personnel to locations outside the United States, potentially would be more costly.

based swaps.[460] As discussed further in Part VI.B.1.b below, U.S.-based dealing entities that use the conditional exception in this manner may benefit by incurring lower compliance costs when providing liquidity to non-U.S. counterparties.

The Commission's designation of a listed jurisdiction by order could signal to non-U.S. counterparties that a non-U.S. person was subject to a regulatory regime that, at a minimum, is consistent with the public interest in terms of financial responsibility requirements, the jurisdiction's supervisory compliance program, the enforcement authority in connection with those requirements, and other factors the Commission may consider. This process potentially provides a certification benefit to non-U.S. persons availing themselves of the exception by demonstrating to non-U.S. counterparties the applicability of regulatory requirements that would be in the public interest.

Table 3 summarizes the quantifiable costs the Commission estimates non-U.S. persons could incur as a result of the conditions associated with the exception. The per-entity cost estimates assume the de novo formation of a security-based swap dealer or broker-dealer. The Commission expects that these are likely upper bounds for per-entity costs for two reasons. First, non-U.S. persons may already be regulated by jurisdictions with similar requirements and, as a consequence of foreign regulatory requirements, may already have established infrastructure, policies, and procedures that would facilitate meeting the conditions of the exception. For example, a non-U.S. person regulated by a jurisdiction with similar trade acknowledgment and verification requirements would likely already have an order management system in place capable of complying with Rule 15Fi–2, making development of a novel system for the purpose of taking advantage of the exception unnecessary. Second, non-U.S. persons that already have an affiliated registered security-based swap dealer or registered broker-dealer likely would use their existing registered affiliates to rely on the exception rather than register new entities.

TABLE 3—ESTIMATES OF QUANTIFIABLE COSTS ASSOCIATED WITH AMENDMENT TO RULE 3a71–3[461]

	Initial costs		Ongoing costs	
	Per entity	Aggregate	Per entity	Aggregate
Registered entity:				
Security-based swap dealer registration	$530,991	$12,743,784	$2,797	$67,128
Security-based swap dealer capital requirement			3,000,000	72,000,000
Broker-dealer registration	$301,400	$7,233,600	54,800	1,315,200
Broker-dealer capital requirement			3,000,000	72,000,000
Risk management control systems	$525,333	$12,607,992	71,000	1,704,000
Applicable SBSD requirements	$2,107,341	$50,576,184	520,735	12,497,640
Recordkeeping:				
• If registered entity is a registered security-based swap dealer and registered broker-dealer or registered entity is a stand-alone registered broker-dealer.	$530,935	$12,742,440	101,353	2,432,472
• If registered entity is a stand-alone registered SBSD	$243,376	$5,841,024	61,140	1,467,360
• If registered entity is a bank registered SBSD	$187,388	$4,497,312	44,405	1,065,720
Trading relationship documentation	$3,150	$75,600	3,692	88,608
Consent to service of process	$423	$10,152		
Development of policies and procedures for threshold compliance documentation.	$4,230	$101,520		
Receipt and maintenance of compliance documentation			21,996	527,904
Notice by registered entity	$212	$5,088		
Analysis of inter-dealer activity	$16,320	$391,680	18,190	436,560
Non-U.S. entity:				
Trading relationship documentation	$3,150	$75,600	7,384	177,216
Consent to service of process	$423	$10,152		
Disclosure of limited Title VII applicability	$30,598 and 100 hours	$734,352 and 2,400 hours		
''Listed jurisdiction'' applications	$119,364	$358,092		
Development of policies and procedures for threshold compliance documentation.	$4,230	$101,520		
Creation and conveyance of compliance documentation			43,992	1,055,808

[460] *See* Parts II.C and VI.A.7, *supra.*

[461] Certain cost estimates presented in this section differ from those presented in the Proposing Release (*see* Proposing Release, 84 FR at 24255–61). There are a number of reasons for such differences. First, the Commission now adjusts for inflation through June 2019, whereas in the Proposing Release, the Commission adjusted for inflation through the end of 2018 (*see* note 458, *supra*). Second, the Commission now uses data through the end of 2018 to estimate the capital requirement for the registered entity, whereas in the Proposing Release, the Commission used data through the first quarter of 2018. Third, the Commission has revised the cost estimates associated with the suitability condition to reflect (a) the number of non-U.S. counterparties presented in Part VII.A.4 note 663, *infra,* and (b) modifications to the suitability condition as discussed in Part II.C.2, *supra,* and Part VII.A.4, *infra.* Fourth, the Commission has removed the costs associated with the proposed portfolio reconciliation requirement, which the Commission is not adopting. Fifth, the Commission has revised the cost associated with the capital requirement for the registered entity if it is a registered broker, in light of modifications discussed in Part II.C.1, *supra.*

If a non-U.S. person or its affiliated group seeks to rely on the exception using a registered security-based swap dealer, that person or its affiliated group would incur the cost of registering one U.S.-based entity as a security-based swap dealer (if there otherwise is not an affiliated security-based swap dealer present).[462] The Commission estimates per entity initial costs of registering a security-based swap dealer of approximately $530,991.[463] In addition, the non-U.S. person or its affiliated group would incur ongoing costs associated with its registered security-based swap dealer of approximately $2,797.[464] Based on the Commission's estimate that up to 24[465] persons might avail themselves of the exception, the aggregate initial costs associated with registering security-based swap dealers under the exception would be approximately $12,743,784 and the aggregate ongoing costs would be approximately $67,128.[466] The U.S. person affiliate of such a non-U.S. person or affiliated group would also be required to meet minimum capital requirements as a registered security-based swap dealer.[467] At a minimum, the Commission estimates the ongoing cost of this capital to be approximately $3 million[468] per entity and $72 million in aggregate.[469] To the extent that this capital is held in liquid assets[470] that generate a positive return to the registered security-based swap dealer, that positive return could be used to offset, at least in part, the ongoing cost of capital.

If a non-U.S. person or its affiliated group seeks to rely on the exception using a registered broker-dealer, that person or its affiliated group would incur the cost of registering one entity as a broker-dealer (if there otherwise is not an affiliated broker-dealer present). The Commission estimates the per entity initial costs of registering a broker-dealer to be approximately $301,400,[471] and estimates the per entity ongoing costs of meeting registration requirements as a broker-dealer to be approximately $54,800[472] per year. Based on the Commission's estimate that up to 24[473] persons might avail themselves of the exception and assuming that these persons choose to do so by using registered broker-dealers, the Commission estimates the aggregate initial costs of broker-dealer registration to be $7,233,600[474] and the aggregate ongoing costs of meeting broker-dealer registration requirements to be $1,315,200[475] per year. Non-U.S. persons meeting the conditions of the exception by using a registered broker-dealer would additionally incur the cost of complying with applicable requirements associated with the registered broker-dealer status, including maintaining a minimum level of net capital. The Commission estimates the ongoing cost of this capital to be approximately $3 million[476] per

[461] Certain cost estimates presented in this section differ from those presented in the Proposing Release (*see* Proposing Release, 84 FR at 24255–61). There are a number of reasons for such differences. First, the Commission now adjusts for inflation through June 2019, whereas in the Proposing Release, the Commission adjusted for inflation through the end of 2018 (*see* note 458, *supra*). Second, the Commission now uses data through the end of 2018 to estimate the capital requirement for the registered entity, whereas in the Proposing Release, the Commission used data through the first quarter of 2018. Third, the Commission has revised the cost estimates associated with the suitability condition to reflect (a) the number of non-U.S. counterparties presented in Part VII.A.4 note 663, *infra,* and (b) modifications to the suitability condition as discussed in Part II.C.2, *supra,* and Part VII.A.4, *infra.* Fourth, the Commission has removed the costs associated with the proposed portfolio reconciliation requirement, which the Commission is not adopting. Fifth, the Commission has revised the cost associated with the capital requirement for the registered entity if it is a registered broker, in light of modifications discussed in Part II.C.1, *supra.*

[462] This is a Title VII programmatic cost and is in addition to other Title VII programmatic costs discussed in Part VI.B.1.b, *infra.*

[463] This estimate incorporates quantifiable initial costs presented in the Registration Adopting Release, 80 FR at 48990–95 & 49005–06, adjusted for inflation. Specifically, per entity initial costs in 2019 dollars are estimated as $13,027 (filing Form SBSE) + $13,289 (senior officer certification) + $449,700 (associated natural person certifications) + $27,110 (associated entity person certifications) + $27,865 (initial filing of Schedule F) = $530,991.

[464] This estimate incorporates quantifiable annual costs presented in the Registration Adopting Release, 80 FR at 48990–95 & 49005–06, adjusted for inflation. Specifically, per entity ongoing costs in 2019 dollars are estimated as $931 (amending Form SBSE) + $1,505 (amending Schedule F) + $51 (retaining signature pages) + $310 (filing withdrawal form) = $2,797.

[465] *See* Part VI.A.7, *supra.*

[466] Aggregate initial costs calculated as 24 × $530,991 = $12,743,784. Aggregate ongoing costs calculated as 24 × $2,797 = $67,128.

[467] A registered non-bank security-based swap dealer may be subject to minimum fixed-dollar capital requirements of $20 million or $1 billion in net capital and $100 million or $5 billion in tentative net capital, depending in part on whether it is a stand-alone security-based swap dealer or a security-based swap dealer that is dually registered as a broker-dealer, and on whether it uses models to compute deductions for market and credit risk. *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43874–76. Registered security-based swap dealers that have a prudential regulator must comply with capital requirements that the prudential regulators have prescribed. *See* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (adopting capital requirements for bank security-based swap dealers).

[468] This estimation assumes that the registered entity relies on the limited exemption from broker registration, does not use models to compute deductions for market or credit risk, and thus must maintain a minimum net capital of $20 million. *See* Part II.C, *supra,* and Capital, Margin, and Segregation Adopting Release, 84 FR at 43875. The Commission estimated the cost of capital in two ways. First, the time series of average return on equity for all U.S. banks between the fourth quarter 1983 and the fourth quarter 2018 (*see* Federal Financial Institutions Examination Council (US), Return on Average Equity for all U.S. Banks [USROE], retrieved from FRED, Federal Reserve Bank of St. Louis on July 26, 2019, available at *https://fred.stlouisfed.org/series/USROE*), are averaged to arrive at an estimate of 11.28%. The cost of capital is calculated as 11.28% × $20 million = $2.256 million or approximately $2.3 million. The Commission believes that use of the historical return on equity for U.S. banks adequately captures the cost of capital because of the 12 persons that were identified in the 2017 TIW data as persons that potentially may use the exception, eight are banks and three have bank affiliates. *See* Part VI.A.7, *supra.* To the extent that this approach does not adequately capture the cost of capital of persons that are not banks or have no bank affiliates, the Commission supplements the estimation by also using the annual stock returns on financial stocks to calculate the cost of capital. With this second approach, the annual stock returns on a value-weighted portfolio of financial stocks from 1983 to 2018 (*see* Professor Ken French's website, available at *http://mba.tuck.dartmouth.edu/pages/faculty/ken.french/data_library.html* and accessed on July 26, 2019) are averaged to arrive at an estimate of 16.05%. The cost of capital is calculated as 16.05% × $20 million = $3.21 million or approximately $3.2 million. The final estimate of the cost of capital is the average of $2.3 million and $3.2 million = (2.3 + 3.2)/2 = $2.75 million or approximately $3 million.

[469] Aggregate costs calculated as $3 million × 24 entities = $72 million.

[470] *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43879.

[471] The Commission previously estimated that an entity would incur costs of $275,000 to register as a broker-dealer and become a member of a national securities association. *See* Crowdfunding, Exchange Act Release No. 76324 (Oct. 30, 2015), 80 FR 71388, 71509 (Nov. 16, 2015) (''Regulation Crowdfunding Adopting Release''). Adjusted for inflation, these costs are $301,400 in 2019 dollars.

[472] The Commission previously estimated that an entity would incur ongoing annual costs of $50,000 to maintain broker-dealer registration and membership of a national securities association. *See* Regulation Crowdfunding Adopting Release, 80 FR at 71509. Adjusted for inflation, these costs are $54,800 in 2019 dollars. The estimation of ongoing annual costs is based on the assumption that the entity would use existing staff to perform the functions of the registered broker-dealer and would not incur incremental costs to hire new staff. To the extent that the entity chooses to hire new staff, the ongoing annual costs may be higher.

[473] *See* Part VI.A.7, *supra.*

[474] Aggregate broker-dealer registration costs calculated as $301,400 × 24 entities = $7,233,600.

[475] Aggregate ongoing costs of meeting broker-dealer registration requirements calculated as = $54,800 × 24 entities = $1,315,200.

[476] This estimation assumes that the registered entity does not use models to compute deductions for market or credit risk and thus must maintain a minimum net capital of $20 million (*see* Part II.C, *supra*). The Commission believes that the methodology for estimating the cost of capital of a registered security-based swap dealer is also appropriate for estimating the cost of capital of a registered broker-dealer (*see* note 468, *supra*). Using the historical return on equity for all U.S. banks, the Commission calculated the cost of capital as 11.28% × $20 million = $2.256 million or approximately $2.3 million. The Commission believes that use of the historical return on equity

Continued

entity. If the up to 24 persons that might use the exception choose to do so by using registered broker-dealers, the estimated aggregate ongoing cost of capital is approximately $72 million.[477] To the extent that this capital is held in liquid assets [478] that generate a positive return to the registered broker-dealer, that positive return would offset, at least in part, the ongoing cost of capital.

To the extent that a non-U.S. person or its affiliated group seeks to rely on the exception by using a registered broker-dealer that is not approved to use models and is not dually registered as a security-based swap dealer or an OTC derivatives dealer, such a non-U.S. person or its affiliated group would incur costs to establish and maintain risk management control systems as if the registered entity also were a security-based swap dealer.[479] The Commission estimates the per entity initial costs of such risk management control systems to be approximately $525,333,[480] and estimates the per entity ongoing costs of such risk management control systems to be approximately $71,000.[481] If the up to 24 persons that might use the exception choose to do so by using registered broker-dealers that are not approved to use models and are not dually registered as security-based swap dealers or OTC derivatives dealers, the estimated aggregate initial costs and ongoing costs would be approximately $12,607,992,[482] and $1,704,000,[483] respectively.

To the extent that a non-U.S. person has an existing, registered broker-dealer affiliate,[484] and uses that affiliate to rely on the conditional exception, the non-U.S. person would not incur costs associated with registering a broker-dealer and the incremental compliance cost would be limited to costs associated with complying with the other conditions of the exception as discussed below.

In addition to registering either as security-based swap dealers or as broker-dealers, U.S. person affiliates of non-U.S. persons seeking to rely on the exception would be required to comply with applicable security-based swap dealer requirements, including those related to disclosures of risks, characteristics, incentives, and conflicts of interest, suitability,[485] communications, and trade acknowledgment and verification.[486] The Commission, estimates initial costs associated with these requirements of up to approximately $2,107,341 per entity,[487] or up to $50,576,184 in aggregate,[488] and ongoing costs associated with these requirements of approximately $520,735 per entity,[489] or up to $12,497,640 in aggregate.[490]

If the registered entity is a registered stand-alone security-based swap dealer, it also would be responsible for creating and maintaining books and records related to the transactions subject to the exception that are required, as applicable, by Exchange Act Rules 18a–5 and 18a–6, including any books and records requirements relating to the provisions specified in paragraph (d)(1)(iii)(B) of Rule 3a71–3. The Commission estimates the initial costs associated with Exchange Act Rules 18a–5 and 18a–6 to be approximately $243,376 per entity,[491] or up to

for U.S. banks adequately captures the cost of capital because of the 12 persons that were identified in the 2017 TIW data as persons that potentially may use the exception, eight are banks and three have bank affiliates. *See* Part VI.A.7, *supra.* To the extent that this approach does not adequately capture the cost of capital of persons that are not banks or have no bank affiliates, the Commission supplements the estimation by also using the annual stock returns on financial stocks to calculate the cost of capital. With this second approach, the Commission calculated the cost of capital as 16.05% × $20 million = $3.21 million or approximately $3.2 million. The final estimate of the cost of capital is the average of $2.3 million and $3.2 million = (2.3 + 3.2)/2 = $2.75 million or approximately $3 million.

[477] Aggregate costs calculated as $3 million × 24 entities = $72 million.

[478] *See* Exchange Act Rule 15c3–1.

[479] *See* Section II.C.1.b, *supra.*

[480] Per entity initial costs = 2,000/3 hours × $423/hour national hourly rate an attorney + 2,000/3 hours × $202/hour national hourly rate for a risk management specialist + 2,000/3 hours × $139/hour national hourly rate for an operations specialist + per entity hardware and software expenses of $16,000 = $525,333.33 or approximately $525,333. *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43962 and Section VII.A.4.g, *infra.* The per hour figures for an attorney, a risk management specialist, and an operations specialist are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, as modified by Commission staff to adjust for inflation and to account for an 1,800-hour work-year, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[481] Per entity ongoing costs = 250 hours × $202/hour national hourly rate for a risk management specialist + per entity ongoing cost of $20,500 = $71,000.

[482] Aggregate initial costs calculated as $525,333 × 24 entities = $12,607,992.

[483] Aggregate ongoing costs calculated as $71,000 × 24 entities = $1,704,000.

[484] Analyses of 2017 TIW data indicate that of the six non-U.S. persons that potentially may use the exception, four have majority-owned registered broker-dealer affiliates. *See* Part VI.A.7, *supra.*

[485] *See* note 461, *supra,* discussing, among other things, that the cost estimate associated with the suitability condition has been revised to reflect modifications to the suitability condition as discussed in Part II.C.2, *supra,* and Part VII.A.4, *infra.*

[486] *See* Exchange Act Rule 3a71–3(d)(1)(ii)(B). The costs of complying with applicable security-based swap dealer requirements are Title VII programmatic costs and are in addition to other Title VII programmatic costs discussed in Part VI.B.1.b, *infra.*

[487] This estimate incorporates quantifiable initial costs presented in the Business Conduct Adopting Release, 81 FR at 30092–93, 30111, 30117, 30126, and the Trade Acknowledgment and Verification Adopting Release, 81 FR at 39839, adjusted for inflation where applicable. Specifically, initial costs associated with disclosures, suitability, communications, and trade acknowledgment and verification in 2019 dollars are estimated as $980,288 (disclosures) + $970,031 (suitability) + $18,034 (communications) + $138,988 (trade acknowledgment and verification) = $2,107,341. The cost associated with disclosures has been adjusted to account for the fact that the disclosures of clearing rights and daily mark are not part of paragraph (d)(1)(ii)(B)(*1*) of Exchange Act Rule 3a71–3.

As discussed above, the Commission assumes that the compliance costs incurred by the U.S. registered entity in connection with the amendment would be passed on to the non-U.S.-person affiliate. To the extent that the registered entity complies with the disclosure condition by delegating to the non-U.S.-person affiliate the tasks of delivering the required disclosures and creating (but not maintaining) books and records relating to those disclosures as required by Rule 3a71–3(d)(1)(iii)(B)(*1*) (*see* Part II.C.2, *supra*), the cost associated with the disclosure condition and the cost associated with Rule 3a71–3(d)(1)(iii)(B)(*1*) could be incurred directly, at least in part, by the non-U.S.-person affiliate. The Commission does not believe such delegation affects the estimation of the costs associated with the disclosure condition and Rule 3a71–3(d)(1)(iii)(B)(*1*). Further, to the extent that the registered entity complies with the trade acknowledgment and verification condition by delegating to the non-U.S. person-affiliate the tasks of delivering the required trade acknowledgment or verification and creating (but not maintaining) books and records relating to that trade acknowledgment or verification as required by Rule 3a71–3(d)(1)(iii)(B)(*1*) (*see* Part II.C.2, *supra*), the cost associated with the trade acknowledgment and verification condition and the cost associated with Rule 3a71–3(d)(1)(iii)(B)(*1*) could be incurred directly, at least in part, by the non-U.S.-person affiliate. The Commission does not believe such delegation affects the estimation of the costs associated with the trade acknowledgment and verification condition and Rule 3a71–3(d)(1)(iii)(B)(*1*).

In estimating the cost associated with the trade acknowledgment and verification condition, the Commission assumes that the registered entity relies on the exemption from Rule 10b–10 (*see* Exchange Act Rule 3a71–3(d)(5)) to the extent that the registered entity is a registered broker and Rule 10b–10 applies to the transaction that is subject to the exception. If such an entity does not rely on the exemption from Rule 10b–10, the cost associated with the trade acknowledgment and verification condition could be higher.

[488] Aggregate initial costs = Per entity initial costs of $2,107,341 × 24 entities = $50,576,184.

[489] This estimate incorporates quantifiable ongoing costs presented in the Business Conduct Adopting Release, 81 FR at 30092–93, 30111, 30126, and the Trade Acknowledgment and Verification Adopting Release, 81 FR at 39839, adjusted for inflation where applicable. Specifically, ongoing costs associated with disclosures, and trade acknowledgment and verification are estimated in 2019 dollars as $424,407 (disclosures) + $96,328 (trade acknowledgment and verification) = $520,735. The cost associated with disclosures has been adjusted to account for the fact that the disclosures of clearing rights and daily mark are not part of paragraph (d)(1)(ii)(B)(*1*) of Rule 3a71–3.

[490] Aggregate ongoing costs = Per entity ongoing costs of $520,735 × 24 entities = $12,497,640.

[491] The per entity initial costs associated with Exchange Act Rule 18a–5 (assuming that the stand-

$5,841,024 in aggregate,[492] and ongoing costs associated with these rules of approximately $61,140 per entity,[493] or up to $1,467,360 in aggregate.[494] The discussion in Part VI.A.7 above suggests that a number of the persons that may make use of the exception likely would be banks.[495] In light of this finding, the Commission also presents cost estimates associated with Exchange Act Rules 18a–5 and 18a–6 under the assumption that the registered security-based swap dealer is a bank registered security-based swap dealer. The Commission estimates the initial costs associated with these rules to be approximately $187,388 per entity,[496] or up to $4,497,312 in aggregate,[497] and ongoing costs associated with these rules of approximately $44,405 per entity,[498] or up to $1,065,720 in aggregate.[499]

If the registered entity is a registered security-based swap dealer and a registered broker-dealer, or if the registered entity is a stand-alone registered broker-dealer, then it would need to comply with Exchange Act Rules 17a–3 and 17a–4, including any books and records requirements relating to the provisions specified in paragraph (d)(1)(iii)(B) of Rule 3a71–3. The Commission estimates the initial costs associated with Exchange Act Rules

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alone registered security-based swap dealer does not have a prudential regulator and is not an ANC stand-alone registered security-based swap dealer) = 320 hours × $315/hour national hourly rate for a compliance manager + per entity external costs of $1,000 = $101,8000. *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68609–11 for burden hours and external costs. The $315 per hour figure for a compliance manager is from SIFMA's Management and Professional Earnings in the Securities Industry—2013, as modified by Commission staff to adjust for inflation and to account for an 1,800-hour work-year, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

The per entity initial costs associated with Exchange Act Rule 18a–6 (assuming that the stand-alone registered security-based swap dealer does not have a prudential regulator and is not an ANC stand-alone registered security-based swap dealer) = 408 hours × $347/hour national hourly rate for a senior database administrator = $141,576. *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68611–14 for burden hours. The $347 per hour figure for a senior database administrator is from SIFMA's Management and Professional Earnings in the Securities Industry—2013, as modified by Commission staff to adjust for inflation and to account for an 1,800-hour work-year, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

The per entity initial costs associated with Exchange Act Rules 18a–5 and 18a–6 = $101,800 + 141,576 = $243,376.

[492] Aggregate initial costs = Per entity initial costs of $243,376 × 24 entities = $5,841,024.

[493] The per entity ongoing costs associated with Exchange Act Rule 18a–5 (assuming that the stand-alone registered security-based swap dealer does not have a prudential regulator and is not an ANC stand-alone registered security-based swap dealer) = 400 hours × $71/hour national hourly rate for a compliance clerk + per entity external costs of $4,650 = $33,050. *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68609–11 for burden hours and external costs. The $71 per hour figure for a compliance clerk is from SIFMA's Office Salaries in the Securities Industry (Oct. 2013), as modified by Commission staff to adjust for inflation and to account for an 1,800-hour work-year, and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

The per entity ongoing costs associated with Exchange Act Rule 18a–6 (assuming that the stand-alone registered security-based swap dealer does not have a prudential regulator and is not an ANC stand-alone registered security-based swap dealer) = 310 hours × $71/hour national hourly rate for a compliance clerk + per entity external costs of $6,080 = $28,090. *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68611–14 for burden hours and external costs.

The per entity ongoing costs associated with Exchange Act Rules 18a–5 and 18a–6 = $33,050 + 28,090 = $61,140.

[494] Aggregate ongoing costs = Per entity ongoing costs of $61,140 × 24 entities = $1,467,360.

[495] *See* Part VI.A.7, *supra,* stating that of the 12 persons identified in 2017 TIW data as potential users of the exception, eight are banks.

[496] The per entity initial costs associated with Exchange Act Rule 18a–5 (assuming that the registered security-based swap dealer has a prudential regulator) = 260 hours × $315/hour national hourly rate for a compliance manager = $81,900. *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68609–11 for burden hours. *See* note 491, *supra,* for a derivation of the national hourly rate for a compliance manager.

The per entity initial costs associated with Exchange Act Rule 18a–6 (assuming that the registered security-based swap dealer has a prudential regulator) = 304 hours × $347/hour national hourly rate for a senior database administrator = $105,488. *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68611–14 for burden hours. *See* note 491, *supra,* for a derivation of the national hourly rate for a senior database administrator.

The per entity initial costs associated with Exchange Act Rules 18a–5 and 18a–6 = $81,900 + $105,488 = $187,388.

[497] Aggregate initial costs = Per entity initial costs of $187,388 × 24 entities = $4,497,312.

[498] The per entity ongoing costs associated with Exchange Act Rule 18a–5 (assuming that the registered security-based swap dealer has a prudential regulator) = 325 hours × $71/hour national hourly rate for a compliance clerk = $23,075. *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68609–11. *See* note 493, *supra,* for a derivation of the national hourly rate for a compliance clerk.

The per entity ongoing costs associated with Exchange Act Rule 18a–6 (assuming that the registered security-based swap dealer has a prudential regulator) = 230 hours × $71/hour national hourly rate for a compliance clerk + per entity external costs of $5,000 = $21,330. *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68611–14 for burden hours and external costs.

The per entity ongoing costs associated with Exchange Act Rules 18a–5 and 18a–6 = $23,075 + 21,330 = $44,405.

[499] Aggregate ongoing costs = Per entity ongoing costs of $44,405 × 24 entities = $1,065,720.

17a–3 and 17a–4 to be approximately $530,935 per entity,[500] or up to $12,742,440 in aggregate,[501] and ongoing costs associated with these rules of approximately $101,353 per entity,[502] or up to $2,432,472 in aggregate.[503]

The registered entity also must obtain from the non-U.S. person relying on the exception, and maintain for not less than three years following the ''arranging, negotiating, or executing'' activity pursuant to the exception, the first two years in an easily accessible place, documentation encompassing all terms governing the trading relationship between the non-U.S. person and its counterparty relating to the transactions subject to this exception, including, without limitation, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, allocation of any applicable regulatory reporting obligations, governing law, valuation, and dispute resolution.[504] The Commission believes that both the registered entity and its non-U.S. affiliate will incur costs to comply with this condition.[505] However as discussed above, the Commission believes that the costs incurred by the registered entity would be passed on to the non-U.S. affiliate. For registered entities, the Commission estimates the initial costs associated with this condition to be approximately $3,150 per registered entity,[506] or up to $75,600 in aggregate,[507] and ongoing costs associated with this condition of approximately $3,692 per registered entity,[508] or up to $88,608 in aggregate.[509] For non-U.S. entities, the Commission estimates the initial costs associated with this condition to be approximately $3,150 per non-U.S. entity,[510] or up to $75,600 in aggregate,[511] and ongoing costs associated with this condition of approximately $7,384 per non-U.S. entity,[512] or up to $177,216 in aggregate.[513]

The registered entity also would be responsible for obtaining from the non-U.S. person relying on this exception, and maintaining for not less than three years following the ''arranging, negotiating, or executing'' activity pursuant to the exception, the first two years in an easily accessible place, written consent to service of process for any civil action brought by or proceeding before the Commission, providing that process may be served on the non-U.S. person by service on the registered entity in the manner set forth in the registered entity's current Form

[500] The Commission estimates these costs in two parts: (1) Costs associated with the SBS requirements of Exchange Act Rules 17a–3 and 17a–4, *i.e.,* recordkeeping requirements mandated under the Dodd-Frank Act with respect to broker-dealer SBSDs that were adopted in the Recordkeeping and Reporting Adopting Release and (2) costs associated with the non-SBS requirements of Exchange Act Rules 17a–3 and 17a–4.

The per entity initial costs associated with the SBS requirements of Exchange Act Rule 17a–3 (assuming the entity is not an ANC broker-dealer) = 150 hours × $315/hour national hourly rate for a compliance manager = $47,250. *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68609–11. *See* note 491, *supra,* for a derivation of the national hourly rate for a compliance manager.

To estimate the per entity initial costs associated with the non-SBS requirements of Exchange Act Rule 17a–3, the Commission assumes these costs are proportional to the per entity ongoing costs associated with the non-SBS requirements of Exchange Act Rule 17a–3. Further, the Commission assumes that this proportion is equal to the proportion of per entity initial costs to per entity ongoing costs associated with the SBS requirements of Exchange Act Rule 17a–3. As discussed in note 502, *infra,* the Commission estimates the per entity ongoing costs associated with the SBS requirements of Exchange Act Rule 17a–3 as $10,082. The proportion of per entity initial costs to per entity ongoing costs associated with the SBS requirements of Exchange Act Rule 17a–3 is $47,250/$10,082 or approximately 4.7. The per entity initial costs associated with the non-SBS requirements of Exchange Act Rule 17a–3 is estimated as 4.7 × $59,186 (per entity ongoing costs associated with non-SBS requirements of Exchange Act Rule 17a–3, *see* note 502, *infra*) = $278,174.20 or approximately $278,174.

The per entity initial costs associated with the SBS requirements of Exchange Act Rule 17a–4 (assuming the entity is not an ANC broker-dealer) = 156 hours × $347/hour national hourly rate for a senior database administrator = $54,132. *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68611–14. *See* note 491, *supra,* for a derivation of the national hourly rate for a senior database administrator.

To estimate the per entity initial costs associated with the non-SBS requirements of Exchange Act Rule 17a–4, the Commission assumes these costs are proportional to the per entity ongoing costs associated with non-SBS requirements of Exchange Act Rule 17a–4. Further, the Commission assumes that this proportion is equal to the proportion of per entity initial costs to per entity ongoing costs associated with SBS requirements of Exchange Act Rule 17a–4. As discussed in note 502, *infra,* the Commission estimates the per entity ongoing costs associated with the SBS requirements of Exchange Act Rule 17a–4 as $8,432. The proportion of per entity initial costs to per entity ongoing costs associated with SBS requirements of Exchange Act Rule 17a–4 is $54,132/$8,432 or approximately 6.4. The per entity initial costs associated with non-SBS requirements of Exchange Act Rule 17a–4 is estimated as 6.4 × $23,653 (per entity ongoing costs associated with non-SBS requirements of Exchange Act Rule 17a–4, *see* note 502, *infra*) = $151,379.20.

The per entity initial costs associated with Exchange Act Rules 17a–3 and 17a–4 = $47,250 + $278,174.20 + $54,132 + $151,379.20 = $530,935.40 or approximately $530,935.

[501] Aggregate initial costs = Per entity initial costs of $530,935 × 24 entities = $12,742,440.

[502] The Commission estimates these costs in two parts: (1) Costs associated with the SBS requirements of Exchange Act Rules 17a–3 and 17a–4, *i.e.,* recordkeeping requirements mandated under the Dodd-Frank Act with respect to broker-dealer SBSDs that were adopted in the Recordkeeping and Reporting Adopting Release and (2) costs associated with the non-SBS requirements of Exchange Act Rules 17a–3 and 17a–4.

The per entity ongoing costs associated with the non-SBS requirements of Exchange Act Rule 17a–3 = 673.40 hours × $71/hour national hourly rate for a compliance clerk + per entity external costs of $11,374.15 in 2019 dollars = $59,185.55, or approximately $59,186. Per entity ongoing burden hours = total burden hours of 2,763,612/4,104 broker-dealer respondents = 673.40 hours. *See* U.S. Securities and Exchange Commission, ''Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–3'' (Mar. 9, 2017), available at *https://www.reginfo.gov/public/do/DownloadDocument?objectID=72125401. See* note 493, *supra,* for a derivation of the national hourly rate for a compliance clerk.

The per entity ongoing costs associated with the SBS requirements of Exchange Act Rule 17a–3 (assuming the entity is not an ANC broker-dealer) = 142 hours × $71/hour national hourly rate for a compliance clerk = $10,082 (*See* Recordkeeping and Reporting Adopting Release, 84 FR at 68609–11).

The per entity ongoing costs associated with the non-SBS requirements of Exchange Act Rule 17a–4 = 257 hours × $71/hour national hourly rate for a compliance clerk + per entity external costs of $5,406 in 2019 dollars = $23,653. *See* U.S. Securities and Exchange Commission, ''Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–4'' (Oct. 19, 2016), available at *https://www.reginfo.gov/public/do/DownloadDocument?objectID=68823501.*

The per entity ongoing costs associated with the SBS requirements of Exchange Act Rule17a–4 (assuming the entity is not an ANC broker-dealer) = 72 hours × $71/hour national hourly rate for a compliance clerk + per entity external costs of $3,320 = $8,432 (*See* Recordkeeping and Reporting Adopting Release, 84 FR at 68611–14).

The total per entity ongoing costs = $59,186 + $10,082 + $23,653 + $8,432 = $101,353.

[503] Aggregate ongoing costs = Per entity ongoing costs of $101,353 × 24 entities = $2,432,472.

[504] *See* Exchange Act Rule 3a71–3(d)(1)(iii)(B)(*2*).

[505] *See* Part VII.A.4.d, *infra.*

[506] As discussed in Part VII.A.4.d, *infra,* the condition imposes an initial burden of 20 hours. The Commission assumes that the burden will be allocated equally between the registered entity and the non-U.S. entity. Therefore, a registered entity will incur initial costs associated with a burden of 10 hours = 10 hours × $315/hour national hourly rate for a compliance manager = $3,150. *See* note 491, *supra,* for a derivation of the national hourly rate for a compliance manager.

[507] Aggregate initial costs = Per entity initial costs of $3,150 × 24 entities = $75,600.

[508] Per entity ongoing costs = 1 hour × 52 weeks × $71/hour national hourly rate for a compliance clerk= $3,692. *See* note 493, *supra,* for a derivation of the national hourly rate for a compliance clerk.

[509] Aggregate ongoing costs = Per entity ongoing costs of $3,692 × 24 entities = $88,608.

[510] As discussed in note 506, *supra,* a non-U.S. entity will incur initial costs associated with a burden of 10 hours = 10 hours × $315/hour national hourly rate for a compliance manager = $3,150. *See* note 491, *supra,* for a derivation of the national hourly rate for a compliance manager.

[511] Aggregate initial costs = Per entity initial costs of $3,150 × 24 entities = $75,600.

[512] Per entity ongoing costs = 2 hours × 52 weeks × $71/hour national hourly rate for a compliance clerk = $7,384. *See* note 493, *supra,* for a derivation of the national hourly rate for a compliance clerk.

[513] Aggregate ongoing costs = Per entity ongoing costs of $7,384 × 24 entities = $177,216.

BD, SBSE, SBSE–A, or SBSE–BD, as applicable.[514] The Commission believes that both the registered entity and its non-U.S. affiliate will incur one-time costs to comply with this condition.[515] For registered entities, the Commission estimates the one-time costs associated with this condition to be approximately $423 per registered entity,[516] or up to $10,152 in aggregate.[517] For non-U.S. entities, the Commission estimates the one-time costs associated with this condition to be approximately $423 per non-U.S. entity,[518] or up to $10,152 in aggregate.[519] To the extent both parties agree to use an industry-standard consent provision,[520] these costs may be limited.

Although costly, the Commission believes that the conditions associated with the exception afford appropriate counterparty protections under Title VII and the Commission has considered the benefits of these specific Rule provisions in prior Commission releases.[521] In the context of the exception, these conditions would benefit non-U.S. counterparties. Moreover, the registered entity would be required to notify non-U.S. counterparties, in connection with each transaction covered by the exception, that the non-U.S. person is not registered as a security-based swap dealer and that certain Exchange Act provisions or rules do not apply to the transaction.[522] The final rules require the registered entity to provide the notice contemporaneously with, and in the same manner as, the arranging, negotiating, or executing activity at issue. The final rules also provide that, during a period in which the counterparty is not a customer[523] of the registered entity or a counterparty to a security-based swap with the registered entity, the notice need only be provided contemporaneously with, and in the same manner as, the first arranging, negotiating, or executing activity with that counterparty, rather than with each such activity during the period in which the counterparty is not such a customer or counterparty. Because this single notice is permitted only during a period in which the counterparty is not a customer of the registered entity or a counterparty to a security-based swap with the registered entity, the final rules would require the registered entity to resume providing the notice contemporaneously with, and in the same manner as, each arranging, negotiating, or executing activity at issue if the counterparty later becomes a customer of the registered entity or a counterparty to a security-based swap with the registered entity. The Commission believes that non-U.S. persons would incur an upfront cost of $734,352 and 2,400 hours[524] to develop appropriate disclosures, but that non-U.S. persons using the exception would integrate these disclosures into existing trading systems so that the ongoing costs of delivering these disclosures would be insubstantial. Furthermore, disclosures are only required when the identity of the counterparty is known to the registered entity, so anonymous transactions would not be subject to this requirement.[525]

These required notices would benefit non-U.S. counterparties by informing them of the regulatory treatment of transactions under the exception. To the extent that non-U.S. counterparties value elements of the Title VII regulatory framework that do not apply to transactions under the exception, they may attempt to negotiate more favorable prices to compensate themselves for the additional risks they may perceive. Alternatively, non-U.S. counterparties that prefer transactions fully covered by the Commission's security-based swap regulatory framework could search for a registered security-based swap dealer willing to transact with all Title VII protections in place.

The final rules include a cap of $50 billion on the aggregate gross notional value of covered inter-dealer security-based swap positions that a registered entity may support on behalf of its non-U.S. person affiliates that choose to rely on the conditional exception. To comply with this provision, registered entities will develop policies and procedures for threshold compliance documentation at a one-time cost of $4,230 per registered entity,[526] or $101,520 in aggregate.[527] Registered entities will further incur ongoing costs associated with receipt and maintenance of compliance documentation received from non-U.S. persons.[528] The Commission estimates annual costs associated with receipt and maintenance of compliance documentation of $21,996 per registered entity,[529] or $527,904 in aggregate.[530] Use of the exception further requires the registered entity to file a notice with the Commission that the registered entity's associated persons will be used in connection with the exception. The Commission estimates that preparation and filing of such notice would entail initial costs of approximately $212 per registered entity,[531] or $5,088 in

[514] *See* Exchange Act Rule 3a71–3(d)(1)(iii)(B)(*3*).

[515] *See* Part VII.A.4.e, *infra.* The Commission assumes that the burden will be allocated equally between the registered entity and the non-U.S. entity. The burden associated with the registered entity's maintenance of records related to the consent to service condition are included in the Commission's estimate of the burden associated with the registered entity's maintenance of records related to the recordkeeping provisions.

[516] Per entity initial costs = 1 hour × $423/hour for national hourly rate for an attorney = $423. The hourly cost figure is based upon data from SIFMA's Management and Professional Earnings in the Securities Industry—2013 (modified by the Commission staff to adjust for inflation and to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead).

[517] Aggregate initial costs = Per entity initial costs of $423 × 24 entities = $10,152.

[518] *See* note 516, *supra.*

[519] *See* note 517, *supra.*

[520] *See* Part VII.A.4.e, *infra.*

[521] *See* Business Conduct Adopting Release; Trade Acknowledgment and Verification Adopting Release; and Recordkeeping and Reporting Adopting Release.

[522] *See* Exchange Act Rule 3a71–3(d)(1)(iv).

[523] The term ''customer'' is defined consistent with the definition of the term in Rule 15c3–3, the customer protection rule that applies to brokers and dealers. *See* Exchange Act Rule 15c3–3(a)(1).

[524] *See* Part VII.A.4.a and note 653, *infra,* stating that each non-U.S. person would spend 100 hours and incur approximate costs of $30,598 in 2019 dollars to develop policies and procedures to help ensure that appropriate disclosures are provided. The aggregate upfront costs are = $30,598 × 24 entities = $734,352. The aggregate burden hours are = 100 × 24 entities = 2,400 hours. These cost estimates are based on the assumption that none of the non-U.S. persons would use the alternative means of satisfying the condition (*i.e.,* single disclosure) (*see* Part VII.A.4.a, *infra*). To the extent that non-U.S. persons rely on single disclosure as a means of satisfying the condition, the costs associated with the condition could be reduced.

[525] *See* Proposing Release, 84 FR at 24224 n.149, for circumstances in which the registered entity engaged would not know the identity of the counterparty.

[526] Per entity initial costs = 10 hour × $423/hour for national hourly rate for an attorney = $4,230. The hourly cost figure is based upon data from SIFMA's Management and Professional Earnings in the Securities Industry—2013 (modified by the Commission staff to adjust for inflation and to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead).

[527] Aggregate initial costs = Per entity initial costs of $4,230 × 24 entities = $101,520.

[528] The registered entities are required to maintain such documentation for not less than three years following the ''arranging, negotiating, or executing'' activity pursuant to the exception, the first two years in an easily accessible place. *See* Rule 3a71–3(d)(1)(iii)(B)(*2*).

[529] Per entity annual cost = 52 hour × $423/hour for national hourly rate for an attorney = $21,996. The hourly cost figure is based upon data from SIFMA's Management and Professional Earnings in the Securities Industry—2013 (modified by the Commission staff to adjust for inflation and to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead).

[530] Aggregate annual costs = Per entity annual costs of $21,996 × 24 entities = $527,904.

[531] Per entity initial costs = 0.5 hour × $423/hour for national hourly rate for an attorney = $211.50 or approximately $212. The hourly cost figure is based upon data from SIFMA's Management and Professional Earnings in the Securities Industry—

Continued

aggregate.[532] Finally, registered entities that support ANE activity on behalf of non-U.S. person affiliates may choose to develop systems to determine whether their covered inter-dealer positions exceed the $50 billion cap. The Commission estimates such systems or modifications to existing systems could cost a registered entity approximately $16,320 in upfront costs,[533] or $391,680 in aggregate.[534] Periodic assessment of positions against the $50 billion cap could cost an additional $18,190 per registered entity on an annual basis,[535] or $436,560 in aggregate.[536]

As discussed in Part II above, non-U.S. persons operating in listed jurisdictions could rely on the conditional exception. By doing so, these non-U.S. persons may gain a competitive advantage over non-U.S. persons operating in unlisted jurisdictions. In particular, non-U.S. persons operating in listed jurisdictions and that rely on the exception may incur lower regulatory burdens [537] than non-U.S. persons operating in unlisted jurisdictions. This cost advantage may be limited if the Commission subsequently orders additional unlisted jurisdictions to be designated as listed jurisdictions, and non-U.S. persons operating in these jurisdictions rely on the conditional exception following the designation. This cost advantage also may be limited if non-U.S. persons operating in unlisted jurisdictions could set up operations in a listed jurisdiction to rely on the exception.

For non-U.S. persons in jurisdictions that are not yet designated as listed jurisdictions by the Commission, an application for listed jurisdiction designation would be filed pursuant to Rule 0–13 and, like the exception, is purely voluntary. Thus, the Commission expects that, to the extent that market participants submit applications for designation of one or more listed jurisdictions, non-U.S. persons would do so only to the extent that they believe that compliance with each relevant jurisdiction's regulatory regime, in combination with the other conditions of the exception, was less burdensome than the alternatives of (i) incurring assessment costs related to *de minimis* calculations and potential compliance with the Title VII regulatory framework for dealers, and (ii) restructuring their security-based swap businesses to avoid arranging, negotiating, or executing transactions with non-U.S. counterparties using personnel located in the United States. The Commission estimates that three non-U.S. persons that seek to rely on the exception would file listed jurisdiction applications.[538] The Commission estimates the costs associated with each application to be approximately $119,364, or up to $358,092 in aggregate.[539] Any costs incurred by a non-U.S. person in filing an application for a listed jurisdiction may be obviated in part by the provision that permits a foreign financial regulatory authority or authorities supervising such a non-U.S. person or its security-based swap activities to file such an application. Further, the non-U.S. persons (or their financial regulatory authorities) in those jurisdictions that are designated as listed jurisdictions by the Commission may avoid the costs of filing an application.

Finally, a non-U.S. person that chooses to use the conditional exception would be required to develop policies and procedures, jointly with the registered entity that supports its ANE activity, for documentation to support compliance with the $50 billion covered inter-dealer position threshold. The Commission estimates that a non-U.S. person, similar to a registered entity, would incur initial costs of $4,230,[540] or $101,520 in aggregate,[541] to develop these policies and procedures. Moreover, to maintain compliance with the cap on covered inter-dealer positions a non-U.S. person would incur ongoing costs to create compliance documentation and convey this documentation to the registered entity that supports its ANE activity. The Commission estimates annual costs of $43,992 per non-U.S. person,[542] or $1,055,808 in aggregate,[543] associated with creation and conveyance of compliance documentation.

(b) Title VII Programmatic Costs and Benefits

The exclusion of transactions that must be counted against the *de minimis* threshold will affect the set of registered security-based swap dealers subject to security-based swap dealer regulation and in turn determine the allocation and flow of programmatic costs and benefits arising from such regulation.

The Commission believes that Rule 3a71–3(d)(1)(v) would support the Title VII regime's programmatic benefit of mitigating risks in foreign security-based swap markets that may flow into U.S. financial markets through liquidity spillovers.[544] Specifically, Rule 3a71–

2013 (modified by the Commission staff to adjust for inflation and to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead). *See* Section VII.A.4.h, *infra*.

[532] Aggregate initial costs = Per entity initial costs of $212 × 24 entities = $5,088.

[533] Estimate based on prior Commission estimates of the costs of systems non-U.S. persons might implement to determine whether their dealing transactions exceed the *de minimis* thresholds, and adjusted for inflation to 2019 dollars. *See* Cross-Border Adopting Release, 79 FR at 47332. These initial systems costs would be lower for registered entities with systems already in place to assess whether their security-based swap transaction activity exceeds the *de minimis* threshold.

[534] Aggregate initial costs = Per entity initial costs of $16,320 × 24 entities = $391,680.

[535] Estimate based on prior Commission estimates of the costs of systems non-U.S. persons might implement to determine whether their dealing transactions exceed the *de minimis* thresholds, and adjusted for inflation to 2019 dollars. *See* Cross-Border Adopting Release, 79 FR at 47332. These ongoing systems costs would be lower for registered entities with systems already in place to assess whether their security-based swap transaction activity exceeds the *de minimis* threshold.

[536] Aggregate annual costs = Per entity annual costs of $18,190 × 24 entities = $436,560.

[537] These non-U.S. persons may incur lower regulatory burdens to the extent that they avoid the costs of assessing market-facing activity and the costs of compliance with conditions set forth under the exception are lower than the compliance costs in the absence of the exception and the costs of business restructuring. In contrast, non-U.S. persons in unlisted jurisdictions may have to incur the costs of assessing market-facing activity. Further, for these non-U.S. persons, the costs of complying with the full set of security-based swap dealer requirements and business restructuring may be higher than compliance costs associated with the exception.

[538] *See* Part VII.A.4.f, *infra*.

[539] The Commission assumes that the costs associated with filing an application for a qualified jurisdiction designation are the same as the costs associated with filing a substituted compliance request with respect to business conduct requirements. *See* Business Conduct Adopting Release, 81 FR at 30097, 30137, and Part VII.A.4.f, *infra*. The Commission estimates the per entity costs of filing an application in 2016 dollars as: $30,400 (internal counsel) + $80,000 (external counsel) = $110,400. Adjusted for CPI inflation, the per entity costs of filing an application in 2019 dollars are = $119,364. The aggregate costs of filing applications = Per entity costs of $119,364 × 3 entities = $358,092.

[540] Per entity initial costs = 10 hour × $423/hour for national hourly rate for an attorney = $4,230. The hourly cost figure is based upon data from SIFMA's Management and Professional Earnings in the Securities Industry—2013 (modified by the Commission staff to adjust for inflation and to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead).

[541] Aggregate initial costs = Per entity initial costs of $4,230 × 24 entities = $101,520.

[542] Per entity annual costs = 104 hour × $423/hour for national hourly rate for an attorney = $43,992. The hourly cost figure is based upon data from SIFMA's Management and Professional Earnings in the Securities Industry—2013 (modified by the Commission staff to adjust for inflation and to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead).

[543] Aggregate annual costs = Per entity annual costs of $43,992 × 24 entities = $1,055,808.

[544] As the Commission noted elsewhere, in a highly concentrated global security-based swap market, the failure of a key liquidity provider poses a particularly high risk of propagating liquidity shocks not only to its counterparties but to other participants, including other dealers. To the extent

3(d)(1)(v) would require a non-U.S. person relying on the exception to be subject to the margin and capital requirements of a listed jurisdiction when engaging in transactions subject to the exception. As discussed earlier,[545] the listed jurisdiction condition is intended to help avoid creating an incentive for dealers to book their transactions into entities that solely are subject to the regulation of jurisdictions that do not effectively require security-based swap dealers or comparable entities to meet certain financial responsibility standards. Absent this type of condition, non-U.S. persons that rely on the exception could gain a competitive advantage because they would be able to conduct security-based swap dealing activity in the United States without being subject to even minimal financial responsibility standards and incurring the associated compliance costs. Such non-U.S. persons potentially could provide liquidity to market participants at more favorable prices, but potentially also at greater risk, compared to registered security-based swap dealers. Generally, this condition would benefit non-U.S. counterparties. It provides them with assurances that the non-U.S. person has sufficient financial resources to engage in security-based swap activity and that the non-U.S. person's risk exposures to other counterparties are appropriately managed. This supports the Title VII regime's programmatic benefit of preventing risks in foreign security-based swap markets from flowing into U.S. financial markets through liquidity spillovers.

The Commission believes that another potential programmatic benefit of the amendment is to reduce market fragmentation and associated distortions. In the ANE Adopting Release, the Commission noted that the ''arranged, negotiated, or executed'' counting requirement may cause non-U.S. dealers to restructure their operations to avoid using U.S. personnel in order to avoid triggering security-based swap dealer obligations. Such restructuring may result in market fragmentation. Nevertheless, to the extent that the restructuring costs incurred by non-U.S. dealers offset the benefits from avoiding dealer registration, the likelihood or extent of market fragmentation and associated distortions may be attenuated, but not eliminated.[546] The Commission believes that the amendment, by permitting a non-U.S. person further flexibility to opt into a Title VII compliance framework that is compatible with its existing business practices, could further reduce the incentives of non-U.S. persons to restructure and further reduce the likelihood or extent of market fragmentation and associated distortions.[547]

The above discussion notwithstanding, the Commission is mindful that the likelihood of market fragmentation and associated distortions might increase if U.S.-based dealing entities rely on the conditional exception by booking transactions with non-U.S. counterparties into non-U.S. affiliates, thereby avoiding the application of the full set of security-based swap dealer requirements to those transactions and the associated security-based swaps.[548] As discussed further below, U.S.-based dealing entities that use the conditional exception in this manner may incur lower compliance costs when providing liquidity to non-U.S. counterparties and may decide to limit their liquidity provision only to non-U.S. counterparties. To the extent that these U.S.-based dealing entities choose to provide liquidity only to non-U.S. counterparties, security-based swap liquidity may fragment into two pools: One pool that caters to U.S. counterparties and another pool that caters to non-U.S. counterparties.

The amendment could promote competition in the security-based swap market to the extent that competitive effects arise from differences between the full set of requirements for registered security-based swap dealers (that otherwise would apply to the non-U.S. entity) and the conditions applicable to the registered U.S. entity under the amendment. As discussed more fully below,[549] a non-U.S.-person dealer that uses the exception may become more competitive in the market for liquidity provision because (a) the non-U.S.-person dealer may incur lower compliance costs when providing liquidity to non-U.S. counterparties and (b) non-U.S. counterparties may incur lower costs when transacting with the non-U.S.-person dealer. The set of dealing entities that benefit from such competitive effects might expand to the extent that U.S.-based dealing entities that are primarily or wholly responsible for managing interactions with non-U.S. counterparties may rely on the conditional exception by booking transactions into non-U.S. affiliates.[550] Nevertheless, this competitive effect may be attenuated by the condition that makes the exception available only to non-U.S. persons that are subject to the margin and capital requirements of a listed jurisdiction.

The amendment potentially could limit the programmatic benefits of Title VII regulation because the non-U.S. person taking advantage of the conditional exception would not be subject to the full suite of Title VII business conduct and financial responsibility requirements. This limitation of programmatic benefits might increase to the extent that U.S.-based dealing entities that primarily or wholly are responsible for managing interactions with non-U.S. counterparties may rely on the conditional exception by booking transactions into non-U.S. affiliates.[551] Because the non-U.S. person would not be subject to Title VII business conduct requirements, the associated Title VII counterparty protections would not apply to the non-U.S. person's communications with non-U.S. counterparties. The non-U.S. counterparties thus would not benefit from those protections in their dealings with the non-U.S. person relying on the exception, notwithstanding the U.S. arranging, negotiating, and executing activity that led to the transactions at issue.[552]

Similarly, Title VII financial responsibility requirements applicable to security-based swap dealers would not apply to the non-U.S. person, notwithstanding that the transactions would result from arranging, negotiating, and executing activity in the United States. The financial

that U.S. persons are significant participants in the market, the liquidity shock may propagate to these U.S. persons and from these U.S. persons to the U.S. financial system as a whole, even if the liquidity shock originates with the failure of a non-U.S. person liquidity provider. *See* ANE Adopting Release, 81 FR at 8611–12, 8630.

[545] *See* Part II.C.5, *supra.*

[546] *See* ANE Adopting Release, 81 FR at 8630.

[547] One commenter perceived a tension between, on the one hand, the reduction in market fragmentation as a result of the amendment and, on the other hand, the exacerbation of market fragmentation if non-U.S. dealers limit themselves to trading with non-U.S. persons to avoid triggering security-based swap dealer obligations absent the rules adopted in the ANE Adopting Release (*see* ANE Adopting Release, 81 FR at 8610–11). *See* AFR letter at 4. The market fragmentation in both instances have different causes. The market fragmentation in the first instance stems from restructuring by non-U.S. dealers to avoid using U.S. personnel; the market fragmentation discussed in the ANE Adopting Release stems from the way non-U.S. dealers select their trading counterparties. The amendment addresses, among other things, market fragmentation that stems from restructuring by non-U.S. dealers.

[548] *See* Proposing Release, 84 FR at 24219, and Part VI.A.7, *supra.*

[549] *See* Part VI.B.2, *infra.*

[550] *See* Proposing Release, 84 FR at 24219.

[551] *See id.*

[552] The antifraud provisions of the federal securities laws and certain relevant Title VII requirements would continue to apply to the transactions. *See* note 24, *supra.*

responsibility requirements serve to prevent the spread to U.S. financial markets of financial contagion that originates from the failure of one or more non-U.S. persons engaged in arranging, negotiating, and executing activity in the United States.[553] However, the fact that these requirements would not apply to non-U.S. persons taking advantage of the conditional exception could limit the Title VII regulatory regime's ability to protect U.S. financial markets from financial contagion. This concern would be mitigated by the condition that makes the exception available only to non-U.S. persons that are subject to the margin and capital requirements of a listed jurisdiction, which would afford the Commission flexibility to designate jurisdictions with appropriately robust financial responsibility requirements as listed jurisdictions.

Non-U.S. persons would face important limits on their ability to rely on the conditional exception. First, such non-U.S. persons could not rely on the exception if the gross notional value of covered inter-dealer security-based swap positions made in reliance on the conditional exception, aggregated across their non-U.S. affiliates, exceeded $50 billion over the course of the immediately preceding 12 months. If this threshold were to be breached, the non-U.S. person relying on the exception must count against the *de minimis* thresholds all of its (and its non-U.S. person affiliates') covered inter-dealer security-based swap positions connected with dealing activity subject to the exception over the course of the immediately preceding 12 months, including any transactions below the $50 billion limit.[554] This condition mitigates incentives for financial groups, including U.S. financial groups, to restructure their business to avoid the application of certain Title VII requirements by carrying out substantial amounts of transactions against other dealers using one or more unregistered foreign dealers. As a result, this condition will help preserve the programmatic effects of Title VII regulation of covered inter-dealer security-based swap activities while also reducing the potential that reliance on the exception by foreign dealers would distort markets by conferring competitive advantages on foreign dealers relative to U.S. dealers. Second, competitive disparities and limits to the programmatic effects of Title VII may be more generally offset to the extent that non-U.S. counterparties value the protections afforded them by Title VII regulation and prefer to transact with dealing entities that are subject to the full scope of Title VII regulation, rather than with non-U.S. persons that rely on the conditional exception.

2. Effects on Efficiency, Competition, and Capital Formation

As discussed earlier, the amendment could reduce the regulatory burden for non-U.S. persons that engage in security-based swap arranging, negotiating, and executing activity with non-U.S. counterparties using affiliated U.S.-based personnel because these non-U.S. persons could avail themselves of an additional, potentially lower-cost, means of engaging in arranging, negotiating, and executing activity with non-U.S. counterparties.[555] To the extent that the regulatory burden for such non-U.S. persons is reduced as a result of the amendment, resources could be freed up for investing in profitable projects, which would promote investment efficiency and capital formation. In addition, a reduction in regulatory burden for such non-U.S. persons could allow these persons to operate their security-based swap dealing business more efficiently. To the extent that these non-U.S. persons carry out security-based swap dealing activity with counterparties around the world[556] and choose to pass on cost savings flowing from their improved efficiency in the form of lower prices for liquidity provision, counterparties around the world could benefit by being able to transact at lower costs. A reduction in regulatory burden associated with the amendment could lower entry barriers into the security-based swap market and increase the number of non-U.S.-person dealers that are willing to provide liquidity to non-U.S. counterparties using affiliated U.S.-based personnel. An increase in the number of such non-U.S.-person dealers may increase competition for liquidity provision to non-U.S. counterparties, which could lower transaction costs for these counterparties and improve their ability to hedge economic exposures. To the extent that non-U.S.-person dealers focus their market-making activities on non-U.S. counterparties and avoid U.S. counterparties, the competition for liquidity provision to U.S. counterparties may decline, which could increase transaction costs for U.S. counterparties and impair their ability to hedge their economic exposures or to incur economic exposures. In addition, to the extent that increased transaction costs reduce the expected profits from trading on new information, market participants may be less willing to transact in the security-based swap market in response to new information. Such reduced participation in the security-based swap market might impede the incorporation of new information into security-based swap prices, reducing the informational efficiency of these markets.

The amendment might generate certain competitive effects due to gaps between the full set of requirements for registered security-based swap dealers and the conditions applicable to the registered entity of the non-U.S. person under the amendment,[557] though these effects will be tempered to the extent that the non-U.S.-person dealer passes on compliance costs incurred by its U.S. registered entity to the non-U.S. counterparty. First, under Rule 3a71–3(d)(1)(C), the exception would not be conditioned on the registered entity of the non-U.S. person dealer having to comply with requirements pertaining to ECP verification, daily mark disclosure, and ''know your counterparty.'' [558] Thus, to the extent that the non-U.S. person adheres only to the provisions specifically required by the conditions set forth under the amendment, the non-U.S. person dealer could incur lower compliance costs in providing liquidity to non-U.S. counterparties than under current rules, relative to the baseline. In that case, the non-U.S. person-dealer might be able to lower the price at which it offers liquidity to a non-U.S. counterparty. However, under the exception the non-U.S. person must have a U.S. affiliate that is registered with the Commission. The extent to which the non-U.S. person dealer may offer a more competitive price would depend in part on whether the non-U.S. person dealer will pass on compliance costs incurred by its U.S. registered entity to the non-U.S. counterparty in the form of a higher price for providing liquidity to the non-U.S. counterparty. To the extent that the non-U.S. person-dealer offers liquidity to the non-U.S. counterparty at a price that fully

[553] *See* ANE Adopting Release, 81 FR at 8612.

[554] *See* Exchange Act Rule 3a71–3(d)(6)(ii)(B). The *de minimis* thresholds to the ''security-based swap dealer'' definition appear in Rule 3a71–2(a)(1).

[555] *See* Part VI.B.1, *supra.*

[556] *See* Part VI.A.2.c, *supra.*

[557] As context, the use of the ''arranged, negotiated, or executed'' counting standard was intended in part to avoid allowing competitive disparities between registered security-based swap dealers and entities that otherwise could engage in security-based swap market-facing activity in the United States without having to register as security-based swap dealers. *See* Proposing Release, 84 FR at 24208–09.

[558] *See* Business Conduct Adopting Release, 81 FR at 29978.

recovers the compliance costs incurred by its U.S. registered entity, any price reduction that could be offered by the non-U.S.-person dealer might be limited.

Second, a non-U.S. counterparty may prefer to enter into a security-based swap transaction with a non-U.S.-person dealer that takes advantage of the conditional exception, rather than a U.S. registered security-based swap dealer, not only because the non-U.S. person dealer may offer more competitive prices, but also because the non-U.S. counterparty may itself avoid certain costs by transacting with a non-U.S. person dealer. For example, Title VII financial responsibility requirements applicable to security-based swap dealers would not apply to the non-U.S. person dealer under the amendment, although the non-U.S. person dealer would be subject to the margin and capital requirements of a listed jurisdiction. To the extent that a non-U.S. counterparty has already established with the non-U.S. person dealer the necessary margin agreement that is compliant with the margin requirements of the listed jurisdiction, the non-U.S. counterparty could avoid the additional costs of negotiating and adhering to a new margin agreement that is compliant with the Commission's Title VII margin requirements, if the non-U.S. counterparty transacts with the non-U.S. person dealer.

These competitive effects may create an incentive for entities that carry out their security-based swap dealing business in a U.S. person dealer with non-U.S. person counterparties to restructure a proportion of this business to be carried out in a non-U.S. person dealer affiliate. The extent to which such entities are willing or able to restructure would be limited. Market forces could limit incentives to restructure to the extent that non-U.S. counterparties value the protections afforded them by Title VII regulation and prefer to transact with dealing entities that are subject to the full scope of Title VII regulation, rather than with non-U.S. persons that rely on the conditional exception. Further, the $50 billion aggregate notional value cap on covered inter-dealer security-based swap positions applied to registered entities that support non-U.S. person affiliates' reliance on the conditional exemption, limits non-U.S. persons' ability to restructure their security-based swap businesses.

3. Additional Alternatives Considered

In developing these amendments, the Commission considered a number of alternatives. This section outlines these alternatives and discusses the potential economic effects of each.

(a) Proposed Alternative 1

The Commission is adopting Alternative 2 to the exception, which requires that the arranging, negotiating, and executing activity in the United States be performed by personnel associated either with a registered security-based swap dealer or with a registered broker—but is modifying elements of Alternative 2 from the proposal in response to concerns raised by commenters.[559]

As an alternative, the Commission could have adopted Alternative 1, which would have required the arranging, negotiating, and executing activity in the United States to be performed by personnel associated with registered security-based swap dealers.[560] Some commenters rejected Alternative 1 in favor of Alternative 2 because it provides more flexibility to market participants to utilize U.S. personnel associated with either a registered broker or a registered security-based swap dealer.[561] To the extent that market participants would choose not to rely on the exception if Alternative 1 were adopted, because of the absence of a registered broker option, Alternative 1 may have been less effective in supporting the use of ''arranged, negotiated, or executed'' criteria as part of *de minimis* counting, while avoiding negative consequences that otherwise may be associated with those criteria could be attenuated. In light of this concern, the Commission believes that the adopted approach is preferable to the alternative.

(b) Requiring the Registered Entity To Comply With ECP Verification and ''Know Your Counterparty''

When identifying the security-based swap dealer requirements that are applicable to a registered entity for purposes of this rulemaking, the Commission considered requiring the registered entity to comply with ECP verification and ''know your counterparty'' requirements, along with other security-based swap dealer requirements, even if the registered entity is not a party to the resulting security-based swap. Although this alternative would lead to greater conformity with the full set of security-based swap dealer requirements, the provisions in question may require knowledge that may not be readily available to the registered entity when it engages in limited arranging, negotiating, and executing activity in connection with the security-based swaps addressed by the exception. These operational difficulties may prevent the registered entity from complying with the provisions or may require the registered entity to incur costs to ensure compliance. The Commission estimates that, if included as part of the conditions of the exception, the ECP verification and know your counterparty requirements would impose initial costs of approximately $3,006 per registered entity,[562] or $72,144 in aggregate,[563] and ongoing costs of approximately $94,497 per registered entity,[564] or $2,267,928 in aggregate.[565] Further, the non-U.S. counterparties transacting with the non-U.S. persons making use of the exception that are not also participating in swap markets and relying on industry established verification of status protocol may incur initial costs associated with the verification of status requirement and related adherence letters.[566] The Commission estimates these aggregate initial costs at approximately $473,598.[567] All non-U.S. counterparties (or their agents) transacting with the non-U.S. persons making use of the exception would also be required to collect and provide essential facts to the registered entities to comply with the ''know your counterparty'' obligations for an aggregate initial cost of approximately

[559] *See* Exchange Act Rule 3a71–3(d)(1)(i)(A).

[560] *See* Proposing Release, 84 FR at 24291.

[561] *See* note 87, *supra.*

[562] This estimate incorporates quantifiable initial costs presented in the Business Conduct Adopting Release, 81 FR at 30090–92, 30110, adjusted for inflation.

[563] Aggregate initial costs = Per entity initial costs of $3,006 × 24 entities = $72,144.

[564] This estimate incorporates quantifiable initial costs presented in the Business Conduct Adopting Release, 81 FR at 30090–92, 30110, adjusted for inflation.

[565] Aggregate initial costs = Per entity initial costs of $94,497 × 24 entities = $2,267,928.

[566] In the Business Conduct Adopting Release, the Commission assumed that counterparties that are swap market participants likely already adhere to the relevant protocol and would not have any start-up or ongoing burdens with respect to verification. *See* Business Conduct Adopting Release, 81 FR at 30091. The Commission continues to believe that this assumption is valid and thus, for purposes of this alternative, the Commission believes that only non-U.S. counterparties that are not swap market participants will incur verification-related costs. As discussed in Part VI.A.7, *supra,* the Commission estimates that up to 24 persons likely may use the exception, and that their registered entity affiliates may arrange, negotiate, or execute transactions with up to 1,614 non-U.S. counterparties, of which 498 do not participate in swap markets.

[567] This estimate incorporates quantifiable initial costs presented in the Business Conduct Adopting Release, 81 FR at 30090–92, 30110, adjusted for inflation. Per counterparty initial costs in 2019 dollars = $951. Aggregate initial costs = Per entity initial costs of $951 × 498 counterparties = $473,598.

$6,631,926.[568] To the extent that the knowledge needed to comply with these requirements may not be readily available to the registered entity and the registered entity has to expend additional resources to obtain that knowledge, the actual costs incurred by the registered entity to comply with these requirements may be higher. The Commission acknowledges that a non-U.S. person making use of the exception potentially could mitigate the compliance costs of the registered entity by transacting only with non-U.S. counterparties that are known ECPs to the registered entity. By doing so, the registered entity could avoid expending additional resources to learn about the non-U.S. counterparties' ECP status. However, as a result of this approach, the non-U.S. person may have to forgo transacting with new non-U.S. counterparties whose ECP status is not known to the registered entity. The non-U.S. person would thus have to balance the cost savings associated with transacting only with a set of known non-U.S. counterparties against the revenues that may be forgone by not transacting with new non-U.S. counterparties whose ECP status is unknown to the registered entity.

As another alternative, the Commission considered requiring compliance with the ECP verification and ''know your counterparty'' requirements with a one-time carve out when the non-U.S. counterparty is unknown to the registered entity and there is no basis to believe that the registered entity would have further interactions with that non-U.S. counterparty. Although such a carve out may reduce compliance costs arising from transactions that likely would pose the greatest operational difficulties in terms of obtaining knowledge needed for complying with the ECP verification and know your counterparty requirements, the Commission is also cognizant that the carve out may create new costs associated with assessing when the carve out would apply. The Commission is concerned that these new assessment costs may impose an additional burden on the registered entity and may offset any reduction in compliance costs associated with a one-time carve out. As with the previous alternative, a non-U.S. person making use of the exception potentially could mitigate the compliance costs of the registered entity by transacting only with non-U.S. counterparties that are ECPs known to the registered entity. As discussed above, the non-U.S. person would thus have to balance the cost savings associated with this approach against the revenues that may be forgone by not transacting with new non-U.S. counterparties whose ECP status is unknown to the registered entity.

In light of these compliance challenges and the fact that the amendment does include conditions designed to impose a minimum standard of conduct upon security-based swap dealers in connection with their transaction-related activities, the Commission believes that the adopted approach is preferable to these alternatives.

(c) Requiring the Registered Entity To Comply With Daily Mark Disclosure

The Commission also considered requiring the registered entity to comply with daily mark disclosure, along with other security-based swap dealer requirements, even if the registered entity is not a party to the resulting security-based swap. Similar to the discussion of ECP verification and know your counterparty requirements above, this alternative would lead to greater conformity with the full set of security-based swap dealer requirements. However, it may require knowledge that may not be readily available to the registered entity when it engages in limited arranging, negotiating, and executing activity in connection with the security-based swaps addressed by the exception. Further, the daily mark disclosure is predicated on the existence of an ongoing relationship between the security-based swap dealer and the counterparty that may not be present in connection with the transactions at issue, and would be linked to risk management functions that are likely to be associated with the entity in which the resulting security-based swap position is located.[569] These operational difficulties may prevent the registered entity from complying with the daily mark disclosure requirement or may require the registered entity to incur an unreasonably high cost to ensure compliance. In light of these compliance challenges and the fact that the amendment does include conditions designed to impose a minimum standard of conduct upon security-based swap dealers in connection with their transaction-related activities, the Commission believes that the adopted approach is preferable to this alternative.

(d) Requiring a Limited Disclosure of Incentives and Conflicts

As an alternative to the disclosure requirements set forth under Rule 3a71–3(d)(1)(ii)(B)(1), the Commission considered requiring the registered entity to disclose its own material incentives and conflicts of interest, but not requiring the registered entity to disclose the incentives and conflicts of interest of its non-U.S. affiliate. While this alternative might help to mitigate the costs associated with disclosing the incentives and conflicts of interest of the non-U.S. affiliate,[570] the benefits associated with such disclosures [571] may also decrease because non-U.S. counterparties would not know about the incentives and conflicts of interest of the non-U.S. affiliate prior to entering into security-based swaps with the non-U.S. affiliate. In light of this concern, the Commission believes that the adopted approach is preferable to this alternative.

(e) Requiring the Non-U.S. Person To Be Domiciled in a G–20 Jurisdiction or in a Jurisdiction Where the Non-U.S. Person Would Be Subject to Basel Capital Requirements

As alternatives to paragraph (d)(1)(v), the Commission considered a requirement that the non-U.S. person be domiciled in a G–20 jurisdiction or in a jurisdiction where the non-U.S. person would be subject to Basel capital requirements as commenters have suggested. While the Commission acknowledges that these alternatives are clearly defined and would provide certainty to market participants, the Commission believes these alternatives potentially could create opportunities for regulatory arbitrage whereby a non-U.S. person may relocate its operations to a jurisdiction that imposes lower financial responsibility standards. The non-U.S. person may thus enjoy a cost advantage relative to other dealers that operate under higher regulatory burdens, while not being subject to equally rigorous financial responsibility standards. Further, as discussed earlier,[572] the fact that a jurisdiction is a member of the G–20 or subscribes to Basel standards does not by itself provide assurance that the jurisdiction has implemented appropriate financial responsibility standards.

[568] This estimate incorporates quantifiable initial costs presented in the Business Conduct Adopting Release, 81 FR at 30090–92, 30110, adjusted for inflation. Per counterparty initial costs in 2019 dollars = $4,109. Aggregate initial costs = Per entity initial costs of $4,109 × 1,614 counterparties = $6,631,926.

[569] *See* Proposing Release, 84 FR at 24223.

[570] *See* Business Conduct Adopting Release, 81 FR at 30112.

[571] *See id.* at 30111–12.

[572] *See* Part II.C.5, *supra.*

(f) Not Requiring Notification to Counterparties of the Non-U.S. Person

In identifying the conditions that would apply to the non-U.S. person, the Commission considered omitting the notification condition.[573] The omission of this notification condition may reduce cost and thus regulatory burden for the non-U.S. persons that rely on the exception.

However, the absence of this notification condition potentially could reinforce the competitive disparity between the non-U.S. persons that make use of the exception and registered security-based swap dealers that comply with the full set of Title VII security-based swap dealer requirements. As discussed above,[574] non-U.S. persons that avail themselves of the exception could bear lower costs compared to registered security-based swap dealers that have to comply with the full set of security-based swap dealer requirements.

To the extent that non-U.S. counterparties prefer to trade with dealers that are subject to the full set of Title VII security-based swap dealer requirements and the associated safeguards, in the absence of the notification condition, non-U.S. persons that rely on the exception could bear lower regulatory costs than registered security-based swap dealers but may nevertheless be regarded by non-U.S. counterparties as subject to similar Title VII safeguards as registered security-based swap dealers. As a result, these non-U.S. persons potentially could capture the business of non-U.S. counterparties from registered security-based swap dealers that they otherwise might not have captured if the notification condition had been part of the exception. In light of this concern, the Commission believes that requiring such notification to non-U.S. counterparties is preferable to this alternative.

(g) ''No Management of Relationship'' Condition

When identifying the conditions of the exception, the Commission considered making the exception unavailable where U.S. personnel manage the relationship with the non-U.S. counterparty to the security-based swap. Such a condition might help address concerns that U.S.-based dealers could use the exception to rebook transactions, which are managed by U.S. personnel, to a non-U.S. affiliate to avoid triggering security-based swap dealer registration. However, the Commission recognizes that there may be challenges in articulating objective criteria to identify when the exception would or would not be available under this type of approach. Even if objective criteria could be articulated, non-U.S. persons seeking to use the exception may have to incur costs to satisfy these criteria on an ongoing basis. In light of these concerns, the Commission believes that the adopted approach is preferable to this alternative.

C. Amendment to Commission Rule of Practice 194

Several key economic effects and tradeoffs inform the Commission's analysis of adopting new paragraph (c)(2) of Rule of Practice 194.[575]

First, as the Commission discussed in the Rule of Practice 194 Adopting Release,[576] increasing the ability of statutorily disqualified persons to effect or be involved in effecting security-based swap transactions on behalf of SBS Entities may give rise to higher compliance and counterparty risks, increase costs of adverse selection, decrease market participation, and reduce competition among higher quality associated persons and SBS Entities.

Second, at the same time, the scope of conduct that gives rise to disqualification is broad and includes conduct that may not pose ongoing risks to counterparties.[577] In addition, as discussed in the Rule of Practice 194 Adopting Release and in greater detail below, strong disqualification standards can also reduce competition and the volume of service provision.

Third, public information about misconduct can give rise to capital market participants voting with their feet (reputational costs), and labor markets frequently penalize misconduct through firing or other career outcomes in other settings, as discussed in the Rule of Practice 194 Adopting Release. If counterparties perceive the risks related to disqualified associated persons to be high, counterparties may choose to perform more in-depth due diligence related to their SBS Entity counterparties or to transact with SBS Entities without disqualified associated persons.

Fourth, an overwhelming majority of dealers and most counterparties transact across both swap and security-based swap markets, including in financial products that are similar or identical in their payoff profiles and risks. As discussed in the Rule of Practice 194 Adopting Release, differential regulatory treatment of disqualification in swap and security-based swap markets may disrupt existing counterparty relationships and may increase costs of intermediating transactions for some SBS Entities, which may be passed along to certain counterparties in the form of higher transaction costs.

Fifth, as also discussed in the Rule of Practice 194 Adopting Release, market participants may value bilateral relationships with SBS Entities, including with SBS Entities dually-registered as Swap Entities, and searching for and initiating bilateral relationships with new SBS Entities may involve costs for counterparties. For example, security-based swaps are long-term contracts that are often renegotiated, and disruptions to existing counterparty relationships can reduce the potential future ability to modify a contract, which may be priced in widening spreads.[578]

1. Costs and Benefits of the Amendment

Once compliance with SBS Entity registration rules is required, registered SBS Entities will be unable to utilize any statutorily disqualified associated natural person, including natural persons with potentially valuable capabilities, skills, or expertise, to effect or be involved in effecting security-based swap transactions, absent relief, including an order under Rule of Practice 194. Absent the exclusion in Rule of Practice 194(c)(2), the statutory disqualification prohibition set forth in Section 15F(b)(6) of the Exchange Act would apply to all associated natural persons effecting or involved in effecting security-based swap transactions on behalf of all registered SBS Entities regardless of the nature of the conduct giving rise to the disqualification.[579] SBS Entities are, under the baseline regulatory regime, unable to rely on statutorily disqualified associated persons even if such persons are non-U.S. persons transacting exclusively with non-U.S. counterparties. However, absent the exclusion provided in Rule of Practice

[573] *See* Part II.C.4, *supra.*

[574] *See* Part VI.B.2, *supra.*

[575] *See* Rule of Practice 194 Adopting Release, 84 FR at 4922–43.

[576] *See id.*

[577] As discussed in Part V.A. of the Rule of Practice 194 Adopting Release, the definition of disqualified persons, as applied in the statutory prohibition in Exchange Act Section 15F(b)(6), is broad. That definition disqualifies associated persons due to violations of the securities laws, but also for felonies and misdemeanors not related to the securities laws and/or financial markets, and certain foreign sanctions. *See id.* at 4922, 4929.

[578] *See id.* at 4922.

[579] As noted above, Section 3(a)(39) of the Exchange Act generally defines the circumstances that would subject a person to a statutory disqualification with respect to membership or participation in, or association with a member of, an SRO. *See* 15 U.S.C. 78c(a)(39).

194(c)(2), SBS Entities would still be able to apply to the Commission for relief, and the Commission would still be able to grant relief, including under Rule of Practice 194.

Under the exclusion provided in Rule of Practice 194(c)(2), unless a limitation applies,[580] SBS Entities will be able to allow statutorily disqualified associated natural persons that are not U.S. persons to effect or be involved in effecting security-based swap transactions with non-U.S. counterparties and foreign branches of U.S. counterparties. The Commission received comment generally in support of the proposed amendment [581] and continues to believe that amendment to Rule of Practice 194, to include subparagraph (c)(2), involves three possible benefits.

First, SBS Entities may benefit from greater flexibility in hiring and managing non-U.S. employees transacting with foreign counterparties and foreign branches of U.S. counterparties. To the degree that such employees may have valuable skills, expertise, or counterparty relationships that are difficult to replace and outweigh the reputational and compliance costs of continued association, SBS Entities would be able to continue employing them without being required to apply for relief with the Commission. In addition, cross-registered SBS Entities would experience economies of scope in employing non-U.S. natural persons in their swap and security-based swap businesses. Specifically, SBS Entities will be able to rely on the same non-U.S. natural persons in transactions with the same counterparties across integrated swap and security-based swap markets. In addition, SBS Entities will no longer be required to apply for relief under Rule of Practice 194 with respect to non-U.S. persons transacting with foreign counterparties and foreign branches of U.S. counterparties.[582]

Second, to the degree that SBS Entities currently pass along costs to counterparties in the form of, for example, higher transaction costs, the amendment may benefit non-U.S. counterparties and foreign branches of U.S. counterparties through lower prices of available security-based swaps. In addition, such counterparties of SBS Entities would be able to continue transacting with the same non-U.S. associated persons of the same SBS Entities across interconnected markets without delays related to Commission review under Rule of Practice 194. Both the returns and the risks from security-based swap transactions by foreign branches of U.S. persons may flow to the U.S. business of U.S. persons, contributing to profits and losses of U.S. persons.

Third, the amendment may benefit disqualified non-U.S. natural persons seeking to engage in security-based swap activity. Under the amendment, an SBS Entity would no longer be required to incur costs related to applying for relief under Rule of Practice 194 in order to allow a disqualified non-U.S. natural person to transact with foreign counterparties and foreign branches of U.S. counterparties. The amendment to Rule of Practice 194, to include subparagraph (c)(2), may reduce direct costs to SBS Entities of hiring and retaining disqualified non-U.S. employees. This may improve employment opportunities for disqualified non-U.S. natural persons in the security-based swap industry. However, research in other contexts points to large reputational costs from misconduct, and some papers show that employers may often fire and replace employees engaging in misconduct to manage these reputational costs, as discussed in the Rule of Practice 194 Adopting Release.[583]

Rule of Practice 194(c)(2) would result in SBS Entities being less constrained by the general statutory prohibition in their security-based swap activity with foreign counterparties and foreign branches of U.S. counterparties. The Commission continues to recognize that associating with statutorily disqualified natural persons effecting or involved in effecting security-based swaps on behalf of SBS Entities may give rise to counterparty and compliance risks. For example, as the Commission discussed elsewhere, in other settings, individuals engaged in misconduct are significantly more likely to engage in repeated misconduct.[584] Data in the Rule of Practice 194 Adopting Release suggests that, in analogous disqualification review processes in swap and broker-dealer settings, the application rate is low, but there are incidences of repeated misconduct.[585] The Commission also continues to recognize that statutory disqualification and an inability to continue associating with SBS Entities creates disincentives against underlying misconduct for associated persons and that there may be spillover effects on other associated persons within the same SBS Entity.[586] Further, the Commission recognizes that, under the amendment, the Commission would be unable to make an individualized determination about whether permitting a given non-U.S. associated natural person to effect or be involved in effecting security-based swaps on behalf of an SBS Entity is consistent with the public interest.

The Commission also notes that the amendment would allow SBS Entities to rely on disqualified non-U.S. personnel in their transactions with both foreign counterparties and foreign branches of U.S. counterparties. To the degree that statutory disqualification may increase risks to counterparties, to the degree that SBS Entities may choose to rely on disqualified foreign personnel despite reputational and compliance costs of association, and to the extent that such counterparties do not move their business to other personnel or SBS Entity, this may increase risks to foreign branches of U.S. counterparties. Depending on the consolidation and ownership structure of counterparties, some of the returns as well as losses in foreign branches may flow through to some U.S. parent firms. However, the adopted approach provides for identical treatment of foreign counterparties and foreign branches of U.S. counterparties, reducing potential competitive disparities between them in security-based swap markets.

Importantly, the exclusion would more closely harmonize the Commission's approach with the approach already being followed with respect to foreign personnel of Swap

[580] An SBS Entity would not be able to avail itself of the exclusion in paragraph (c)(2) if an associated person is currently subject to certain orders.

[581] *See, e.g.,* EBF letter at 6; IIB/SIFMA letter at 5, 29–30; ISDA letter at 3, 16; *see also* European Commission email.

[582] As discussed in the economic baseline, the exclusion may reduce the number of applications by between one and four applications, resulting in potential cost savings of between $12,690 (=1 × 30 hours × Attorney at $423 per hour) and $50,760 (=4 × 30 hours × Attorney at $423 per hour).

[583] *See* Rule of Practice 194 Adopting Release, 84 FR at 4932.

[584] For a more detailed discussion, *see id.*

[585] *See id.* at 4928.

[586] For example, as discussed in the Rule of Practice Adopting Release, Dimmock, Gerken, and Graham (2018) examine customer complaints against FINRA-registered representatives in 1999 through 2011, and argue that misconduct of individuals influences the misconduct of their coworkers. Using mergers of firms as a quasi-exogenous shock, the paper examines changes in an adviser's misconduct around changes to an employee's coworkers due to a merger. The paper estimates that an employee is 37% more likely to commit misconduct if her new coworkers encountered in the merger have a history of misconduct. The paper contributes to broader evidence on peer effects, connectedness, and commonality of misconduct, and can help explain the distributional properties in the prevalence of misconduct across firms documented in Egan, Matvos, and Seru (2017). *See* Stephen G. Dimmock, William C. Gerken, & Nathaniel P. Graham, *Is Fraud Contagious? Coworker Influence on Misconduct by Financial Advisors,* 73 J. Fin. 1417 (2018); *see also* Mark Egan, Gregor Matvos, & Amit Seru, *The Market for Financial Adviser Misconduct,* 127 J. POL. ECON. 233 (2019).

Entities. As such, the Commission's assessment of the benefits and potential counterparty risks of the relief discussed above is informed by experience and data with respect to CFTC/National Futures Association statutory disqualification review in swap markets, including, among others: (i) The low incidence of statutory disqualification of associated persons; (ii) the majority of applications arising out of non-investment related conduct by associated persons; and (iii) the absence of additional statutory disqualification forms filed by swap dealers to request NFA determination with respect to a new statutory disqualification for any of the individuals.[587] The Commission also notes that parallel swap markets remain large, with multi-name credit default swaps representing an increasing share of credit-default swap notional outstanding, and highly liquid.[588]

Three factors may reduce the magnitude of the above economic costs and benefits. First, the Commission will continue to be able, in appropriate cases, to institute proceedings under Exchange Act Section 15F(l)(3) to determine whether the Commission should censure, place limitations on the activities or functions of such person, suspend for a period not exceeding 12 months, or bar such person from being associated with an SBS Entity.[589]

Second, the security-based swap market is an institutional one, with investment advisers, banks, pension funds, insurance companies, and ISDA-recognized dealers accounting for 99.8% of transaction activity.[590] While security-based swaps may be more opaque than equities and bonds and may give rise to greater information asymmetries between dealers and non-dealer counterparties, institutional counterparties may be more informed and sophisticated compared to retail clients. However, given limited data availability on the domiciles of non-dealer counterparties, the Commission is unable to quantify how many non-institutional foreign counterparties may be affected by the Rule.

Importantly, the concentrated nature of security-based swap market-facing activity may reduce the ability of counterparties to choose to transact with SBS Entities that do not rely on disqualified personnel. As the Commission estimated elsewhere, the top five dealer accounts intermediated approximately 55% of all SBS Entity transactions by gross notional, and the median counterparty transacted with 2 dealers in 2017.[591] While reputational incentives may flow from a customer's willingness to deal with an SBS Entity, the fact that the customer may not have many dealers to choose from weakens those incentives. However, the Commission also notes that market concentration is itself endogenous to market participants' counterparty selection. That is, counterparties trade off the potentially higher counterparty risk of transacting with SBS Entities that rely on disqualified associated persons against the attractiveness of security-based swaps (price and non-price terms) that they may offer. If a large number of counterparties choose to move their business to SBS Entities that do not rely on disqualified associated persons (including those SBS Entities that may currently have lower market share), market concentration itself can decrease.

Third, as discussed above, the exclusion will not be available with respect to an associated person if that associated person is currently subject to an order described in subparagraphs (A) and (B) of Section 3(a)(39) of the Exchange Act, with the limitation that an order by a foreign financial regulatory authority described in subparagraphs (B)(i) and (B)(iii) of Section 3(a)(39) shall only apply to orders by a foreign financial regulatory authority in the jurisdiction where the associated person is employed or located. In such circumstances, affected SBS Entities will be required to apply for relief under Rule of Practice 194 and will be unable to allow their disqualified associated person entities to effect or be involved in effecting security-based swaps on their behalf, pending review by the Commission.

2. Effects on Efficiency, Competition, and Capital Formation

The Commission has assessed the effects of the amendment on efficiency, competition, and capital formation. As noted above, limiting the ability of statutorily disqualified persons to effect or be involved in effecting security-based swaps on behalf of SBS Entities may reduce compliance and counterparty risks and may facilitate competition among higher quality associated persons and SBS Entities, thereby enhancing integrity of security-based swap markets. At the same time, limits on the participation of disqualified employees in security-based swap markets may result in costs related to replacing or reassigning an employee to SBS Entities or applying to the Commission for relief. This may disrupt existing counterparty relationships across closely linked swap and security-based swap markets and increase transaction costs borne by counterparties, adversely effecting efficiency and capital formation in swap and security-based swap markets.

In addition, if more SBS Entities seek to avail themselves of the exclusion and retain, hire, or increase their reliance on disqualified foreign personnel in their transactions with foreign counterparties, a greater number of disqualified persons may seek employment and business opportunities in security-based swap markets. As discussed in the Rule of Practice 194 Adopting Release,[592] there is a dearth of economic research on these issues in derivatives markets, and the research in other settings cuts both ways. On the one hand, a greater number of disqualified persons active in security-based swaps could increase the ''lemons'' problem and related costs of adverse selection,[593] since market participants may demand a discount from counterparties if they expect a greater chance that counterparties have employed disqualified persons that are involved in arranging transactions. This effect could lead to a reduction in informational efficiency and capital formation. On the other hand, more flexibility in employing disqualified persons may also increase competition and consumer surplus.[594]

[587] *See* Rule of Practice Adopting Release, 84 FR at 4931.

[588] *See, e.g.,* Inaki Aldasoro & Torsten Ehlers, *The Credit Default Swap Market: What a Difference a Decade Makes,* BIS Q. Rev., June 2018, at 3 (Graph 1), available at *https://www.bis.org/publ/qtrpdf/r_qt1806b.pdf,* last accessed March 26, 2019; *see also* Richard Haynes & Lihong McPhail, *The Liquidity of Credit Default Index Swap Networks* (Working Paper, 2017).

[589] *See* 15 U.S.C. 78o–10(l)(3).

[590] *See* Rule of Practice 194 Adopting Release, 84 FR at 4925–26, Table 1.

[591] *See id.* at 4925.

[592] *See* Rule of Practice 194 Adopting Release, 84 FR at 4923.

[593] *See, e.g.,* George A. Akerlof, *The Market for ''Lemons'': Quality Uncertainty and the Market Mechanism,* 84 Q. J. Econ. 488 (1970). Informational asymmetry about quality can negatively affect market participation and decrease the amount of trading—a problem commonly known as adverse selection. When information about counterparty quality is scarce, market participants may be less willing to enter into transactions, and the overall level of trading may fall.

[594] *See* Jonathan Berk & Jules H. van Binsbergen, *Regulation of Charlatans in High-Skill Professions* (Stanford University Graduate School of Business, Research Paper No. 17–43, 2017), available at *https://ssrn.com/abstract=2979134.* The paper models the costs and benefits of both disclosure and standards regulation of ''charlatans'' (professionals who sell a service they do not deliver) in high skill professions. When there is a mismatch between high demand for a skill and short supply of the skill, the presence of charlatans in a profession is an equilibrium outcome. Importantly, reducing the number of charlatans by regulation decreases consumer surplus in their model. Both standards and disclosure regulations drive charlatans out of

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The amendment would preserve an equal competitive standing of U.S. and non-U.S. SBS Entities with disqualified foreign personnel as they compete for business with foreign counterparties and foreign branches of U.S. counterparties. Importantly, under the baseline, both U.S. and non-U.S. Swap Entities are able to transact with foreign counterparties relying on their foreign disqualified personnel without applying to the CFTC for relief from the statutory prohibition. As discussed in the economic baseline, the Commission expects extensive cross-registration of dealers across the two markets. As a result of the exclusion being adopted, dually registered U.S. SBS Entities would be more likely to be able to rely on at least some of the same disqualified foreign personnel in transacting with the same counterparties in both swap (*e.g.,* index CDS) and security-based swap (*e.g.,* single-name CDS) markets.

The amendment may create incentives for SBS Entities to relocate their personnel (or the activities performed by U.S. personnel) outside the U.S. to be able to avail themselves of the exclusion and avoid being bound by the statutory prohibition. The cost of relocation will depend on many factors, such as the number of positions being relocated, the location of new operations, the costs of operating at the new location, and other factors. These factors will, in turn, depend on the relative volumes of market-facing activity that a firm carries out on different underliers and with counterparties in different jurisdictions. As a result of these dependencies, the Commission cannot reliably quantify the costs of these alternative approaches to compliance. However, the Commission believes that firms would seek to relocate their personnel (or the activities performed by U.S. personnel) only if they expect the relocations to be profitable.

Further, the amendment may improve the employment and career outcomes of disqualified foreign personnel relative to disqualified U.S. personnel. As a result, disqualified personnel may seek to relocate outside the U.S. and seek employment by SBS Entities in their foreign business. To the degree that such relocation occurs, it may reduce the effective scope of application of the statutory prohibition. This may also lead to a separating equilibrium: It may decrease counterparty risks and adverse selection costs of security-based swaps in SBS Entities and in transactions with U.S. counterparties and increase counterparty risks and adverse selection costs in transactions with foreign counterparties and foreign branches of U.S. counterparties.

3. Alternatives Considered

The Commission has considered several alternatives to the amendment to Rule of Practice 194(c)(2).

(a) Relief for All SBS Entities With Respect to Non-U.S. Personnel Transacting With Non-U.S. Counterparties But Not With Foreign Branches of U.S. Counterparties

The Commission could have adopted an exclusion for all SBS Entities with respect to foreign personnel transacting with foreign counterparties, without making the exclusion available to foreign personnel transacting with foreign branches of U.S. counterparties. As discussed above, a history of statutorily disqualifying conduct may signal higher ongoing risks to counterparties. SBS Entities may choose to replace disqualified foreign personnel due to reputational and compliance costs. In addition, the security-based swap market is institutional in nature, and better informed institutional counterparties may choose to move their business to another employee or another SBS Entity without disqualified personnel. To the degree that SBS Entities do not replace disqualified personnel and counterparties do not move their business, the alternative may decrease risks to foreign branches of U.S. counterparties relative to the adopted approach. Since both potential returns and potential risks of foreign branches may flow through to some U.S. parents (depending on the counterparty's ownership and organizational structure), the alternative could reduce the returns and risks of such U.S. counterparties' parents.

At the same time, the alternative approach would involve unequal effects on foreign counterparties and foreign branches of U.S. counterparties. Specifically, under the alternative, foreign counterparties would be able to choose between transacting with those SBS Entities that employ statutorily disqualified personnel and those that do not, whereas foreign branches of U.S. counterparties would only be able to transact with SBS Entities that do not employ statutorily disqualified personnel. If SBS Entities with disqualified personnel compensate for potentially higher counterparty risks with, for example, more attractive terms of security-based swaps, the alternative may introduce disparities in access and cost of security-based swaps available to foreign counterparties as compared to those available to foreign branches of U.S. counterparties.

(b) Relief for Non-U.S.-Person SBS Entities With Respect to Non-U.S. Personnel Transacting With Non-U.S. Counterparties and Foreign Branches of U.S. Counterparties

The Commission has considered a narrower alternative exclusion limited to non-U.S.-person SBS Entities relying on non-U.S. personnel in their transactions with foreign counterparties and foreign branches of U.S. counterparties. The alternative exclusion would be subject to the same limitation as the amendment, discussed above: An SBS Entity would not be able to rely on the exclusion with respect to an associated person currently subject to an order that prohibits such person from participating in the U.S. financial markets, including the securities or swap market, or foreign financial markets.

Relative to the amendment, this alternative would broaden the effective scope of application of the statutory prohibition and might reduce ongoing compliance and counterparty risks for foreign counterparties and foreign branches of U.S. counterparties. Under the alternative, disqualified foreign personnel of U.S. SBS Entities would be unable to transact without the costs and delays related to applications for relief. This might decrease the number of disqualified foreign personnel transacting in security-based swap markets and seeking to associate with U.S. SBS Entities. Lower market participation of disqualified personnel on behalf of U.S. SBS Entities in their foreign transactions may reduce the costs of adverse selection and increase foreign counterparty willingness to transact with U.S. SBS Entities in security-based swaps.

At the same time, it would result in a disparate competitive standing between U.S. SBS Entities and non-U.S.-person SBS Entities as they are competing for business with foreign counterparties and foreign branches of U.S. counterparties. This alternative would allow nonresident SBS Entities to enjoy flexibility in hiring, retaining, and replacing non-U.S. personnel and in staffing foreign offices with personnel engaged in transactions with foreign counterparties. However, U.S. SBS Entities would be unable to rely on the exclusion and would have to either replace an employee or apply under Rule of Practice 194, incurring related costs and delays. To the degree that SBS Entities pass along costs to their

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the market, but the resulting reduction in competition amongst producers actually reduces consumer surplus. In turn, producers strictly benefit from such regulation.

counterparties, relative to the exclusion, this narrower alternative may result in somewhat lower availability or worse terms of security-based swaps and may somewhat reduce the choice of dealers for foreign counterparties and foreign branches of U.S. counterparties.

Further, under the alternative, foreign personnel of U.S. SBS Entities would not have the same competitive standing as foreign personnel of non-U.S. SBS Entities when engaging in business with the same foreign counterparties. The Commission also notes that the definition of a U.S. person is based on a natural person's residency in the United States. As discussed above, excluding foreign personnel of foreign SBS Entities creates incentives for all disqualified U.S. personnel employed by foreign SBS Entities to be transferred to a foreign office in order to legally become non-U.S. personnel eligible for the alternative exclusion. Of course, the choice made by a non-U.S. SBS Entity to transfer disqualified U.S. personnel abroad will reflect the value of an employee's skills and expertise, costs to reputation with counterparties, the number of positions being moved, and internal organizational structures of a non-U.S. SBS Entity. However, SBS Entities are commonly part of large financial groups with many domestic and foreign regional offices. Therefore, many non-U.S. SBS Entities may be able to relocate statutorily disqualified U.S. personnel to foreign offices and rely on the exclusion.

Under this alternative, however, disqualified personnel of U.S. SBS Entities would be unable to relocate to a foreign office and rely on the exclusion, adding to the competitive disparities between disqualified personnel of U.S. and foreign SBS Entities transacting with the same foreign counterparties. As a result, under the alternative, statutorily disqualified personnel of U.S. SBS Entities may seek employment with foreign SBS Entities and continue to transact with the same foreign counterparties on behalf of non-U.S. SBS Entities.

The Commission continues to recognize that, due to adverse selection costs and compliance risks related to hiring and retaining disqualified persons, many SBS Entities may choose not to hire or may fire and replace statutorily disqualified employees. However, this incentive may be weaker with respect to personnel whose conduct giving rise to disqualification occurred in jurisdictions where statutory disqualification is not public information.

(c) Relief for Non-U.S. SBS Entities With Respect to Both U.S. and Non-U.S. Personnel Transacting With Foreign Counterparties and Foreign Branches of U.S. Counterparties

The Commission has considered excluding from the statutory prohibition both U.S. and foreign disqualified personnel, but limiting the relief to non-U.S.-person SBS Entities transacting exclusively with foreign counterparties or foreign branches of U.S. counterparties. The alternative exclusion would be subject to the same limitation as the amendment, discussed above: An SBS Entity would not be able to rely on the exclusion with respect to an associated person currently subject to an order that prohibits such person from participating in the U.S. financial markets, including the securities or swap market, or foreign financial markets.

Under the alternative, non-U.S. SBS Entities would enjoy full flexibility in hiring, retaining, and replacing personnel and in staffing both U.S. and non-U.S. offices with personnel engaged in transactions with foreign counterparties. To the degree that non-U.S. SBS Entities pass along costs to their counterparties, this may result in somewhat higher availability or improved terms of security-based swaps for foreign counterparties. Further, under the alternative, disqualified U.S. personnel would have the same competitive standing as disqualified foreign personnel with similar skills and expertise transacting on behalf of non-U.S. SBS Entities with the same foreign counterparties. For example, disqualified U.S. personnel transacting with foreign counterparties and foreign branches of U.S. counterparties would not need to relocate to a foreign office of a foreign SBS Entity to avail themselves of the exclusion.

Relative to the Rule, this alternative would increase the competitive gap between U.S. and non-U.S. SBS Entities in their ability to hire, retain, and locate disqualified personnel as they compete for business with foreign counterparties. To the degree that U.S. SBS Entities may wish to begin or continue to associate with disqualified personnel despite potential reputation costs, U.S. SBS Entities would be required to apply with the Commission and disallow disqualified personnel from effecting security-based swaps pending Commission action. At the same time, foreign SBS Entities would be able to freely hire and retain disqualified personnel in the U.S. and allow them to engage in security-based swap transactions with foreign counterparties and foreign branches of U.S. counterparties.

As noted in the economic baseline, this alternative approach is inconsistent with the relief from the CFTC's requirements that is available to both U.S. and non-U.S. SBS Entities with respect to only foreign personnel. Given expected extensive cross-registration and active cross-market participation by counterparties, differential treatment of disqualification may disrupt counterparty relationships between the same dually registered SBS Entities transacting with the same foreign counterparties in related markets.

Under the alternative and relative to the amendment, disqualified U.S. personnel of non-U.S. SBS Entities may enjoy better employment and career outcomes, which may increase the number of disqualified personnel transacting in security-based swap markets and seeking to associate with SBS Entities. Greater market participation of disqualified personnel on behalf of non-U.S. SBS Entities, particularly in jurisdictions where conduct giving rise to disqualification is not public or easily accessible information, may increase the costs of adverse selection and decrease counterparty willingness to transact with non-U.S. SBS Entities in security-based swaps. As a result, some foreign counterparties may choose to move their transaction activity from non-U.S. to U.S. SBS Entities.

The magnitude of the above economic effects of the alternative approach may be limited by three factors. First, many non-U.S. SBS Entities may choose to locate personnel transacting with foreign counterparties in foreign offices if most of their business is in foreign underliers trading in foreign jurisdictions.[595] As a result, some non-U.S. SBS Entities may already locate personnel, including statutorily disqualified personnel, dedicated to transacting with foreign counterparties outside the United States.

Second, due to reputational and adverse selection costs and compliance risks related to hiring and retaining disqualified persons, many SBS Entities may choose not to hire, or may fire and replace disqualified employees. The incentive to disassociate is strongest in jurisdictions in which conduct giving rise to statutory disqualification is public information (as in the U.S). As a result, it is not clear how often non-U.S. SBS Entities would choose to hire or

[595] As discussed in Part VII.A.2.c, *infra,* we understand that many market participants engaged in market-facing activity prefer to use traders and manage risk for security-based swaps in the jurisdiction where the underlying security is traded.

continue to employ disqualified U.S. personnel even if they were able to rely on an exclusion and avoid applying for relief under Rule of Practice 194.

Third, the primary difference between the adopted approach and the alternative is in the treatment of U.S. SBS Entity personnel. Specifically, under the amendment, U.S. SBS Entities may permit non-U.S. personnel to transact with foreign counterparties and foreign branches of U.S. counterparties, whereas under the alternative they may not. With respect to non-U.S. SBS Entities, the amendment provides relief for foreign personnel only; the alternative provides relief with respect to both U.S. and foreign personnel. As discussed above, the definition of a U.S. person in Rule 3a71–3(a)(4)(i)(A) under the Exchange Act with respect to a natural person is based on residency in the United States. Under the amendment, non-U.S. SBS Entities may be able to simply transfer statutorily disqualified U.S. personnel transacting with foreign counterparties to a foreign office in order to become eligible for the exclusion. Of course, each non-U.S. SBS Entity's choice to continue to employ disqualified U.S. personnel and relocate them abroad would likely reflect the value of an employee's skills and expertise, reputational costs of continued association, the number of positions being moved, and internal organizational structures of each entity, among others. However, non-U.S. SBS Entities are commonly members of large financial groups with many domestic and foreign regional offices, and such relocation is likely to be feasible for some non-U.S. SBS Entities. As a result, depending on the ease and costs of such relocation and the value of disqualified personnel to the non-U.S. SBS Entity, the scope of this alternative with respect to non-U.S. SBS Entities may be similar to the effective scope of the exclusion with respect to non-U.S. SBS Entities.

(d) Relief for All SBS Entities With Respect to All Personnel Transacting With Non-U.S. Counterparties and Foreign Branches of U.S. Counterparties

The Commission has considered an exclusion for both U.S. and foreign SBS Entities with respect to all personnel transacting with foreign counterparties and foreign branches of U.S. counterparties. The alternative exclusion would be subject to the same limitation as the amendment, discussed above: An SBS Entity would not be able to rely on the exclusion with respect to an associated person currently subject to an order that prohibits such person from participating in the U.S. financial markets, including the securities or swap market, or foreign financial markets.

This alternative would allow both non-U.S. and U.S. SBS Entities to enjoy full flexibility in hiring, retaining, and replacing personnel, and in staffing both U.S. and non-U.S. offices with personnel engaged in transacting with foreign counterparties and foreign branches of U.S. counterparties. To the degree that SBS Entities currently pass along costs to their counterparties or to the degree disqualified personnel may have superior skills or expertise, this may benefit the terms of security-based swaps and choice of dealers available to foreign counterparties. Further, disqualified U.S. personnel would have the same competitive standing as disqualified foreign personnel with similar skills and expertise transacting on behalf of SBS Entities with the same foreign counterparties.

Relative to the exclusion, this alternative provides more relief from the statutory prohibition and may, thus, increase ongoing compliance and counterparty risks for foreign counterparties and foreign branches of U.S counterparties. Since all disqualified personnel of all SBS Entities transacting with foreign counterparties and foreign branches of U.S. counterparties would be excluded from the statutory prohibition, more disqualified personnel may seek to associate with both U.S. and foreign SBS Entities and to transact with foreign counterparties and foreign branches of U.S. counterparties. However, as discussed elsewhere in this release and in the Rule of Practice 194 Adopting Release, one of the key disincentives against continued association with disqualified personnel may be reputational. To the degree that information about the disqualifying conduct by U.S. personnel may be public and institutional customers perceive disqualification as increasing counterparty risk, counterparties may move their business, and SBS Entities may simply replace disqualified U.S. personnel. As a result, it is not clear that SBS Entities would significantly increase their reliance on disqualified personnel in transactions with foreign counterparties and foreign branches of U.S. counterparties relative to the baseline or the adopted approach. Nevertheless, to the degree that they may do so, greater market participation of disqualified personnel may increase adverse selection costs and decrease such counterparties' willingness to participate in security-based swap markets.

As noted above, a natural person's residency in the United States is endogenous. As a result, any exclusion for foreign personnel, but not U.S. personnel, transacting with foreign counterparties may result in SBS Entities simply transferring disqualified U.S. personnel to a foreign office. As the Commission recognized above, this decision by an SBS Entity will reflect the uniqueness and value of an employee's skills, expertise, and client relationships relative to the reputational costs and compliance risks of continuing to employ disqualified personnel and directs costs of personnel transfers. However, SBS Entities that belong to large global financial groups are less likely to be constrained by the location of disqualified personnel whom they prefer to retain. As a result, the economic effects of this alternative may be similar to those of the adopted approach.

(e) Relief for All SBS Entities With Respect to Non-U.S. Personnel Effecting and Involved in Effecting Security-Based Swaps With U.S. and Non-U.S. Counterparties

The Commission has also considered alternatives excluding from the statutory prohibition non-U.S. associated persons involved in effecting security-based swaps with both U.S. and non-U.S. counterparties in general, or under certain circumstances. For example, the Commission has considered excluding from the statutory prohibition non-U.S. associated persons involved in effecting security-based swaps with U.S. counterparties, if such activity is limited in level or scope (*e.g.,* collateral management).

As discussed in the economic baseline above, security-based swap markets are global and many SBS Entities actively participate across U.S. and non-U.S. markets. Due to economies of scale and scope, some SBS Entities may choose not to separate customer facing and/or operational activities, such as collateral management and clearing, related to security-based swaps with U.S. and non-U.S. counterparties. To the degree that some SBS Entities rely on the same personnel across their U.S. and non-U.S. business, they are currently unable to hire and retain statutorily disqualified personnel absent relief by the Commission. As discussed above, SBS Entities may face reputational costs from retaining disqualified employees. To the degree that SBS Entities would prefer to hire and retain certain disqualified employees due to their superior expertise, skills, and abilities, and despite such reputational costs, the alternative would provide beneficial flexibility in personnel decisions

without necessitating an SBS Entity to completely separate the operational side of their U.S and non-U.S. businesses (and more flexibility relative to the amendment). Some of these benefits may flow through to counterparties in the form of more efficient execution of security-based swaps and related services, or better price and non-price terms.

To the degree that statutory disqualification of associated persons may increase compliance and counterparty risks, the alternative may involve greater risks to U.S. counterparties of SBS Entities relative to the amendment. The Commission continues to note that the scope of conduct that gives rise to statutory disqualification is broad and includes conduct that is not related to investments or financial markets. Moreover, the security-based swap market is an institutional one, and conduct that gives rise to statutory disqualification in the U.S. is generally public. U.S. counterparties that believe statutory disqualification is a meaningful signal of quality may vote with their feet and choose to transact with non-disqualified personnel or SBS Entities that do not rely on disqualified personnel.

The alternative would provide broader relief compared to CFTC's requirements in swap markets and would not result in a harmonized regulatory regime with respect to statutory disqualification. Importantly, the full costs and benefits of an alternative that provides broader relief from the statutory prohibition in security-based swaps compared to the relief available in swap markets may not be realized. Specifically, to the degree that market participants transact across swap and security-based swap markets with the same SBS Entity counterparties, SBS Entities may continue to rely on the same personnel who are allowed to effect or be involved in both swaps and security-based swap transactions.

(f) Relief With Respect to Certain Non-U.S. Middle- and Back-Office Associated Persons

As discussed above, the Commission has considered two alternatives that would exclude certain non-U.S. middle- or back-office associated persons from the scope of the statutory disqualification prohibition in Section 15F(b)(6).[596] The first alternative would exclude non-U.S. associated persons involved in drafting and negotiating master agreements and confirmations and managing collateral for the SBS Entity from the statutory prohibition. The second alternative would be broader and also exclude from the statutory prohibition associated persons involved in structuring or supervisory functions, leaving only sales and trading persons considered ''involved in effecting'' security-based swaps and subject to the statutory prohibition.

TABLE 4—ESTIMATES OF ASSOCIATED PERSONS AFFECTED BY THE PROPOSAL AND ALTERNATIVES[597]

Estimate	Bank 1	Bank 2	Bank 3	Bank 4	Bank 5	Bank 6
Baseline[598]	3,750	2,150–2,250	2,100	2,100	1,340	>6,800
Proposal[599]	1,125	1,350–1,400	700–800	[600] 1,680	650–750	>1,000
Alternative 1[601]	875	850	100–200	n.a	560	700
Alternative 2[602]	288	750	[603] 100	[604] 700	n.a	n.a

TABLE 5—PERCENTAGE REDUCTION IN ASSOCIATED PERSONS BASED ON DATA PROVIDED BY 6 MARKET PARTICIPANTS[605]

Panel A. Reduction Relative to the Market Participant Estimates of the Baseline			
Estimate	Average (%)	Minimum (%)	Maximum (%)
Proposal	54	20	85
Alternative 1	76	58	93
Alternative 2	80	66	95
Panel B. Reduction Relative to the Market Participant Estimates of the Proposal			
Alternative 1	38	20	80
Alternative 2	66	45	87

Based on estimates summarized in Tables 4 and 5 above, the first alternative may reduce the scope of application of the statutory prohibition with respect to associated persons by an average of 76% relative to baseline estimates in the survey, with a range of estimates between 58% and 93%. The second alternative may reduce the scope of application of the statutory prohibition with respect to associated persons by an average of 80% relative to

[596] *See* EBF letter at 6; IIB/SIFMA letter at 5, 30; ISDA letter at 3, 16.

[597] *See* European Commission email.

[598] Range of associated persons if global SBS associated persons are taken into account, with broad definition and accounting for back office.

[599] Remaining range of associated persons after accounting for potential reduction of this number when removing personnel with no U.S. person contacts.

[600] This figure represents an estimate of ''only those associated persons authorized to communicate directly with U.S. persons.''

[601] Remaining range of associated persons after accounting for potential further reduction of the number by excluding back office functions.

[602] Remaining range of associated persons after accounting for potential further reduction by focusing exclusively on personnel with sales or trader mandates for derivatives.

[603] This figure represents the response ''approx. 100 if limited to US-focused associated persons.''

[604] This figure represents the response ''estimated 700 SBS associated persons for front-office personnel only, and when removing all back-office functions (comparable to the CFTC associated person approach).''

[605] *See* European Commission email. Where a market participant provided a range, the percentage reduction was calculated using a midpoint of that range. When a market participant provided an estimate using ''over,'' the percentage reduction assumed the figure was exactly as reported, which may under-estimate the magnitude of the reduction relative to baseline.

baseline estimates in the survey, with a range of estimates between 66% and 95%. In contrast, by adopting the proposed approach, as discussed above, the Commission estimates that the final amendments may reduce the scope of application of the statutory prohibition by approximately 54%, with a range of estimates between 20% and 85%.

Relative to the final approach, both alternatives excluding certain non-U.S. middle- and back-office employees may provide SBS Entities with further flexibility with respect to hiring and retaining disqualified personnel who may have valuable expertise and skills in their security-based swap business with U.S. and non-U.S. counterparties. These alternatives may also involve greater benefits for disqualified persons who may enjoy improved labor market outcomes and a greater likelihood of being hired and retained by SBS Entities in their middle and back-office functions. Such an alternative may also more closely harmonize the treatment of statutory disqualification across tightly linked swap and security-based swap markets.[606]

However, the Commission continues to recognize that, relative to the final approach, and to the degree that statutory disqualification may act as a signal of quality of an associated person, these alternatives may further increase compliance and counterparty risks, including to U.S. counterparties. As discussed in Part IV.B above, the conduct of a variety of middle- and back-office activities beyond solicitations or sales of security-based swaps—activities such as collateral management in connection with security-based swaps—may directly impact the risks and returns of counterparties on security-based swaps. These alternatives may also increase the incentives of U.S. and non-U.S. SBS Entities to move their non-U.S. disqualified personnel into middle- and back-office functions and may result in competitive disadvantages between U.S. and non-U.S. disqualified persons in front- and middle- and back-office functions.

The costs and benefits of these alternatives relative to the final approach are likely to be attenuated by two important considerations. First, as discussed above, the security-based swap market is an institutional one. To the degree that institutional counterparties may view statutory disqualification as a meaningful signal of quality, SBS Entities may still choose to disassociate from disqualified personnel in middle- and back-office functions to reduce reputational costs. While dealer concentration may reduce the effectiveness of this market discipline, market concentration is itself endogenous. As a result, the benefits of this alternative to SBS Entities and disqualified personnel as well as the potential risks to counterparties may be dampened. Second, under the alternatives, as under the final approach, the Commission would continue to be able, in appropriate cases, to institute proceedings under Exchange Act Section 15F(l)(3) to determine whether the Commission should censure, place limitations on the activities or functions of such person, suspend for a period not exceeding 12 months, or bar such person from being associated with an SBS Entity.[607] However, the Commission reiterates that the conduct of middle- and back-office activities may impact the risks and returns of counterparties and that, as estimated in Table 4, these alternatives may result in a further narrowing of the scope of the statutory prohibition relative to the final approach.

D. Certification, Opinion of Counsel, and Employee Questionnaires

In addition, the Commission is adopting certain amendments to registration Rule 15Fb2–1, and modifications to the requirement to obtain employee questionnaires under Rules 18a–5(a)(10) and (b)(8).

1. Amendments to Rule 15Fb2–1

As the Commission stated in the Registration Adopting Release, the Commission's access to books and records and the ability to inspect and examine registered SBS Entities facilitates Commission oversight of security-based swap markets.[608] To the degree that the certification and opinion of counsel requirements of Rule 15Fb2–4 provide assurances regarding the Commission's ability to oversee and inspect and examine nonresident SBS Entities, the baseline certification and opinion of counsel requirements may reduce counterparty and compliance risks and adverse selection.

However, certain nonresident entities may lack clarity concerning the scope of the certification and opinion of counsel requirements and their ability to comply. Specifically, the recent passage of the GDPR, as well as the potential exit of the United Kingdom from the European Union may create significant uncertainty for market participants currently intermediating large volumes of security-based swaps regarding their ability to comply with the certification and opinion of counsel requirements, as well as the background check recordkeeping requirements discussed below.

The Commission estimates that nonresident SBS Entities currently intermediating approximately 59.8% of all security-based swap notional are subject to foreign privacy and secrecy laws, blocking statutes, and other legal barriers that make it difficult or create uncertainty about their ability to provide certification and opinion of counsel and/or to be subject to inspections and examinations by the Commission.[609] Such nonresident SBS entities may be less likely to apply or may become unable to register as SBS Entities when compliance with SBS Entity registration rules is required.[610] As a result, some nonresident SBS Entities currently intermediating large volumes of security-based swap transactions may cease transaction activity or be forced to relocate certain operations, books, and records. This may result in disruptions to valuable counterparty relationships or increased costs to counterparties (to the degree that nonresident SBS Entities may pass along the costs of such restructuring in

[606] *See* EBF letter at 6; IIB/SIFMA letter at 30; ISDA letter at 16; *see also* Part V, *supra.*

[607] *See* 15 U.S.C. 78o–10(l)(3).

[608] *See* Registration Adopting Release, 80 FR at 48972.

[609] Since we expect a large number of U.S. SBS Entities will have dually registered as Swap Entities, to inform our analysis we considered foreign jurisdictions where CFTC staff previously provided no-action relief for trade repository reporting requirements as they apply to swap dealers (available at *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/15-01.pdf*). This estimate was also informed by a legal analysis of the EU General Data Protection Regulation, foreign blocking statutes, bank secrecy and employment laws, jurisdiction specific privacy laws, and other legal barriers that may inhibit compliance with regulatory requirements. These jurisdictions were matched to the domicile classifications of TIW accounts likely to trigger requirements to register with the Commission as SBS Entities when compliance with registration requirements becomes effective, using 2017 DTCC–TIW data. If foreign jurisdictions amend their data privacy and blocking laws, provide guidance, or enter into international agreements that would facilitate compliance with Commission SBS Entity registration requirements before compliance with SBS Entity registration rules becomes effective, or if SBS Entities choose to restructure their operations and/or relocate their books and records to other jurisdictions (for example, in response to the potential exit of the U.K. from the E.U. or GDPR restrictions), this figure may over- or under-estimate the security-based swap market share impacted by the guidance.

[610] The BIS estimates that as of year-end 2017, the total gross market value outstanding in single-name credit default swaps, in multi-name credit default swap instruments, and in equity forwards and swaps totaled $501 billion. If the amendment affects even 0.02% of the market, the economic impact of the amendment may exceed $100 million. *See* BIS, *Semi-annual OTC derivatives statistics at December 2017,* Table 10.1, available at *https://www.bis.org/statistics/d10_1.pdf* (accessed May 18, 2018).

the form of higher transaction costs or less attractive security-based swaps). In addition, depending on whether and which SBS Entities step in to intermediate the newly available market share, there may be significant competitive effects.

(a) Costs, Benefits, and Effects on Efficiency, Competition, and Capital Formation

The Commission is cognizant of the fact that SBS Entity Registration rules and other elements of the Title VII regime will apply to an active market. As analyzed in the economic baseline, the Commission recognizes that security-based swap markets involve extensive cross-border activity, and nonresident SBS Entities intermediate a large percentage of security-based swaps. The Commission believes that the nonresident SBS entities that may face uncertainty about their ability to comply with certification and opinion of counsel requirements and are likely to utilize conditional registration are those SBS Entities located in jurisdictions with foreign privacy and secrecy laws, blocking statutes, and other legal barriers described above.

Conditional registration may provide SBS Entities currently active in security-based swap markets with beneficial flexibility and time to relocate some of their operations and/or books and records around the constraints of foreign privacy and secrecy laws, blocking statutes, and other legal barriers, without disrupting ongoing counterparty relationships and market activity. In addition, conditional registration may facilitate smooth functioning of active security-based swap markets as compliance with the Commission's Title VII rules becomes required, may benefit both SBS Entities and counterparties by preserving SBS Entity-counterparty relationships, and may enhance efficiency and capital formation in security-based swaps.

However, conditional registration may reduce the assurances of the certification and opinion of counsel regarding the Commission's ability to inspect and examine some SBS Entities during the 24-month period. In addition, 24 months may not be sufficient for the more complex SBS Entities to relocate and restructure their security-based swap market activity outside the reach of foreign privacy and secrecy laws, blocking statutes, and other legal barriers, particularly as foreign laws, statutes and legal barriers evolve. Thus, under the amendment there may still be a risk of disruptions to counterparty relationships and market activity if conditionally registered SBS Entities having large market shares, and transacting with hundreds and thousands of counterparties, are unable to meet the certification and opinion of counsel requirements within the 24-month period.

Moreover, counterparties that may rely on the Commission's ability to inspect and examine a registered SBS Entity as a signal of higher quality may reduce their participation in security-based swap markets, which may increase adverse selection. Alternatively, they may vote with their feet and shift business from conditionally registered SBS Entities to non-conditionally registered SBS Entities. This may enhance competition between conditionally registered and non-conditionally registered SBS Entities and may create a market incentive for conditionally registered SBS Entities to provide the certification and opinion of counsel.

(b) Alternatives Considered

The Commission considered alternative approaches. Specifically, the Commission considered adopting some, but not other, aspects of the above relief. For example, the Commission considered shortening the conditional registration period (*e.g.,* to 12 or 18 months). Relative to the final approach, these alternatives would provide less relief and greater uncertainty to nonresident entities that may seek to register with the Commission as an SBS Entity, which may increase the likelihood of disruptions of counterparty relationships and risks of adverse effects on market activity in security-based swaps. At the same time, these alternatives may increase the scope, strength, and/or timeliness of the certification and opinion of counsel requirement, which may give the Commission further assurances regarding its ability to oversee security-based swap activity of nonresident entities applying for registration. Importantly, regardless of the certification and opinion of counsel requirement, all nonresident SBS Entities would continue to have independent ongoing obligations to provide the Commission with access to their books and records and to permit on-site inspections and examinations.

The Commission has considered an alternative under which all conditionally registered SBS Entities would be required to provide disclosures to U.S. counterparties or to all counterparties regarding their conditional registration. Such disclosures may help inform counterparties regarding the conditional registration status of SBS Entities with which they may wish to transact. To the degree that counterparties may consider conditional registration as a signal of lower quality or may seek to build long-term relationships with non-conditionally registered SBS Entity counterparties, and to the degree such counterparties are otherwise uninformed about SBS Entities' registration status, this alternative may facilitate more efficient counterparty selection. The alternative may also create reputational incentives for conditionally registered SBS Entities to provide the requisite certification and opinion of counsel to the Commission, to the degree that some counterparties may interpret conditional registration as a signal of reduced quality.

However, such disclosure requirements would involve burdens on SBS Entities related to the preparation and production of such disclosures. Related costs may be partly or fully passed along to SBS Entities' counterparties in the form of more expensive security-based swaps. As noted above, the Commission believes that nonresident SBS Entities most likely to utilize conditional registration are those SBS Entities that face uncertainty regarding their ability to comply with certification and opinion of counsel requirements due to privacy and secrecy laws, blocking statutes, and other legal barriers in their foreign jurisdictions. Based on the analysis of 2017 TIW data, the Commission estimates that there are approximately 9,611 unique relationships (pairs of counterparties and accounts likely to trigger SBS Entity registration requirements with registered office locations in jurisdictions with foreign privacy and secrecy laws, blocking statutes, and other legal barriers) or approximately 72.6% of all unique dealer–counterparty pairs active in security-based swap market that may become subject to the disclosure requirement.[611] Limiting such disclosure requirements to relationships between dealer accounts in jurisdictions with foreign privacy and secrecy laws, blocking statutes, and other legal barriers and U.S. non-dealer counterparties may affect 4,322 unique dealer-U.S. counterparty relationships.

[611] This estimate includes unique dealer-counterparty pairs where the counterparty is another dealer. Excluding dealer-dealer pairs reduces the estimate by 279, with an estimate of 9,332 unique pairs between non-dealer counterparties and dealer accounts with registered office locations in jurisdictions with foreign privacy and secrecy laws, blocking statutes, and other legal barriers (or approximately 70.5% of all unique dealer-counterparty pairs).

Since many of the dealer accounts belong to large financial groups, the Commission can also use the domicile of the parent organization to categorize dealers at the level of the financial group (at the firm-level) instead of at the level of the dealer (at the account-level). Using this more conservative approach, there may be 779 unique dealer-counterparty ties (or 25.7% of all ties) that may be affected by foreign privacy and secrecy laws, blocking statutes, and other legal barriers and the alternative disclosure requirement. The Commission also notes that, as a baseline matter, SBS Entity registration forms are public and the Commission may, in the course of Commission business, publish a list of registered SBS Entities and note the conditional registration status of such entities on the Commission's public website.

The Commission has also considered alternatives providing further relief to SBS Entities with respect to the certification and opinion of counsel requirements. For example, the Commission has also considered lengthening the conditional registration period (to, *e.g.,* 5 or 10 years) in recognition of the fact that some SBS Entities may be unable to provide the requisite certification and opinion of counsel within a 24-month grace period.[612] The Commission also considered eliminating the opinion of counsel requirement and providing carve-outs from the certification for competing blocking, privacy, or secrecy laws, similar to the relief available in swap markets.[613] The Commission could also have eliminated the opinion of counsel requirement and changed the certification to allow a senior officer to certify, based on reasonable due diligence, that the SBS Entity will provide access to its U.S. business-related books and records to the Commission upon request.[614] Finally, the Commission has also considered eliminating the certification and opinion of counsel requirement as a whole.[615]

Relative to the final approach, these alternatives may provide more relief and greater certainty to nonresident entities that may seek to register with the Commission as an SBS Entity. As a result, these alternatives may further decrease the likelihood of disruptions of counterparty relationships and risks of adverse effects on market activity in security-based swaps. These alternatives would further reduce or eliminate certification and opinion of counsel burdens, related uncertainty, and liability risk. At the same time, as discussed in prior sections, the Commission continues to believe that access to books and records and the ability to inspect and examine registered SBS Entities facilitates Commission oversight of security-based swap markets. These alternatives may limit the scope of assurances provided to the Commission by SBS Entity applicants regarding the Commission's ability to inspect and examine SBS Entities. To the degree that some nonresident SBS Entities may be unable to provide certification or opinion of counsel due to their inability to become subject to Commission inspections and examinations (as a result of, for example, foreign privacy and secrecy laws, blocking statutes, and other legal barriers), these alternatives may reduce the extent of Commission inspections and examinations. Importantly, under the final approach as well as under these alternatives, all nonresident SBS Entities would continue to have independent ongoing obligations to provide the Commission with access to their books and records and to permit onsite inspections and examinations.

2. Modifications to Rules 18a–5(a)(10) and (b)(8)

(a) Costs, Benefits, and Effects on Efficiency, Competition, and Capital Formation

The questionnaire requirement is intended to support Commission oversight and entity compliance with the substantive requirements of Rule 15Fb6 regarding statutory disqualification. The modifications to Rule 18a–5: i) eliminate the questionnaire requirement with respect to associated persons excluded from the statutory prohibition; and ii) modify the questionnaire requirement with respect to associated persons if local law in the jurisdiction where the associated person is located would prohibit the SBS Entity from collecting certain data otherwise required under Rule 18a–5. As discussed above, the Commission received comments supporting the proposed modifications to Rule 18a–5.[616] The Commission continues to believe that these modifications are unlikely to adversely affect Commission oversight of SBS Entity compliance with the statutory prohibition since those associated persons are already excluded from the statutory prohibition. In addition, the modifications relating to local law still require the SBS Entity to collect those data elements generally required under Rule 18a–5 that the SBS Entity is not prohibited from collecting under local law. At the same time, the modifications may involve modest reductions to corresponding paperwork burdens. The Commission continues to believe that, to the degree that SBS Entities may pass along these burdens to counterparties, the modifications may also result in some benefits to counterparties of these SBS Entities.

As discussed in Part VII.B, the Commission estimates that the addition of paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) to Rule 18a–5 would reduce initial costs associated with Rule 18a–5 by $49,491 and ongoing costs by $61,335.[617] Therefore, the cost savings to SBS Entities and counterparties from this modification are likely to be modest.

In addition, as discussed above, the Commission is modifying, by adding paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B), the questionnaire requirement with respect to non-U.S. associated persons of SBS Entities if the receipt of that information, or the creation or maintenance of records reflecting that information, would result in a violation of applicable law in the jurisdiction in which the associated person is employed or located. The primary intended benefit of this modification is to enable certain nonresident SBS Entities to continue intermediating transactions with their counterparties. Specifically, due to the existence of foreign privacy and secrecy laws, blocking statutes, and other legal barriers, the tailoring of the questionnaire requirement can enable more nonresident market participants to register as SBS Entities without a potentially costly relocation or business restructuring of certain operations and records to jurisdictions outside the reach of such laws. This may also reduce costs for counterparties (as nonresident SBS Entities may pass along related costs to counterparties in the form of more expensive security-based swaps) and may preserve valuable counterparty relationships.

In addition, this modification may also involve some modest burden reductions. As discussed in Part VII.B, the modification to add paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) to Rule 18a–5 is expected to decrease the initial costs associated with Rule 18a–5 by

[612] *See* ISDA letter at 10 n.21.

[613] *See* IIB/SIFMA letter at 20; Credit Suisse/UBS letter at 2; ISDA letter at 10.

[614] *Id.*

[615] *See, e.g.,* EBF letter at 2; ISDA letter at 10; Credit Suisse/UBS letter at 2.

[616] *See* EBF letter at 6–7; IIB/SIFMA letter at 30.

[617] Initial cost reduction for all stand-alone and bank SBS Entities reduction: (117 × Attorney at $423 per hour) = $49,491. Ongoing cost reduction for all stand-alone and bank SBS Entities reduction: (145 × Attorney at $423 per hour) = $61,335.

$24,534 and ongoing costs by $30,879.[618] In aggregate, as estimated in Part VIII.B, under both modifications, initial and ongoing costs of all stand-alone and bank SBS Entities related to complying with Rule 18a–5 are estimated at $215,730 and $269,874 respectively.[619]

The Commission continues to recognize that certain recordkeeping requirements may facilitate compliance and Commission oversight of SBS Entities. In adopting a tailored questionnaire requirement with respect to non-U.S. associated persons, the Commission has considered the value of such recordkeeping for compliance with Rule 15Fb6–2 and related oversight, as well as the costs and potential disruptions to counterparty relationships and market activity that may result when foreign jurisdictions do not allow nonresident SBS Entities to receive, create, or maintain such records. Importantly, as discussed above, the Commission continues to note that the tailoring of the requirement in (a)(10)(iii)(B) and (b)(8)(iii)(B) does not eliminate or affect the scope of all SBS Entities' ongoing obligations to comply with Section 15F(b)(6) of the Exchange Act and Rule 15Fb6–2, with respect to every associated person that effects or is involved in effecting security-based swaps and is not subject to an exclusion from the statutory disqualification prohibition in Section 15F(b)(6) of the Exchange Act.

Finally, the adopted approach involves a disparate treatment of broker-dealer SBS Entities and stand-alone and bank SBS Entities. Based on an analysis of 2017 TIW data and filings with the Commission, out of 50 participants likely to register with the Commission as security-based swap dealers, the Commission estimates that 16 market participants have already registered with the Commission as broker-dealers; 9 market participants will be stand-alone security-based swap dealers, and up to 25 participants will be bank security-based swap dealers.[620]

Under the modifications, SBS Entities that are not stand-alone or bank SBS Entities would be required to make and keep current a questionnaire or application for employment for associated persons with respect to whom the broker-dealer SBS Entity is excluded from the prohibition in Exchange Act 15F(b)(6), incurring corresponding compliance burdens, albeit modest, estimated above. In addition, to the extent that some SBS Entities that are not stand-alone or bank SBS Entities are heavily reliant on employees in jurisdictions with foreign privacy and secrecy laws, blocking statutes, and other legal barriers in their security-based swap business, they may be unable to comply with the employee questionnaire requirement and register with the Commission. These SBS Entities would be unable to register without a relocation or restructuring of various records and or operations, involving costs for such SBS Entities—costs that may be passed along to counterparties or disrupt existing counterparty relationships. This may reduce the competitive standing of SBS Entities cross-registered as broker-dealers and their employees in certain foreign jurisdictions and improve the competitive standing of stand-alone and bank SBS Entities and their employees in foreign data privacy jurisdictions.

Broker-dealer SBS Entities are already subject to a questionnaire requirement under Rule 17a–3(a)(12). The Commission believes that such entities are making and keeping current employment questionnaires and applications for all of their associated persons in their normal course of business. In addition, the Commission believes that such SBS Entities have already structured their security-based swap business in a manner that would enable them to comply with this requirement without disrupting transaction activity or ongoing counterparty relationships. The sunk cost nature of such structuring of broker-dealers' security-based swap business may partly mitigate the above competitive effects.

(b) Alternatives Considered

The Commission has considered an alternative approach, which would provide the same relief (by also amending Rule 17a–3(a)(12) and providing the same relief to broker-dealer SBS Entities) with respect to: (i) Exemption based on the non-U.S. associated SBS Entity's exclusion from the prohibition under Section 15F(b); and (ii) exemption based on local law.

The alternative would benefit a greater number of SBS Entities and counterparties by extending the relief (with its benefits discussed above) to all SBS Entities in their security-based swap business. Moreover, the alternative would eliminate the competitive disparities between broker-dealer and stand-alone and bank SBS Entities discussed above.

However, the Commission continues to recognize that recordkeeping requirements are essential to the inspection and examination process and facilitate effective oversight of the markets the Commission regulates. Importantly, as discussed above, broker-dealer SBS Entities are already subject to a questionnaire requirement under Rule 17a–3(a)(12). The Commission believes that broker-dealer SBS Entities have already located and structured their security-based swap business in a way that would allow them to comply with the questionnaire requirement. At the same time, the Commission understands that stand-alone and bank SBS Entities active in security-based swap markets are not currently subject to similar recordkeeping requirements and that the questionnaire requirement, as adopted, may require these entities to relocate their security-based swap business and staff to other jurisdictions. This may disrupt counterparty relationships and ongoing business transactions between stand-alone and bank SBS Entities and their customers.

The Commission also understands that broker-dealer SBS Entities are routinely making and keeping current employment questionnaires and applications for all of their associated persons, which may reduce the benefits of the above alternative. However, if such baseline behavior of broker-dealer SBS Entities is a result of Rule 17a–3 currently in effect and not of compliance practices optimal for each broker-dealer SBS Entity, the alternative may reduce burdens[621] and provide beneficial flexibility in recordkeeping practices for broker-dealer SBS Entities with respect to associated persons excluded from the statutory prohibition. The Commission continues to note that the recordkeeping requirement in Rule 18a–5 is intended to support substantive obligations with respect to statutory disqualification and that such substantive obligations would no longer

[618] Initial cost reduction for all stand-alone and bank SBS Entities reduction: (58 × Attorney at $423 per hour) = $24,534. Ongoing cost reduction for all stand-alone and bank SBS Entities reduction: (73 × Attorney at $423 per hour) = $30,879.

[619] Initial costs for all stand-alone and bank SBS Entities reduction under the modifications to Rule 18a–5(a)(10) and (b)(8): ((700–127–63) × Attorney at $423 per hour) = $215,730.

Ongoing costs for all stand-alone and bank SBS Entities reduction: ((875–158–79) × Attorney at $423 per hour) = $269,874.

[620] We note that these figures are based on current market activity in security-based swaps. We are unable to quantify the number of market participants currently expected to register as broker-dealer, bank, or stand-alone security-based swap dealers that may choose to restructure their U.S. security-based swap market participation in response to the pending substantive requirements of Title VII, such as capital and margin requirements.

[621] As acknowledged above, the overall burdens of compliance with Rule 18a–5 are relatively modest; however, fixed costs may be more significant for smaller entities.

exist with respect to associated persons of broker-dealer SBS Entities effecting or involved in effecting security-based swaps and exempt from the statutory prohibition under, for instance, Rule of Practice 194(c)(2).

VII. Paperwork Reduction Act

Certain provisions of the amendments to Exchange Act Rules 3a71–3 and 18a–5 contain ''collection of information'' [622] requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''). The Commission published notice requesting comment on the collection of information requirements [623] and submitted the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The Commission's earlier PRA assessments have been revised to reflect the modifications to the rule amendments from those that were proposed, as well as additional information and data now available to the Commission. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The title of the new collection of information associated with the amendments to Rule 3a71–3 is ''Rule 3a71–3(d)—Conditional Exception from *De Minimis* Counting Requirement in Connection with Certain Transactions Arranged, Negotiated, or Executed in the United States,'' OMB Control Number 3235–0771.[624] The title and OMB control number for the collection of information the Commission is proposing to modify is ''Rule 18a–5—Records to be made by certain security-based swap dealers and major security-based swap participants,'' OMB Control Number 3235–0745.

In the Proposing Release, the Commission requested comment on the collection of information requirements contained therein, as well as the accuracy of the Commission's related estimates and statements regarding the associated costs and burdens of the proposed rules. The Commission did not receive any comments on these matters. The Commission continues to believe that the methodology used for calculating the burdens set forth in the Proposing Release is appropriate. However, where noted, certain estimates have been modified, as necessary, to conform to the adopted rules and to reflect the most recent data available to the Commission. Other than these changes, the Commission's estimates remain unchanged from those in the Proposing Release.

A. Amendment to Rule 3a71–3

1. Summary of the Collection of Information [625]

(a) Notification of Limited Title VII Applicability

The exception to Rule 3a71–3 is conditioned in part on the registered entity engaged in arranging, negotiating, or executing activity in the United States notifying the counterparties of the non-U.S. person relying on the exception, contemporaneously with and in the same manner as the arranging, negotiating, or executing activity, that the non-U.S. person is not registered with the Commission as a security-based swap dealer, and that certain Exchange Act provisions or rules addressing the regulation of security-based swaps would not be applicable in connection with the transaction.[626] As discussed in Part II.C.4, the Commission is adopting an alternative means of satisfying this notification condition. As amended, the condition allows a single disclosure to cover all subsequent arranging, negotiating, or executing activity of a registered entity that has no customer relationship with the counterparty. This notification condition applies only when the identity of the counterparty is known to the registered entity at a reasonably sufficient time prior to the execution of the transaction to permit the disclosure.[627]

(b) Business Conduct-Related Conditions

The exception to Rule 3a71–3 is conditioned in part on the registered entity that engages in arranging, negotiating, or executing activity in the United States in connection with the transactions at issue complying with certain security-based swap dealer business conduct requirements related to disclosure of material risks, characteristics, incentives, and conflicts of interest; suitability of recommendations; and fair and balanced communications. The registered entity must comply with these requirements as if the counterparty to the non-U.S. person relying on the exception also were a counterparty to that registered entity and, if the registered entity is a broker not registered as a security-based swap dealer, also as if it were a registered security-based swap dealer.[628] Each of those underlying business conduct requirements itself is associated with a collection of information.[629] The Commission is adopting the disclosure condition and the communications condition as proposed, and is adopting an alternative method to satisfy the counterparty-specific prong of the suitability condition. First, the registered entity could ensure that it has a reasonable basis to believe that the recommended security-based swap or strategy involving a security-based swap is suitable for the counterparty, as required by Rule 15Fh–3(f)(1). Alternatively, if the registered entity reasonably determines that the counterparty to whom it recommends a security-based swap or trading strategy involving a security-based swap is an ''institutional counterparty'' as defined in Rule 15Fh–3(f)(4), the registered entity instead may disclose to the counterparty that it is not undertaking to assess the suitability of the security-based swap or trading strategy involving a security-based swap for the counterparty.

(c) Trade Acknowledgment and Verification Condition

The exception to Rule 3a71–3 is conditioned in part on the registered entity that engages in arranging, negotiating, or executing activity in the United States in connection with the

[622] 44 U.S.C. 3502(3).

[623] *See* Proposing Release, 84 FR at 24288–89.

[624] This new collection of information is distinct from an existing collection of information related to Exchange Act Rule 3a71–3(c), which provides an exception from the application of certain business conduct requirements in connection with a security-based swap dealer's ''foreign business.'' *See generally* Business Conduct Adopting Release, 81 FR at 30082.

[625] Because the amendment to Rule 3a71–3 would require the use of a registered entity in connection with the transactions at issue, the amendment also would implicate collections of information associated with security-based swap dealer and/or broker status (apart from the collections associated with the specific conditions of the exception). Separate collections of information address the registration of security-based swap dealers and/or brokers, as well as the requirements associated with those registered entities as a matter of course, including recordkeeping requirements applicable to such registered entities. The separate collections of information associated with requirements of general applicability for registered security-based swap dealers and/or brokers are not addressed as part of this rulemaking, and instead are addressed by the collections of information associated with those separate requirements.

[626] *See* Exchange Act Rule 3a71–3(d)(1)(iv).

[627] *See id.*

[628] *See* Exchange Act Rule 3a71–3(d)(1)(ii)(B)(*1*)–(*3*).

[629] *See* Business Conduct Adopting Release, 81 FR at 30083–85 (discussing collections of information regarding security-based swap dealer requirement for disclosure of information regarding material risks, characteristics, incentives and conflicts of interest, suitability of recommendations, and fair and balanced communications).

transactions at issue complying with trade acknowledgment and verification requirements. These requirements themselves are associated with collections of information.[630] The registered entity must comply with these requirements as if the counterparty to the non-U.S. person relying on the exception also were a counterparty to that registered entity and, if the registered entity is a broker not registered as a security-based swap dealer, also as if it were a registered security-based swap dealer.[631]

(d) Portfolio Reconciliation Condition

The Commission proposed that the exception to Rule 3a71–3 be conditioned in part on registered entity that engages in arranging, negotiating, or executing activity in the United States in connection with the transactions at issue complying with certain portfolio reconciliation requirements.[632] As discussed in Part II.C.2, the Commission is persuaded by comments that the burdens of compliance with the proposed condition would outweigh its benefits, and is not adopting the condition.

(e) Recordkeeping Condition

The exception to Rule 3a71–3 is conditioned in part on the registered entity engaged in arranging, negotiating, or executing activity in the United States obtaining from the non-U.S. person relying on the exception, and maintaining for not less than three years following the activity subject to the exception, the first two years in an easily accessible place, trading relationship documentation involving the counterparty to the transaction.[633]

(f) Consent to Service Condition

The exception to Rule 3a71–3 is conditioned in part on the registered entity engaged in arranging, negotiating, or executing activity in the United States obtaining from the non-U.S. person relying on the exception, and maintaining for not less than three years following the activity subject to the exception, the first two years in an easily accessible place, written consent to service of process for any civil action brought by or proceeding before the Commission, providing that process may be served on the non-U.S. person by service on the registered entity in the manner set forth in the registered entity's current Form BD, SBSE, SBSE–A or SBSE–BD, as applicable.[634]

(g) ''Listed Jurisdiction'' Condition

The exception to Rule 3a71–3 is conditioned in part on the non-U.S. person relying on the exception being subject to the margin and capital requirements of a ''listed jurisdiction.''[635] The Commission may issue an order designating a jurisdiction on its own initiative or in response to applications by persons that may rely on the exception, or by foreign financial authorities, which must be filed pursuant to the procedures set forth in Exchange Act Rule 0–13.[636]

(h) Risk Management Control System Condition

The exception to Rule 3a71–3 is conditioned in part on certain registered entities engaged in arranging, negotiating, or executing activity in the United States complying with portions of Exchange Act Rule 15c3–4 even though they would not otherwise be required to do so.[637] Rule 15c3–4 requires the establishment of an internal risk management control system and involves each entity documenting, recording, and maintaining its system of internal risk management controls.

(i) Conditions Associated With the Use of Exception for Covered Inter-Dealer Security-Based Swaps

The use of the exception to Rule 3a71–3 for covered inter-dealer security-based swaps is conditioned in part on the registered entity engaged in arranging, negotiating, or executing activity in the United States complying with a number of requirements: (1) Filing with the Commission a notice that its associated persons may conduct ''arranging, negotiating, or executing'' activity in the United States; and (2) obtaining from the non-U.S. person relying on the exception, and maintaining, documentation regarding such non-U.S. person's compliance with the inter-dealer threshold.

2. Use of Information

(a) Notification of Limited Title VII Applicability

The notification condition is intended to help guard against counterparties reasonably presuming that the involvement of U.S. personnel in an arranging, negotiating, or executing capacity as part of the transaction would be accompanied by the safeguards associated with Title VII security-based swap dealer regulation applying to the non-U.S. person.

(b) Business Conduct-Related Conditions

The use of the information associated with the business conduct condition is the same as the use of information associated with the currently extant security-based swap dealer business conduct requirements. These conditions apply the existing requirements to transactions that, without the exception to Rule 3a71–3, would have counted against the *de minimis* threshold and could have caused the non-U.S. entity relying on the exception to register as a security-based swap dealer and comply with similar or more stringent business conduct requirements. The condition requiring the registered entity to comply with requirements for the disclosure of risks, characteristics, incentives, and conflicts will assist the counterparty in assessing the transaction by providing it

[630] *See* Trade Acknowledgment and Verification Adopting Release, 81 FR at 39829–30 (discussing collections of information regarding security-based swap dealers requirement for trade acknowledgment and verification).

[631] *See* Exchange Act Rule 3a71–3(d)(1)(ii)(B)(*4*).

[632] *See* proposed Exchange Act Rule 3a71–3(d)(1)(ii)(B)(*5*).

[633] *See* Exchange Act Rule 3a71–3(d)(1)(iii)(B)(*3*).

In addition, the exception is conditioned in part on the registered entity creating and maintaining books and records relating to the transactions subject to this exception that are required, as applicable, by Rules 17a–3 and 17a–4, or Rules 18a–5 and 18a–6, including books and records relating to: Disclosure of risks, characteristics, incentives, and conflicts; assessment of suitability; fair and balanced communications; and trade acknowledgment and verification. *See* Exchange Act Rule 3a71–3(d)(1)(iii)(B) (requiring creation and maintenance of books and records relating to the requirements specified in proposed paragraph (d)(1)(ii)(B)).

Because that part of the condition subsumes the collection of information that the Commission would expect to be associated with the final rules adopting those security-based swap dealer books and records requirements, it does not constitute a separate collection of information attributable to this exception. *See* note 624, *supra.*

[634] *See* Exchange Act Rule 3a71–3(d)(1)(iii)(B)(*4*).

[635] *See* Exchange Act Rule 3a71–3(d)(1)(v).

[636] *See* Exchange Act Rule 3a71–3(d)(2)(i).

[637] *See* Exchange Act Rule 3a71–3(d)(1)(i)(B)(*2*) (requiring compliance with Exchange Act Rule 15c3–1(a)(10)), which in turn requires compliance with portions of Exchange Act Rule 15c3–4, when the registered entity is a broker not approved to use models to compute deductions for market or credit risk). A broker not approved to use models to compute deductions for market or credit risk is not subject to Rule 15c3–4 unless it is also a security-based swap dealer or an OTC derivatives dealer. The condition to the exception requiring such brokers to comply with Rule 15c3–1(a)(10) thus imposes a new requirement to comply with portions of Rule 15c3–4. Other registered entities—brokers who are approved to use models, non-model brokers who are dually registered as a security-based swap dealer or an OTC derivatives dealer, and stand-alone security-based swap dealers—are already required to comply with Rule 15c3–4. *See* Exchange Act Rule 15c3–1(a)(7) (requiring brokers approved to use models to comply with portions of Exchange Act Rule 15c3–4); Exchange Act Rule 15c3–1(a)(10) (requiring brokers not approved to use models who are dually registered as security-based swap dealers to comply with portions of Exchange Act Rule 15c3–4); Exchange Act Rule 15c3–4 (requiring compliance by OTC derivatives dealers); Exchange Act Rule 18a–1(f) (requiring security-based swap dealers to comply with portions of Exchange Act Rule 15c3–4).

with a better understanding of the expected performance of the security-based swap, and provide additional transparency and insight into pricing.[638] The condition requiring the registered entity to comply with requirements regarding the suitability of recommendations will assist the registered entity in making appropriate recommendations.[639] The condition requiring the registered entity to comply with fair and balanced communication requirements in part better equip the counterparty to make more informed investment decisions.[640]

(c) Trade Acknowledgment and Verification Condition

The use of the information associated with the trade acknowledgment and verification condition is the same as the use of information associated with the currently extant security-based swap dealer trade acknowledgment and verification requirements. The condition applies the existing requirements to transactions that, without the exception to Rule 3a71–3, would have counted against the *de minimis* threshold and could have caused the non-U.S. entity relying on the exception to register as a security-based swap dealer and comply with the same trade acknowledgment and verification requirements. In general, the trade acknowledgment serves as a written record by which the counterparties to the transaction may memorialize the terms of a transaction, and the verification requirements ensure that the written record of the transaction accurately reflects the terms of the transaction as understood by the respective counterparties.[641]

(d) Recordkeeping Condition

The condition requiring the registered entity to obtain and maintain trading relationship documentation involving the non-U.S. person relying on the exception and its counterparty is intended to help the Commission obtain a full view of the dealing activities connected with transactions relying on the exception, including such activities that occur in the non-U.S. person relying on the exception. Absent such access, the Commission may be impeded in identifying fraud and abuse in connection with transactions that have been arranged, negotiated, or executed in the United States, where such fraud or abuse may be apparent only in light of relevant information obtained from the non-U.S. person relying on the exception or its associated persons.

(e) Consent to Service Condition

The use of the consent to service condition is to facilitate the Commission's ability to serve process on the non-U.S. person relying on the exception, which in turn will assist the Commission in efficiently taking action to address potential violations of the federal securities laws in connection with the transactions at issue.

(f) ''Listed Jurisdiction'' Condition

The use of information provided by applicants in connection with ''listed jurisdiction'' applications is to assist the Commission in evaluating the effectiveness of the financial responsibility requirements of jurisdictions regulating non-U.S. persons relying on the exception. This condition is intended to help avoid creating an incentive for persons engaged in a security-based swap dealing business in the United States to book their transactions into entities that solely are subject to the regulation of jurisdictions that do not effectively require security-based swap dealers or comparable entities to meet certain financial responsibility standards. Avoiding such an incentive should help prevent creating an unwarranted competitive advantage to non-U.S. persons that conduct security-based swap dealing activity in the United States without being subject to strong financial responsibility standards. The condition also is consistent with the view that applying financial responsibility requirements to such transactions between two non-U.S. persons can help mitigate the potential for financial contagion to spread to U.S. market participants and to the U.S. financial system more generally.

(g) Risk Management Control System Condition

Compliance with Rule 15c3–4 by the registered entity engaged in arranging, negotiating, or executing activity in the United States is intended to promote the establishment and maintenance of an effective risk management control system by such entities.

(h) Conditions Associated With the Use of Exception for Covered Inter-Dealer Security-Based Swaps

The use of information provided by applicants in connection with the notice and compliance documentation requirements associated with the use of the conditional exception for covered inter-dealer security-based swaps is to assist the Commission in evaluating compliance with the limitations on such use of the exception.

3. Respondents

As discussed above, the Commission continues to estimate that up to 24 entities that engage in security-based swap dealing activity may rely on the conditional exception from having to count dealing transactions with non-U.S. counterparties against the *de minimis* thresholds.[642] To satisfy the exception, each of those up to 24 entities will make use of an affiliated registered entity that will be required to comply with—and incur collections of information in connection with—conditions related to compliance with certain Title VII security-based swap dealer requirements related to business conduct and trade acknowledgment and verification. Each of those up to 24 registered entities also will have to provide disclosures to counterparties of the non-U.S. persons relying on the exception, to obtain and maintain trading relationship documentation involving the non-U.S. persons relying on the exception and their counterparties, and to comply with the condition that the registered entity obtain from the non-U.S. person a consent to service of process.

The Commission estimates that up to 24 entities will make use of the exception for covered inter-dealer security-based swaps. To satisfy the exception, each of those up to 24 entities will make use of an affiliated registered entity that will be required to comply with the notice and compliance documentation requirements associated with the use of the exception for covered inter-dealer security-based swaps.

The Commission is unable to estimate how many of the 24 non-U.S. relying entities will make use of a registered broker that is not approved to use

[638] *See* Business Conduct Adopting Release, 81 FR at 30088.

[639] *See id.*

[640] *See id.*

[641] *See* Trade Acknowledgment and Verification Adopting Release, 81 FR at 39830.

[642] This estimate is based on data (*see* Part VI.A.7, *supra*) indicating that: (1) Six U.S. entities are engaged in security-based swap dealing activity above the *de minimis* thresholds may have the incentive to book future security-based swaps with non-U.S. counterparties into U.S. affiliates to make use of the proposed exception in connection with those transactions. (2) One non-U.S. entity would fall below the $3 billion *de minimis* threshold if its transactions with non-U.S. counterparties were not counted. (3) The ''arranged, negotiated, or executed'' counting standard would result in five additional non-U.S. entities incurring assessment costs in connection with the *de minimis* exception.

The analysis has doubled those numbers—to up to twelve U.S. persons that may change its booking practices involving security-based swaps to make use of the exception, plus up to twelve additional non-U.S. persons—to address potential growth of the security-based swap market and to account for uncertainty associated with the availability of data, leading to the final estimate of 24 entities. *See id.*

models to compute deductions for market or credit risk, and is therefore required to maintain minimum net capital equivalent to that of a security-based swap dealer not approved to use models and establish and maintain risk management control systems as if the entity were a security-based swap dealer. For purposes of calculating burdens associated with establishing and maintaining a risk management control system, the Commission estimates that up to 24 non-U.S. relying entities will make use, for purposes of the exception, of a registered broker that is not approved to use models to compute deductions for market or credit risk.

Applications for listed jurisdiction determinations may be submitted by the up to 24 non-U.S. persons that will rely on the exception. In practice the Commission expects that the greater portion of such listed jurisdiction applications will be submitted by foreign financial authorities, given their expertise in connection with the relevant financial responsibility requirements, information access provisions, and supervisory and enforcement oversight with regard to the financial responsibility requirements.[643]

4. Total Annual Reporting and Recordkeeping Burdens (Summarized in Table 6)

(a) Notification of Limited Title VII Applicability

The Commission continues to estimate that up to 12 U.S. entities may book transactions into their non-U.S. affiliates to make use of the conditional exception and in the aggregate would annually engage in nearly 76,000 security-based swap dealing transactions with non-U.S. counterparties.[644] Here—and in connection with the other two groups addressed below—the analysis doubles that amount to estimate the number of total notifications, recognizing that there will be situations in which the registered entity engaged in arranging, negotiating, or executing activity in the United States makes the required notifications but a transaction does not result.[645]

The Commission also continues to estimate that two non-U.S. persons may fall below the *de minimis* thresholds due to the conditional exception and in the aggregate would annually engage approximately 20,000 security-based swap dealing transactions with non-U.S. counterparties,[646] doubled here to account for notices that are not followed by a transaction.[647]

The Commission further continues to estimate that an additional ten non-U.S. entities may rely on the conditional exception and in the aggregate would annually engage in approximately 2,100 security-based swap dealing transactions, with non-U.S. persons, that may be subject to the exception,[648] doubled here to account for notices that are not followed by a transaction.[649]

In light of the limited contents of those notices, the Commission continues to believe that each such notice on average would be expected to take no more than five minutes. Accordingly, the Commission continues to estimate that the 12 U.S. entities that may book transactions into their non-U.S. affiliates to make use of the conditional exception in the aggregate will annually spend a total of approximately 12,609 hours to provide the notices required by the conditions.[650] The alternative means of satisfying this condition through a single notice, discussed in Part II.C.4 above, does not alter the burden estimates for these 12 U.S. entities because the single disclosure is not available when the counterparty is a customer or security-based swap counterparty of the registered entity, and it is likely that the 12 U.S. entities described above would make use of the exception with respect to ''arranging, negotiating, or executing'' activity for its own customers and counterparties. The Commission further continues to estimate that the two non-U.S. entities that may fall below the *de minimis* thresholds due to the exception in the aggregate will annually spend a total of approximately 3,355 hours to provide the disclosures required by the conditions,[651] while the other ten non-U.S. entities that may rely on the conditional exception in the aggregate will annually spend a total of approximately 352 hours to provide the disclosures required by the conditions.[652] However, the Commission is unable to estimate how many of these non-U.S. entities would be able to rely on the single disclosure, and therefore, for purposes of calculating reporting and recordkeeping burdens, the Commission estimates that none of these entities would rely on the single disclosure.

The Commission also continues to believe that each of those 24 total entities would initially spend 100 hours and incur approximate costs of $30,598 to develop policies and procedures to help ensure that appropriate disclosures are provided.[653]

(b) Business Conduct-Related Conditions

The Commission estimated the reporting and recordkeeping burdens associated with the relevant security-based swap dealer business conduct requirements under Title VII when it adopted those requirements. The Commission continues to believe that those estimates are instructive for calculating the per-entity reporting and recordkeeping burdens associated with the business conduct-related conditions, given that the conditions in effect would require compliance with those business conduct requirements.

• *Disclosures of material risks, characteristics, and conflicts and*

[643] As discussed below, the Commission estimates that three non-U.S. persons will submit listed jurisdiction applications.

[644] Available data indicates that the six U.S. entities that are engaged in security-based swap dealing activity above the *de minimis* thresholds in the aggregate annually engage in 37,827 transactions with non-U.S. counterparties. To address potential growth in the market and data-related uncertainty, the analysis doubles that estimate to 75,654 transactions annually (and also doubles the estimated number of entities).

[645] This produces an estimate of 151,308 (75,654 × 2) annual disclosures pursuant to the condition.

[646] Available data indicates that the one non-U.S. entity that would fall below the *de minimis* thresholds due to the exception annually engages in 10,064 transactions with non-U.S. counterparties. To address potential growth in the market and data-related uncertainty, the analysis doubles that estimate to 20,128 transactions annually (and also doubles the estimated number of entities).

[647] This produces an estimate of 40,256 (20,128 × 2) annual disclosures pursuant to the condition.

[648] Available data indicates that would result in five additional non-U.S. persons that would be expected to incur assessment costs due to the ''arranged, negotiated, or executed'' counting standard engage in a total of 1,056 annual security-based swap transactions with non-U.S. counterparties. To address potential growth in the market and data-related uncertainty, the analysis doubles that estimate to 2,112 transactions annually (and also doubles the estimated number of entities).

[649] This produces an estimate of 4,224 (2,112 × 2) annual disclosures pursuant to the condition.

[650] 151,308 aggregate annual disclosures × 5 minutes per transaction. This averages to approximately 1,050.75 hours for each of those 12 firms.

[651] 40,256 aggregate annual disclosures × 5 minutes per transaction. This averages to approximately 1,677 hours for each of those two firms.

[652] 4,224 aggregate annual disclosures × 5 minutes per transaction. This averages to 35.2 hours for each of those ten firms.

[653] Applied to the estimated 24 entities at issue here, this would amount to 2,400 hours and $734,352.

These estimates are based on prior estimates, made in connection with the adoption of the ''arranged, negotiated, or executed'' counting standard, that non-U.S. persons would incur 100 hours and $28,300 to establish policies and procedures to restrict communications with U.S. personnel in connection with the non-U.S. persons' dealing activity. *See* ANE Adopting Release, 81 FR at 8628. That $28,300 estimate has been adjusted to $30,598 in current dollars (28,300 × 1.0812).

incentives. When the Commission earlier considered the compliance burdens associated with those disclosure requirements (along with clearing rights and daily mark disclosure requirements not applicable under this exception),[654] the Commission estimated that implementation of those requirements: (i) Initially would require three persons from trading and structuring, three persons from legal, two persons from operations, and four persons from compliance, for 100 hours each; [655] (ii) half of those persons would be required to spend 20 hours annually to re-evaluate and modify disclosures and systems requirements; [656] and (iii) those entities would require eight full-time persons for six months of systems development, programming, and testing,[657] along with two full-time persons annually for maintenance of this system.[658]

• *Suitability of recommendations.* When the Commission previously analyzed the burdens associated with the security-based swap dealer recommendation suitability requirement, it estimated that most security-based swap dealers would obtain representations from counterparties to comply with the institutional counterparty suitability provisions of the requirement.[659] The Commission further particularly estimated: (i) That for security-based swap market participants that also are swap market participants, most of the requisite representations have been drafted for the swaps context, and that to the extent that any modifications are necessary to adapt those representations to the security-based swap context, each market participant would require two hours to assess the need for modifications and make any required modifications; [660] and (ii) other market participants (apart from special entities not relevant here) would require five hours for each market participant to review and agree to the relevant representations.[661] The suitability condition that the Commission is adopting lessens the institutional counterparty suitability requirements, upon which this prior analysis was based, in connection with transactions subject to the exception. Accordingly, when complying with the institutional counterparty suitability requirements, the registered entity does not have to obtain representations or other information demonstrating that the counterparty or its agent is capable of independently evaluating investment risks with regard to the security-based swap or trading strategy involving a security-based swap, nor must it obtain representations that the counterparty or agent is exercising independent judgment in evaluating the registered entity's recommendations. To reflect this reduced reporting and recordkeeping burden, the Commission estimates: (i) That for registered entities that also are swap market participants, most of the requisite representations have been drafted for the swaps context, and to the extent that any modifications are necessary to adapt those representations to the context of the suitability condition, each market participant would require one hour [662] to assess the need for modifications and make any required modifications; [663] and (ii) other market participants (apart from special entities not relevant here) would require two and a half hours [664] for each market participant to review and agree to the relevant representations.[665]

• *Fair and balanced communications.* The Commission's earlier analysis of the burdens associated with the fair and balanced communications requirement [666] took the view that each registered entity would incur: (i) $6,000 in initial legal costs to draft or review statements of potential opportunities and corresponding risks in marketing materials; [667] (ii) an additional initial six hours for internal review of other communications such as emails and Bloomberg messages; [668] and (iii) $8,400 in initial legal costs associated with marketing materials for more bespoke transactions.[669]

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[654] *See* Business Conduct Adopting Release, 81 FR at 30091–92. In connection with those prior estimates, the Commission noted that entities that are dually registered with the CFTC already provide their counterparties with similar disclosures.

[655] Applied to the 24 entities at issue here, this would amount to an aggregate initial burden of 28,800 hours (24 entities × 12 persons × 100 hours).

[656] Applied to the 24 entities at issue here, this would amount to an aggregate annual burden of 2,880 hours (24 entities × 6 persons × 20 hours).

[657] Applied to the 24 entities at issue here, this would amount to an aggregate initial burden of 192,000 hours (24 entities × 8 persons × 1,000 hours).

[658] Applied to the 24 entities at issue here, this would amount to an aggregate annual burden of 96,000 hours (24 entities × 2 persons × 2,000 hours).

In adopting those disclosure requirements, the Commission also incorporated an estimate of one hour per security-based swap for an entity to evaluate whether more particularized disclosures are necessary and to develop additional disclosures. *See* Business Conduct Adopting Release, 81 FR at 30092. The Commission does not believe that particular category of costs would be applicable in the context of the transactions at issue here.

Under the exception, the disclosure condition extends not only to incentives and conflicts of the registered entity, but also incentives and conflicts of its non-U.S. affiliate. The Commission believes, however, that the existing burden estimates are sufficient to account for this aspect of the disclosure, given that the two entities' affiliation should facilitate the transfer of any relevant incentive and conflict information for the registered entity to convey.

[659] *See id.* at 30092–93.

[662] The Commission previously estimated that, for security-based swap market participants that also are swap market participants, each market participant would require two hours perform this task in connection with the more stringent suitability requirements described above. *See* Business Conduct Adopting Release, 81 FR at 30092.

[663] Analysis of current data indicates that six U.S. entities engaged in security-based swap dealing activity above the *de minimis* thresholds in the aggregate have 161 unique non-U.S. counterparties that are swap market participants, and 70 unique non-U.S. counterparties that are not swap market participants. One non-U.S. entity may fall below the *de minimis* threshold due to the exception and has 391 unique non-U.S. counterparties that are swap market participants, and 178 unique non-U.S. counterparties that are not swap market participants. Five additional non-U.S. persons would be expected to incur assessment costs in connection with the ''arranged, negotiated, or executed'' counting standard in the aggregate have six unique non-U.S. counterparties that are swap market participants, and one unique non-U.S. counterparty that is not a swap market participant. Adding together those estimates and then doubling them (in light of the uncertainty associated with the estimate and to account for potential growth of the security-based swap market) produces a total estimate of 1,116 unique non-U.S counterparties that are swap market participants, and 498 that are not. Only non-U.S. counterparties are relevant for purposes of this analysis because the proposed exception does not address security-based swap transactions involving U.S. person counterparties.

Consistent with these assumptions, the potential burden associated with such modifications in connection with the proposed condition would amount to 1,116 hours (1,116 non-U.S. security-based swap market participants that also are swap market participants × 1 hour).

[664] The Commission previously estimated that other market participants would require five hours for each market participant to perform this task in connection with the more stringent suitability requirements described above. *See* Business Conduct Adopting Release, 81 FR at 30092.

[665] Consistent with the above assumptions, the burden associated with such modifications in connection with the condition would amount to 1,245 hours (498 non-U.S. security-based swap market participants that are not also swap market participants × 2.5 hours).

[666] *See* Business Conduct Adopting Release, 81 FR at 30093.

[667] In connection with the exception, the potential burden associated with such drafting or review would amount to $155,693 (24 entities × $6,000 × 1.0812 adjustment to current dollars).

[668] In connection with the exception, the potential burden associated with such internal review would amount to 144 hours (24 entities × 6 hours).

[669] In connection with the exception, the potential burden associated with such drafting or review would amount to $217,970 (24 entities × $8,400 × 1.0812 adjustment to current dollars).

In adopting the fair and balanced communication requirement, the Commission also incorporated an estimate of ongoing compliance costs (associated with review of email communications sent to counterparties) over the term of the security-based swap. *See* Business Conduct Adopting Release, 81 FR at 30093. Those costs are not incorporated into this estimate because the registered entity that engaged in market-facing activity in the United States in connection with the transactions at issue

(c) Trade Acknowledgment and Verification Condition

The Commission estimated the reporting and recordkeeping burdens associated with the trade acknowledgment and verification requirements under Title VII when it adopted those requirements.[670] The Commission continues to believe that those estimates are instructive for calculating the per-entity reporting and recordkeeping burdens associated with the trade acknowledgment and verification condition, given that the condition in effect would require compliance with that trade acknowledgment and verification requirement by additional persons and/or in additional circumstances.

When the Commission earlier considered the compliance burdens associated with the trade acknowledgment and verification requirements, the Commission estimated that each applicable entity would incur: (i) 355 Hours initially to develop an internal order and trade management system;[671] (ii) 436 hours annually for day-to-day technical support, as well as amortized annual burden associated with system or platform upgrades and updates;[672] (iii) 80 hours initially for the preparation of written policies and procedures to obtain verification of transaction terms;[673] and (iv) 40 hours annually to maintain those policies and procedures.[674]

(d) Recordkeeping Condition

To comply with the recordkeeping conditions relating to trading relationship documentation, the registered entity and the non-U.S. person relying on the exception jointly would need to develop policies and procedures to provide for the identification of such records and for their transfer to the registered affiliate. For each use of the exception, the Commission continues to estimate that such policies and procedures would impose a one-time initial burden of 20 hours.[675]

The Commission also continues to estimate that the non-U.S. person relying on this exception also would need to expend two hours per week to identify such records and to electronically convey the records to its registered affiliate.[676] The Commission further continues to estimate that the registered affiliate would need to expend one hour per week in connection with the receipt and maintenance of those records and the records related to the consent to service condition described below.[677]

(e) Consent To Service Condition

To comply with the condition that the affiliated registered entity obtain from the non-U.S. person relying on the exception, and maintain for not less than three years following the activity subject to the exception, the first two years in an easily accessible place, written consent to service of process for civil actions, one or the other of those parties would have to draft such a consent or use an industry-standard consent provision, and the registered entity must obtain that consent from the non-U.S. person. The Commission continues to estimate that the parties jointly must expend two hours in connection with obtaining this consent.[678] The burden associated with the registered entity's maintenance of records related to the consent to service condition are included in the Commission's estimate of the burden associated with the registered entity's maintenance of records related to the recordkeeping provisions.[679]

(f) ''Listed Jurisdiction'' Condition

The Commission continues to believe that burden estimates associated with applications for substituted compliance determinations are instructive with regard to the burdens that would be associated with applications by market participants in connection with ''listed jurisdiction'' status.[680]

When the Commission initially adopted Rules 0–13 and 3a71–6, providing for substituted compliance in connection with security-based swap dealer business conduct requirements, the Commission concluded that the ''great majority'' of substituted compliance applications would be submitted by foreign authorities, and that ''very few'' applications would be submitted by SBS Entities, and the Commission concluded that three such registered entities would submit substituted compliance applications.[681] The Commission further estimated that the one-time paperwork burden associated with preparing and submitting all three substituted compliance requests in connection with those requirements would be approximately 240 hours, plus $240,000 for the services of outside professionals.[682] The Commission subsequently relied on those estimates in connection with the paperwork burdens associated with amendments to Rule 3a71–6 related to trade acknowledgment and verification.[683]

The Commission similarly believes that the majority of ''listed jurisdiction'' applications would be made by foreign authorities rather than by the up to 24 non-U.S. persons that potentially would rely on the exception. Consistent with the estimates in connection with the substituted compliance rule, moreover, the Commission estimates that three non-U.S. persons that seek to rely on the exception would file listed jurisdiction applications, and that in the aggregate those three persons would incur initial paperwork burdens, associated with preparing and submitting the requests, of approximately 240 hours, plus $259,488 for the services of outside

here would not be expected to have ongoing communications with the counterparty to the security-based swap.

[670] *See id.* at 39830–31.

[671] In connection with the exception, the potential burden associated with such system development would amount to 8,520 hours (24 entities × 355 hours).

[672] In connection with the exception, the potential annual burden associated with such support and updates would amount to 10,464 hours (24 entities × 436 hours).

[673] In connection with the exception, the potential burden associated with such preparation would amount to 1,920 hours (24 entities × 80 hours).

[674] In connection with the exception, the potential annual burden associated with such policies and procedures would amount to 960 hours (24 entities × 40 hours).

[675] Across the 24 potential uses of the exception, this would amount to a total of 480 hours (24 entities × 20 hours).

[676] Across the 24 potential uses of the exception, this would amount to a total of 2,496 hours annually (24 entities × 2 hours × 52 weeks).

[677] Across the 24 potential uses of the exception, this would amount to a total of 1,248 hours annually (24 entities × 1 hour × 52 weeks).

The recordkeeping condition also specifies that, for the exception to be available, the registered entity must create and maintain books and records as required by applicable rules, including any books and records requirements relating to the provisions specified in paragraph (d)(1)(ii)(B) (*i.e.,* relating to disclosure of risks, characteristics, incentives, and conflicts; suitability; fair and balanced communications; and trade acknowledgment and verification). Because that part of the condition subsumes the collection of information that we would expect to be associated with the final rules adopting those security-based swap dealer books and records requirements, it does not constitute a separate collection of information. *See* note 624, *supra.*

[678] Across the 24 expected uses of the exception, this would amount to a total of 48 hours (24 entities × 2 hours).

[679] *See* note 677, *supra.*

[680] Notwithstanding the substantive differences between the standards associated with listed jurisdiction determinations and substituted compliance assessments, *see* Part II.C.5, *supra,* the two sets of applications will be submitted pursuant to Rule 0–13 and may be expected to address certain analogous elements.

[681] *See* Business Conduct Adopting Release, 81 FR at 30097.

[682] This was based on the estimate that each request would require approximately 80 hours of in-house counsel time, plus $80,000 for the services of outside professionals (based on 200 hours of outside time × $400/hour). *See id.*

[683] *See* Trade Acknowledgment and Verification Adopting Release, 81 FR at 39832.

professionals (incorporating an eight percent addition to reflect current dollars).

(g) Risk Management Control System Condition

The Commission estimated the burdens associated with compliance with the Rule 15c3–4 requirement to establish an internal risk management control system when it adopted those requirements for entities dually registered as a brokers or dealer and as a security-based swap dealer.[684] The Commission believes that those estimates are instructive for calculating the per-entity burdens associated with the creation of an internal risk management control system.

The Commission staff estimates that the requirement to comply with Rule 15c3–4 will result in one-time and annual hour burdens to the registered entity. The Commission staff estimates that the average amount of time an entity will spend implementing its risk management control system will be 2,000 hours, resulting in an industry-wide one-time hour burden of 48,000 hours across the 24 registered entities not already subject to Rule 15c3–4.[685] In implementing its policies and procedures, the registered entity is required to document and record its system of internal risk management controls. The Commission staff estimates that each of these 24 registered entities will spend approximately 250 hours per year reviewing and updating their risk management control systems to comply with Rule 15c3–4, resulting in an industry-wide annual hour burden of approximately 6,000 hours.[686]

The registered entities engaged in arranging, negotiating, or executing activity in the United States may incur start-up costs to comply with the provisions of Rule 15c3–4, including information technology costs. The Commission estimates that a registered entity will incur an average of approximately $16,000 for initial hardware and software expenses, while the average ongoing cost will be approximately $20,500 per registered entity, for a total industry-wide initial cost of $384,000 and an ongoing cost of $492,000 per year.[687]

(h) Conditions Associated With the Use of Exception for Covered Inter-Dealer Security-Based Swaps

- *Filing Notice with the Commission.* The Commission estimates that the notice requirement associated with the use of the conditional exception for covered inter-dealer security-based swaps will result in annual hour burdens to registered entities. The Commission estimates each registered entity will file one notice with the Commission. In addition, the Commission estimates that it will take a registered entity approximately 30 minutes to file this notice, resulting in an industry-wide annual hour burden of 12 hours.[688]

- *Creating, Obtaining, and Maintaining Threshold Compliance Documentation.* To comply with the condition that the affiliated registered entity obtain from the non-U.S. person, and maintain, copies of documentation regarding such non-U.S. person's compliance with the inter-dealer threshold, the registered entity and the non-U.S. person jointly would need to develop policies and procedures to provide for the creation of such records and for their transfer to and maintenance by the registered affiliate. For each use of the exception, the Commission estimates that such policies and procedures would impose a one-time initial burden of 20 hours.[689]

The Commission also estimates that the non-U.S. person relying on this exception also would need to expend two hours per week to create such records and to electronically convey the records to its registered affiliate.[690] The Commission further estimates that the registered affiliate would need to expend one hour per week in connection with the receipt and maintenance of those records.[691]

TABLE 6—RULE 3a71–3 AMENDMENT—SUMMARY OF PAPERWORK REDUCTION ACT BURDENS

Burden type	Initial burden		Annual burden	
	Per-firm	Aggregate	Per-firm	Aggregate
*Disclosure of limited Title VII applicability:**				
disclosure by 12 U.S. dealing entities (A)			1,050.75 hr	12,609 hr.
disclosure by 2 non-U.S. dealing entities (B)			1,677.3 hr	3,355 hr.
disclosure by other non-U.S. entities (C)			35.2 hr	352 hr.
related policies and procedures	100 hr	2,400 hr.		
(same)	$30,598	$734,352.		
Disclosure of risks, characteristics et al:				
structuring, legal, operations, compliance	1,200 hr	28,800 hr.		
re-evaluation and modification			120 hr	2,880 hr.
systems development, programming, testing	8,000 hr	192,000 hr.		
system maintenance			4,000 hr	96,000 hr.
Suitability:				
reps. by participants also in swap market	1 hr	1,116 hr.		
representations by other counterparties	2.5 hr	1,245 hr.		
Fair and balanced communications:				
statement drafting	$6,487.2	$155,693.		
additional internal review	6 hr	144 hr.		
legal costs	$9082	$217,970.		
Trade acknowledgment and verification:				
internal order and trade mgt. systems	355 hr	8,520 hr.		
daily tech. support/amortized upgrades			436 hr	10,464 hr.
initial preparation of policies and procedures	80 hr	1,920 hr.		
maintenance of policies and procedures			40 hr	960 hr.

[684] *See* Capital, Margin, and Segregation Adopting Release, 84 FR 43963.

[685] 24 registered entities × 2,000 hours = 48,000 hours.

[686] 24 registered entities × 250 hours = 6,000 hours.

[687] 24 registered entities × $16,000 = $384,000; 24 registered entities × $20,500 = $492,000.

[688] Across the 24 potential uses of the exception, this would amount to a total of 12 hours (24 entities × ½ hours). The estimate is based on a notice requirement associated with the alternative compliance mechanism outlined in Rule 18a–10. *See* Capital, Margin, and Segregation Adopting Release, 84 FR 43967.

[689] Across the 24 potential uses of the exception, this would amount to a total of 480 hours (24 entities × 20 hours).

[690] Across the 24 potential uses of the exception, this would amount to a total of 2,496 hours annually (24 entities × 2 hours × 52 weeks).

[691] Across the 24 potential uses of the exception, this would amount to a total of 1,248 hours annually (24 entities × 1 hour × 52 weeks).

TABLE 6—RULE 3a71–3 AMENDMENT—SUMMARY OF PAPERWORK REDUCTION ACT BURDENS—Continued

Burden type	Initial burden		Annual burden	
	Per-firm	Aggregate	Per-firm	Aggregate
Copies of trading relationship documentation:				
joint development of policies/procedures	20 hr	480 hr.		
non-US entity identification and conveyance			104 hr	2,496 hr.
registered entity receipt and maintenance			52 hr	1,248 hr.
Consent to service of process:				
joint drafting/transfer to registered entity	2 hr	48 hr.		
''*Listed jurisdiction*'' *applications:*				
applications by non-regulators	80 hr	240 hr.		
(same)	$86,496	$259,488.		
Notice of ANE activity filed with the Commission	½ hr	12 hr.		
Compliance with inter-dealer threshold documentation:				
joint development of policies/procedures	20 hr	480 hr.		
non-US entity creation and conveyance			104 hr	2,496 hr.
registered entity receipt and maintenance			52 hr	1,248 hr.
Risk mgmt. control systems:				
establishment of the systems	2,000 hr	48,000 hr.		
maintenance and review of the systems			250 hr	6,000 hr.
information technology costs	$16,000	$384,000	$20,500	$492,000.

* (A) Twelve U.S. dealing entities may book future security-based swaps with non-U.S. counterparties into non-U.S. affiliates. (B) Two non-U.S. entities may fall below the *de minimis* threshold if ''arranged, negotiated, or executed'' transactions are not counted. (C) Ten additional non-U.S. entities may make use of the exception to avoid incurring assessment costs in connection with the ''arranged, negotiated, or executed'' *de minimis* test.

5. Collection of Information Is Mandatory

The collections of information associated with the amendments to Rule 3a71–3 are mandatory to the availability of the exception.

6. Confidentiality

Any disclosures to be provided in connection with the arranging, negotiating, or executing activity of a registered entity in compliance with the requirements of the exception would be provided to the non-U.S. counterparties of the non-U.S. person relying on this exception; therefore, the Commission would not typically receive confidential information as a result of this collection of information. To the extent that the Commission receives records related to such disclosures from a registered entity through the Commission's examination and oversight program, or through an investigation, or some other means, such information would be kept confidential, subject to the provisions of applicable law.

7. Retention Period of Recordkeeping Requirements

By virtue of being registered as a security-based swap dealer and/or as a broker, the entity engaged in market facing conduct in the United States will be required to retain the records and information required under the amendment to Rule 3a71–3 for the retention periods specified in Exchange Act Rules 17a–4 and 18a–6, as applicable.[692]

B. Amendments to Rule 18a–5

1. Summary of Collections of Information

The amendments to Rule 18a–5 relate to the requirements that stand-alone and bank SBS Entities make and keep current certain records.[693] These amendments to Rule 18a–5 reduce the burden associated with Rule 18a–5 by providing generally that a stand-alone or bank SBS Entity need not: (i) Make and keep current a questionnaire or application for employment for an associated person if the SBS Entity is excluded from the prohibition under Exchange Act Section 15F(b)(6) with respect to such associated person (*e.g.,* the exclusion in Rule of Practice 194(c)(2)), and (ii) include the information described in paragraphs (a)(10)(i)(A) through (H) and (b)(8)(i)(A) through (H) of Rule 18a–5, unless the SBS Entity (1) is required to obtain such information under applicable law in the jurisdiction in which the associated person is employed or located or (2) obtains such information in conducting a background check that is customary for such firms in that jurisdiction, and the creation or maintenance of records reflecting that information would not result in a violation of applicable law in the jurisdiction in which the associated person is employed or located. The security-based swap dealer or major security-based swap participant still must comply with Section 15F(b)(6) of the Exchange Act.

2. Use of Information

Rule 18a–5, as amended, is designed, among other things, to promote the prudent operation of SBS Entities, and to assist the Commission, SROs, and state securities regulators in conducting effective examinations.[694] Thus, the collections of information under Rule 18a–5, as amended, are expected to facilitate inspections and examinations of SBS Entities.

3. Respondents

The Commission estimated the number of respondents in the Proposing Release. The Commission received no comment on these estimates. The Commission slightly modified its proposed estimates in the Recordkeeping and Reporting Adopting Release.[695] We continue to believe the modified estimates are appropriate.

Consistent with the Recordkeeping and Reporting Adopting Release, based on available data regarding the single-name CDS market—which the Commission believes will comprise the majority of security-based swaps—the Commission estimates that the number

[692] The registered entity would have to create and/or maintain certain records in connection with the following conditions: Disclosure of limited Title VII applicability; business conduct; trade acknowledgment and verification; obtaining and maintaining relationship documentation and questionnaires; and consent to service of process.

The conditions do not require the non-U.S. person relying on the exception to make or retain any particular types of records (although that non-U.S. person will be required to convey certain documentation to its registered affiliate).

[693] *See* 17 CFR 240.18a–5.

[694] As noted above, Rule 18a–5 is patterned after Exchange Act Rule 17a–3, the recordkeeping rule for registered broker-dealers. *See, e.g.,* Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934, Exchange Act Release No. 47910 (Oct. 26, 2001), 66 FR 55818 (Nov. 2, 2001) (''The Commission has required that broker-dealers create and maintain certain records so that, among other things, the Commission, [SROs], and State Securities Regulators . . . may conduct effective examinations of broker-dealers'' (footnote omitted)).

[695] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68607–09.

of major security-based swap participants likely will be five or fewer and, in actuality, may be zero.[696] Therefore, to capture the likely number of major security-based swap participants that may be subject to the collections of information for purposes of this PRA, the Commission estimates for purposes of this PRA that five entities will register with the Commission as major security-based swap participants. Also consistent with the Recordkeeping and Reporting Adopting Release, the Commission estimates that approximately four major security-based swap participants will be stand-alone entities.[697]

Consistent with prior releases, the Commission estimates that 50 or fewer entities ultimately may be required to register with the Commission as security-based swap dealers, of which 16 are broker-dealers that will likely seek to register as security-based swap-dealers.[698] The Commission continues to estimate that approximately 75% of the 34 non-broker-dealer security-based swap dealers (*i.e.,* 25 firms) will register as bank security-based swap dealers, and the remaining 25% (*i.e.,* 9 firms) will register as stand-alone security-based swap dealers.[699]

Finally, as indicated in the Recordkeeping and Reporting Adopting Release, the Commission estimates that three stand-alone SBSDs will elect to operate under Rule 18a–10 which contains an alternative compliance mechanism that allows a stand-alone SBSD that is registered as a swap dealer and predominantly engages in a swaps business to elect to comply with the recordkeeping and reporting requirements of the CEA and the CFTC's rules in lieu of complying with Rule 18a–5 (among others).[700]

Further, the Commission continues to estimate that each security-based swap dealer will employ approximately 420 associated persons that are natural persons and each major security-based swap participant will employ approximately 62 associated persons that are natural persons.[701] The Commission has no data regarding how many associated persons of SBS Entities who are non-U.S. natural persons may: (a) Not effect or be involved in effecting security-based swap transactions with or for counterparties that are U.S. persons (other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person); (b) effect or be involved in effecting security-based swap transactions with or for counterparties that are U.S. persons, but who may be employed or located in jurisdictions where the receipt of information required by the questionnaire or employment application, or the creation or maintenance of records reflecting that information, would result in a violation of applicable law; or (c) effect or be involved in effecting security-based swap transactions with or for counterparties that are U.S. persons, who are employed or located in jurisdictions where local law would not restrict the receipt, creation or maintenance of information required by the questionnaire or employment application. Given that, the Commission estimates, for purposes of this Paperwork Reduction Act analysis, that non-U.S. associated persons are evenly split into each of these categories.

4. Total Initial and Annual Recordkeeping and Reporting Burden

As indicated in the Recordkeeping and Reporting Adopting Release, Rule 18a–5 will impose collection of information requirements that result in initial and annual burdens for SBS Entities. The amendments to Rule 18a–5 will decrease these burdens for certain SBS Entities.

Rule 18a–5 requires that stand-alone SBS Entities make and keep current 13 types of records, including records on associated persons.[702] The Commission estimated, in the Recordkeeping and Reporting Adopting Release, that those 13 paragraphs would impose an initial burden of 260 hours and an ongoing annual burden of 325 hours on each stand-alone SBS Entity.[703] In addition, Rule 18a–5 would require that bank SBS Entities make and keep current 10 types of records, including records on associated persons.[704] The Commission estimated, in the Recordkeeping and Reporting Adopting Release, that these ten paragraphs will impose an initial burden of 200 hours and an ongoing burden of 250 hours on each bank SBS Entity.[705] The Commission further stated that while Rule 18a–5 will impose a burden to make and keep current these records, it would not require the firm to perform the underlying task.[706] The Commission continues to believe these estimated burdens are appropriate.

The amendments to paragraphs (a)(10) and (b)(8) of Rule 18a–5 (a) exempt stand-alone and bank SBS Entities from the requirement to make and keep current a questionnaire or application for employment for an associated person if the SBS Entity is excluded from the prohibition in section 15F(b)(6) of the Exchange Act with respect to the associated person (*e.g.,* the exclusion in Rule of Practice 194(c)(2)), and (b) allow SBS Entities to exclude information from their associated person records unless the SBS Entity (1) is required to obtain such information under applicable law in the jurisdiction in which the associated person is employed or located or (2) obtains such information in conducting a background check that is customary for such firms in that jurisdiction, and the creation or maintenance of records reflecting that information would not result in a

[696] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68607; *see also* Capital, Margin, and Segregation Adopting Release 84 FR at 43960, and Registration Adopting Release, 80 FR at 48990.

[697] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68610.

[698] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68607; *see also* Capital, Margin, and Segregation Adopting Release 84 FR at 43959–60, and Registration Adopting Release, 80 FR at 48990.

[699] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68608; see also *see also* Capital, Margin, and Segregation Adopting Release 84 FR at 43959–60. The Commission does not anticipate that any firms will be dually registered as a broker-dealer and a bank.

[700] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68621.

[701] *See* Proposing Release, 84 at 24286; *see also* Rule of Practice 194 Adopting Release, 84 FR at 4926. Commission staff also checked with the staff at the National Futures Association regarding an approximate number of associated persons employed by registered swap dealers. NFA staff provided anecdotal information indicating that the number of natural persons that are associated persons of swap dealers is substantially similar to Commission staff estimates. NFA staff further indicated that they believe about half of the total number of natural persons that are associated persons of swap dealers are located in the U.S. and the other half are located in foreign jurisdictions.

[702] 17 CFR 240.18a–5(a)(10).

[703] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68610. Of these total initial and ongoing annual burdens for the 13 types of records a firm would be required to make and keep current under paragraph (a)(10) of Rule 18a–5, Commission staff believes that the burdens associated with making and keeping current questionnaires or applications for employment would be an initial burden of 20 hours (or 260/13) and an ongoing burden of 25 hours (or 325/13).

[704] 17 CFR 240.18a–5(b)(8).

[705] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68611. Of these total initial and ongoing annual burdens for the 10 types of records a firm would be required to make and keep current under paragraph (b)(8) of Rule 18a–5, Commission staff believes that the burdens associated with making and keeping current questionnaires or applications for employment would be an initial burden of 20 hours (or 200/10) and an ongoing burden of 25 hours (or 250/10).

[706] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68610. In estimating the burden associated with Rule 18a–5, the Commission recognizes that entities that will register stand-alone and bank SBS Entities likely already make and keep current some records as a matter of routine business practice, but the Commission does not have information about the records that such entities currently keep. Therefore, the Commission assumes, solely for purposes of estimating PRA burdens for these entities, that they currently keep no records.

violation of applicable law in the jurisdiction in which the associated person is employed or located.

(a) Addition of Paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A)

The Commission estimates that the amendment to add paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) to Rule 18a–5 would eliminate the paperwork burden for stand-alone and bank SBS Entities associated with making and keeping current questionnaires or applications for employment records, otherwise required by Rule 18a–5, with respect to any associated person if the SBS Entity is excluded from the prohibition in Exchange Act Section 15F(b)(6), including the exclusion in Rule of Practice 194(c)(2) with respect to a natural person who is (i) not a U.S. person and (ii) does not effect and is not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons (other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person).

As indicated above, the Commission estimates that there will be approximately 4 stand-alone major security-based swap participants, 6 stand-alone security-based swap dealers and 25 bank security-based swap dealers. Further, as indicated above, we estimate that each security-based swap dealer will have approximately 420 associated persons and half of those associated persons, or 210, would not be employed or located in the U.S. The Commission estimates that stand-alone and bank SBS dealers would not need to obtain the questionnaire or application for employment for one third of those associated persons, or 70, because Rule of Practice 194(c)(2) provides an exclusion from the prohibition in Section 15F(b)(6) of the Exchange Act with respect to associated persons who are not located in the U.S. and do not effect and are not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons (other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person).[707] Similarly, as indicated above, each major security-based swap participant would have approximately 62 associated persons and half of those associated persons, or 31, would not be employed or located in the U.S. The Commission estimates that stand-alone major security-based swap participants would not need to obtain the questionnaire or application for employment for one third of those associated persons, or 10, because Rule of Practice 194(c)(2) provides an exclusion from the prohibition in Section 15F(b)(6) of the Exchange Act with respect to those associated persons.[708]

Given this, the addition of paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) to Rule 18a–5 will reduce the initial burden associated with Rule 18a–5 by 117 hours[709] and it will reduce the ongoing burden associated with Rule 18a–5 by 145 hours.[710]

(b) Addition of Paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B)

The Commission estimates that the amendment to add paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) to Rule 18a–5 will decrease the paperwork burden for stand-alone and bank SBS Entities by permitting the exclusion of information mandated by the questionnaire requirement with respect to associated natural persons who effect or are involved in effecting security-based swap transactions with U.S. counterparties, unless the SBS Entity (1) is required to obtain such information under applicable law in the jurisdiction in which the associated person is employed or located or (2) obtains such information in conducting a background check that is customary for such firms in that jurisdiction, and the creation or maintenance of records reflecting that information would not result in a violation of applicable law in the jurisdiction in which the associated person is employed or located.

As indicated above, the Commission estimates that there will be approximately 4 stand-alone major security-based swap participants, 6 stand-alone security-based swap dealers and 25 bank security-based swap dealers. Further, as indicated above, each security-based swap dealer would have approximately 420 associated persons and half of those associated persons, or 210, would not be employed or located in the U.S. The Commission estimates that these new paragraphs will permit stand-alone and bank security-based swap dealers to exclude certain information mandated by the questionnaire requirement for approximately one third of those associated persons, or 70.[711] Similarly, as indicated above, each major security-based swap participant would have approximately 62 associated persons and half of those associated persons, or 31, would not be employed or located in the U.S. The Commission estimates that these new paragraphs will permit stand-alone major security-based swap participants to exclude certain information mandated by the questionnaire requirement for approximately one third of those associated persons, or 10.[712]

The Commission estimates that this will reduce the burdens associated with obtaining the information specified in the questionnaire requirement by 50% for the affected associated persons. Given this, the addition of paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) to Rule

[707] 70 associated persons/420 associated persons per security-based swap dealer = a reduction of approximately 16.7%. Security-based swap dealers would be able to utilize this paragraph relative to other exclusions from the requirements of Exchange Act Section 15F(b)(6) that the Commission may provide, however the analysis is focusing solely on the exclusion provided by the addition of paragraph (c)(2) to Rule of Practice 194 for purposes of the Paperwork Reduction Act estimate.

[708] 10 associated persons/62 associated persons per major security-based swap participant = a reduction of approximately 16.1%. Major security-based swap participants would be able to utilize this paragraph relative to other exclusions from the requirements of Exchange Act Section 15F(b)(6) that the Commission may provide, however the analysis is focusing solely on the exclusion provided by the addition of paragraph (c)(2) to Rule of Practice 194 for purposes of this Paperwork Reduction Act estimate.

[709] *Initial burden hours associated with paragraphs (a)(10) and (b)(8) of Rule 18a–5 for stand-alone and bank security-based swap dealers and major security-based swap participants*—

20 hours × (6 stand-alone security-based swap dealers + 25 bank security-based swap dealers) = 20 hours × 31 security-based swap dealers = 620 initial burden hours for security-based swap dealers.

20 hours × 4 stand-alone major security-based swap participants = 80 initial burden hours for major security-based swap participants.

Initial burden hour reduction:

620 initial burden hours for security-based swap dealers × 16.7% (*see* n.707, *supra*) = 104 hours. 80 initial burden hours for major security-based swap participants × 16.1% (*see* n.708, *supra*) = 13 hours. A 104 hour reduction in the initial burden for security-based swap dealers + a 13 hour reduction in the initial burden for major security-based swap participants = a 117 hour reduction in initial burden hours across all entities able to rely on Rule 18a–5(a)(10) and (b)(8).

[710] *Ongoing burden hours associated with paragraph (a)(10) and (b)(8) of Rule 18a–5 for stand-alone and bank security-based swap dealers and major security-based swap participants*—

25 hours × (6 stand-alone security-based swap dealers + 25 bank security-based swap dealers) = 25 hours × 31 security-based swap dealers = 775 ongoing burden hours for security-based swap dealers.

25 hours × 4 stand-alone major security-based swap participants = 100 ongoing burden hours for major security-based swap participants.

Ongoing burden hour reduction:

775 ongoing burden hours for security-based swap dealers × 16.7% (*see* n.707, *supra*) = 129 hours. 100 ongoing burden hours for major security-based swap participants × 16.1% (*see* n.708, *supra*) = 16 hours. A 129 hour reduction in the ongoing burden for security-based swap dealers + a 16 hour reduction in the ongoing burden for major security-based swap participants = a 145 hour reduction in ongoing burden hours across all entities able to rely on Rule 18a–5(a)(10) and (b)(8).

[711] *See* text accompanying note 707, *supra.*

[712] *See* text accompanying note 708, *supra.*

18a–5 will reduce the initial burden associated with Rule 18a–5 by 58 hours[713] and will reduce the ongoing burden associated with Rule 18a–5 by 73 hours.[714]

Thus, in total, the addition of both paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) and paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) will reduce the initial burden associated with the questionnaire requirement in Rule 18a–5 by 175 hours,[715] and the ongoing burden associated with the questionnaire requirement in Rule 18a–5 by 218 hours.[716]

5. Collection of Information Is Mandatory

The collections of information pursuant to Rule 18a–5, as amended, are mandatory for SBS Entities.

6. Confidentiality

Information that an SBS Entity is required to make and keep current under Rule 18a–5 will be maintained by the firm. To the extent that the Commission collects such records during an inspection or examination of a registered SBS Entity, or through some other means, such records would generally be kept confidential, subject to the provisions of applicable law.[717]

7. Retention Period for Recordkeeping Requirements

Rule 18a–6 establishes the required retention periods for SBS Entities to maintain records collected in accorded with Rule 18a–5.[718] Under paragraph (d)(1) of Rule 18a–6, an SBS Entity is required to maintain and preserve in an easily accessible place the records required under paragraphs (a)(10) and (b)(8) of Rule 18a–5 until at least three years after the associated person's employment and any other connection with the SBS Entity has terminated.

VIII. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act,[719] the Office of Information and Regulatory Affairs has designated these rules as a major rule, as defined by 5 U.S.C. 804(2).

IX. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (''RFA'')[720] requires the Commission to consider the impact of the rules on ''small entities,''[721] a term that includes ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.''[722] In the Proposing Release, the Commission certified, pursuant to Section 605(b) of the RFA,[723] that the proposed amendments to Exchange Act Rules 3a71–3, 15Fb2–1, 0–13, 18a–5 and Rule of Practice 194 would not have a significant economic impact on a substantial number of small entities.[724] The Commission received no comments on this certification.

For purposes of Commission rulemaking in connection with the RFA,[725] a small business or small organization includes: (1) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less;[726] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[727] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[728] The Commission has not adopted a definition for the term ''small governmental jurisdiction,'' so the RFA's default definition of the term applies; accordingly, the term includes ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[729] The Small Business Administration defines small businesses in the finance and insurance industry to include the following: (i) For depository credit intermediation and credit card issuing, business concerns with $600 million or less in assets;[730] (ii) for non-depository credit

[713] *Initial burden hours associated with paragraphs (a)(10) and (b)(8) of Rule 18a–5 for stand-alone and bank security-based swap dealers and major security-based swap participants—*

20 hours × (6 stand-alone security-based swap dealers + 25 bank security-based swap dealers) = 20 hours × 31 security-based swap dealers = 620 initial burden hours for security-based swap dealers.

20 hours × 4 stand-alone major security-based swap participants = 80 initial burden hours for major security-based swap participants.

Initial burden hour reduction:

(620 initial burden hours for security-based swap dealers × 16.7% (*see* n.707, *supra*) × 50%) = 52 hours. (80 initial burden hours for major security-based swap participants × 16.1% (*see* n.708, *supra*) × 50%) = 6 hours. A 52 hour reduction in the initial burden for security-based swap dealers + a 6 hour reduction in the initial burden for major security-based swap participants = a 58 hour reduction in initial burden hours across all entities able to rely on Rule 18a–5(a)(10) and (b)(8).

[714] *Ongoing burden hours associated with paragraph (a)(10) and (b)(8) of Rule 18a–5 for stand-alone and bank security-based swap dealers and major security-based swap participants—*

25 hours × (6 stand-alone security-based swap dealers + 25 bank security-based swap dealers) = 20 hours × 34 security-based swap dealers = 775 ongoing burden hours for security-based swap dealers.

25 hours × 4 stand-alone major security-based swap participants = 100 ongoing burden hours for major security-based swap participants.

Ongoing burden hour reduction:

(775 ongoing burden hours for security-based swap dealers × 16.7% (*see* n.707 *supra*) × 50%) = 65 hours. (100 ongoing burden hours for major security-based swap participants × 16.1% (*see* n.708 *supra*) × 50%) = 8 hours. A 65 hour reduction in the ongoing burden for security-based swap dealers + a 8 hour reduction in the ongoing burden for major security-based swap participants = a 73 hour reduction in ongoing burden hours across all entities able to rely on Rule 18a–5(a)(10) and (b)(8).

[715] A 127 hour reduction in initial burden hours associated with the addition of paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) and a 63 hour reduction in initial burden hours associated with the addition of paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) = a 190 hour reduction in initial burden hours.

[716] A 158 hour reduction in ongoing burden hours associated with the addition of paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) and a 79 hour reduction in ongoing burden hours associated with the addition of paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) = a 237 hour reduction in ongoing burden hours.

[717] *See, e.g.,* 5 U.S.C. 552 *et seq.;* 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

[718] *See* 17 CFR 240.18a–6(d)(1).

[719] 5 U.S.C. 801 *et seq.*

[720] 5 U.S.C. 601–612.

[721] 5 U.S.C. 605(b).

[722] 5 U.S.C. 601(3)–(6).

[723] 5 U.S.C. 605(b).

[724] *See* Proposing Release, 84 FR at 24290.

[725] Although the RFA, 5 U.S.C. 601(3)–(6), defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the terms ''small business'' and ''small organization'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10 under the Exchange Act, 17 CFR 240.0–10. *See* Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982) (File No. AS–305).

[726] *See* 17 CFR 240.0–10(a).

[727] *See* 17 CFR 240.17a–5(d).

[728] *See* 17 CFR 240.0–10(c).

[729] 5 U.S.C. 601(5).

[730] *See* 13 CFR 121.201 (Subsector 522). A financial institution's assets are determined by averaging the assets reported on it four quarterly financial statements for the preceding year. *See id.* at n.8.

intermediation and certain other activities related to credit intermediation, business concerns with annual receipts not exceeding a threshold between $8 million and $41.5 million depending on the type of business;[731] (iii) for financial investments and related activities, business concerns with $41.5 million or less in annual receipts;[732] (iv) for insurance carriers and related activities, business concerns with annual receipts not exceeding a threshold between $8 million and $41.5 million depending on the type of business;[733] and (v) for funds, trusts, and other financial vehicles, business concerns with $35 million or less in annual receipts.[734]

For purposes of the exception to Exchange Act Rule 3a71–3, the Commission continues to believe, based on feedback from market participants and information about the security-based swap markets, that the types of entities that would engage in more than a *de minimis* amount of dealing activity involving security-based swaps are part of large financial institutions that exceed the thresholds defining ''small entities'' as set forth above. Accordingly, the Commission expects that all of the firms that are likely to make use of the exception to Rule 3a71–3 would not be ''small entities'' for purposes of the RFA.[735] The exception to Exchange Act Rule 3a71–3 is subject to conditions requiring arranging, negotiating, or executing activity to be conducted by registered security-based swap dealers or by registered brokers, in each case that are affiliated with the non-U.S. persons relying on the exception. It is possible that some non-U.S. persons may set up new security-based swap dealers or new brokers to make use of the exception, while other non-U.S. persons that seek to make use of the exception instead may make use of an existing affiliated registered security-based swap dealer or existing affiliated registered broker.[736] By definition, any such affiliated existing or new broker would not be a ''small entity.''[737] Moreover, even in the unlikely event that some non-U.S. persons were to satisfy the exception's conditions via the use of affiliated registered security-based swap dealers that fall within the definition of ''small entity'' for purposes of the RFA,[738] the Commission continues to believe that there would not be a substantial number of such entities.[739]

Based on feedback from industry participants about the security-based swap markets, the Commission continues to believe that entities that will qualify as SBS Entities exceed the thresholds defining ''small entities.'' Thus, the Commission believes that any SBS Entities that may seek to rely on the proposed amendment to Rule 15Fb2–1 would not be ''small entities'' for purposes of the RFA.[740]

The Commission also continues to believe that any SBS Entities—*i.e.,* registered security-based swap dealers and registered major security-based swap participants—with associated persons that may be the subject of the proposed amendments to Rule of Practice 194 would not be ''small entities'' for purposes of the RFA.[741]

The Commission further continues to believe that it is unlikely that the requirements applicable to SBS Entities that would be established under the amendments to Rule 18a–5 would have a significant economic impact on any small entity because no SBS Entity will be a small entity.[742]

Accordingly, the Commission believes that it is unlikely that the rule amendments would have a significant economic impact on a substantial number of small entities.[743]

For the foregoing reasons, the Commission certifies that the amendments to Exchange Act Rules 3a71–3, 15Fb2–1, 0–13, and 18a–5, and Rule of Practice 194 would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

X. Effective Date and Compliance Dates

A. Effective Date

These final rules will be effective on the later of March 1, 2020, or 60 days following publication of this release in the **Federal Register** (the ''Effective Date''). The Commission is setting the Effective Date not to occur before March 1, 2020, to provide certainty for market participants regarding the timing of both the Effective Date and the compliance dates discussed below.

B. Compliance Dates

As explained in the Recordkeeping and Reporting Adopting Release, the compliance date for registration of SBS Entities (the ''Registration Compliance Date'') will be 18 months after the Effective Date set forth above in Part X.A. As the Commission noted in its adopting releases for rules regarding SBS Entity registration[744] and treatment of non-U.S. persons' security-based swap dealing transactions that are arranged, negotiated, or executed by U.S. personnel,[745] ''for purposes of

[731] *See id.* at Subsector 522.

[732] *See id.* at Subsector 523.

[733] *See id.* at Subsector 524.

[734] *See id.* at Subsector 525. In the Proposing Release, the Commission erroneously reported outdated thresholds in the Small Business Administration's definition of small businesses engaged in the finance and insurance industry. *See* Proposing Release, 84 FR at 24289. This error did not impact the Commission's certification that the proposed rules would not have a significant impact on a substantial number of small entities.

[735] *See also* ANE Adopting Release, 81 FR at 8636; Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That A Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent, Exchange Act Release No. 74834 (April 29, 2015), 80 FR 27443, 27503 (May 13, 2015) (''ANE Proposing Release''); Cross-Border Adopting Release, 79 FR at 47368.

[736] *See* Part VI.A.7, *supra* (discussing likely broker or security-based swap dealer affiliates of persons expected to rely on the exception).

[737] The ''small entity'' definition applied to brokers excludes brokers that are affiliated with a person that is not a ''small entity.'' *See* Exchange Act Rule 0–10(c)(2), (i)(1), 17 CFR 240.0–10(c)(2), (i)(1) (basing affiliation on an 25 percent ownership standard that is narrower than the majority ownership standard used in connection with this conditional exception). Because the non-U.S. persons relying on this exception would not be ''small entities,'' *see* note 735, *supra,* and accompanying text, any such affiliated broker also would not be a ''small entity.''

[738] As noted above, the Commission continues to believe, based on feedback from market participants and information about the security-based swap markets, that the types of entities that would engage in more than a *de minimis* amount of dealing activity involving security-based swaps are part of large financial institutions that do not qualify as ''small entities.'' If the affiliated registered security-based swap dealer itself engages in security-based swap dealing activity above the *de minimis* thresholds, then the Commission accordingly believes that this affiliated registered security-based swap dealer would not be a ''small entity.''

[739] Similarly, the Commission believes that there would not be a significant number of ''small entities'' that may file ''listed jurisdiction'' applications pursuant to the proposed amendments to Exchange Act Rule 0–13. This conclusion reflects the same reasons, as well as the expectation that the majority of such applications would be filed by foreign authorities that do not qualify as ''small entities.''

[740] *See* Registration Adopting Release, 80 FR at 49013.

[741] We previously have concluded, based on feedback from market participants and the Commission's information regarding the security-based swap market, that the types of entities that may have security-based swap positions above the level required to register as SBS Entities would not be ''small entities'' for purposes of the RFA. *See* Cross-Border Adopting Release, 79 FR at 47368; *see also* Applications by Security-based Swap Dealers or Major Security-Based Participants for Statutorily Disqualified Associated Persons to Effect or Be Involved in Effecting Security-Based Swaps, Exchange Act Release No. 75612 (Aug. 5, 2015), 80 FR 51684, 51718 (Aug. 25, 2015) and Rule of Practice 194 Adopting Release, 84 FR at 4944.

[742] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68645.

[743] *See also* Parts VI (Economic Analysis) and VII (Paperwork Reduction Act) (discussing, among other things, the economic impact of the rules, including estimated compliance costs and burdens).

[744] *See* Registration Adopting Release, 80 FR at 48988.

[745] *See* ANE Adopting Release, 81 FR at 8637.

complying with the [SBS Entity] registration and other requirements, persons are not required to begin calculating whether their activities meet or exceed [registration thresholds] until two months prior to the Registration Compliance Date.'' [746] Accordingly, the compliance date for the amendments to Exchange Act Rule 3a71–3 will be two months prior to the Registration Compliance Date. The compliance date for the amendments to Exchange Act Rules 18a–5 and 15Fb2–1 will be the same as the Registration Compliance Date. Finally, the compliance date for the amendments to Exchange Act Rule 0–13 and Rule of Practice 194 will be the same as the Effective Date.

In addition, the Commission has coordinated the compliance dates for several additional rules relevant to SBS Entities with the Registration Compliance Date: (1) SBS Entity segregation requirements and nonbank SBS Entity capital and margin requirements; [747] (2) SBS Entity recordkeeping and reporting requirements; [748] (3) SBS Entity business conduct standards; [749] and (4) SBS Entity trade acknowledgment and verification requirements.[750] Compliance with each of these rules will be required beginning on the Registration Compliance Date.

One commenter stated that, if the Commission determines to retain requirements that a non-U.S. person count against security-based swap dealer registration thresholds its dealing transactions with a non-U.S. counterparty that were arranged, negotiated, or executed by U.S. personnel, potential registrants would need *an additional* 18 months beyond 18 months after the Effective Date to come into compliance.[751] Two commenters stated that the Commission should delay the Registration Compliance Date for SBS Entities until 18 months after the Commission issues substituted compliance decisions for all relevant jurisdictions.[752] By contrast, two other commenters urged the Commission to implement Title VII without further delay.[753]

The Commission believes that the Registration Compliance date previously adopted in the Capital, Margin, and Segregation Adopting Release will allow sufficient time to prepare for and come in to compliance with the requirements for SBS Entities noted above, including the requirements for counting of transactions that are arranged, negotiated, or executed by U.S. personnel.[754] The Commission adopted in February 2016 its final rules regarding counting of security-based swap transactions that are arranged, negotiated, or executed by U.S. personnel, and has not proposed to eliminate these requirements. The Commission does not believe it is necessary to further delay the Registration Compliance Date until the Commission has acted on any substituted compliance applications. The Commission considered the need for action with respect to applications for substituted compliance when it set the extended Registration Compliance Date [755] and continues to believe that 18 months after the Effective Date should afford the Commission and potential registrants with sufficient time. As noted above in Part III.H.2, the Commission welcomes requests for substituted compliance ahead of the Registration Compliance Date and encourages potential applicants to begin the process of requesting substituted compliance as soon as practicable.[756]

C. Compliance With Rules for Security-Based Swap Data Repositories and Regulation SBSR

The issuance of this release has certain implications for the compliance schedule for Regulation SBSR, which governs regulatory reporting and public dissemination of security-based swap (''SBS'') transactions.[757] Under Regulation SBSR, the first compliance date (''Compliance Date 1'') for affected persons with respect to an SBS asset class is the first Monday that is the later of: (1) Six months after the date on which the first SBS data repository (''SDR'') that can accept transaction reports in that asset class registers with the Commission; or (2) one month after the Registration Compliance Date.[758] As explained in the Recordkeeping and Reporting Adopting Release, the Registration Compliance Date will be 18 months after the Effective Date set forth above in Part X.A of this release. Although the second condition precedent of Regulation SBSR compliance has now been determined, the first condition precedent remains undetermined, as no SDR has registered with the Commission.

In issuing this release and in light of the completion of many other Title VII rulemakings as well as the changing regulatory landscape since the Commission's consideration of Regulation SBSR and the SDR rules, the Commission has considered how all of the Title VII rules will work on full implementation and, in particular, the role of SDRs. The Commission recognizes that the CFTC rules analogous to the SBS reporting rules have been in force for several years [759]

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[746] Registration Adopting Release, 80 FR at 48988; *see also* ANE Adopting Release, 81 FR at 8637.

[747] *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43954.

[748] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68600–01.

[749] *See* Business Conduct Adopting Release, 81 FR at 30081–82.

[750] *See* Trade Acknowledgment and Verification Adopting Release, 81 FR at 39828–29.

[751] *See* ISDA letter at 5.

[752] *See* IIB/SIFMA letter at 31–32; Credit Suisse/UBS letter at 3.

[753] *See* Better Markets letter at 4; Citadel letter at 6.

[754] One commenter also suggested that the compliance date for Regulation SBSR should be extended for non-U.S. SBS Entities who are part of non-U.S. financial groups. *See* IIB/SIFMA letter at 33. As discussed in Part X.C, *infra,* the Commission is issuing a statement regarding compliance with Regulation SBSR. This statement takes account of these comments.

[755] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68600–01.

[756] *See also* Capital, Margin, and Segregation Adopting Release, 84 FR at 43957.

[757] In 2015, the Commission adopted Regulation SBSR. *See* 17 CFR 242.900 to 242.909; Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, Exchange Act Release No. 74244 (Feb. 11, 2015), 80 FR 14564 (Mar. 19, 2015) (''Regulation SBSR Adopting Release''). Also in 2015, the Commission adopted rules that establish registration standards, duties, and core principles for SDRs. *See* 17 CFR 240.13n–1 to 240.13n–12; SDR Rules and Core Principles Adopting Release, 80 FR 14438. In 2016, the Commission adopted additional provisions of Regulation SBSR. *See* Regulation SBSR Amendments Adopting Release, 81 FR 53546. Regulation SBSR and the SDR rules are hereinafter referred to collectively as the ''SBS reporting rules.''

[758] *See* Regulation SBSR Amendments Adopting Release, 81 FR at 53603. There could be different compliance dates for different asset classes, depending on whether the first SDR that registers with the Commission can accept transaction reports in all SBS asset classes or only certain asset classes.

[759] In 2011, the CFTC adopted its Part 49 rules that establish registration standards, duties, and core principles for swap data repositories. *See* 17 CFR part 49; Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011) (adopting release). In 2012, the CFTC adopted its Part 43 rules, 17 CFR part 43, that provide for real-time public dissemination of swap transactions. *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012) (adopting release). Also in 2012, the CFTC adopted its Part 45 rules, 17 CFR part 45, that provide for regulatory reporting of swap transactions. *See* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012) (adopting release). The Part 45 rules were subsequently amended to provide for regulatory reporting of pre-enactment and transition swaps, *see* Amendments to Swap Data Recordkeeping and Reporting Requirements, 77 FR 35200 (Jun. 12, 2012) (adopting release), and to establish recordkeeping and reporting requirements for cleared swaps, *see* Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transitions Swaps, 81 FR 41736 (Jun. 27, 2016) (adopting release). The Part 43 rules were subsequently amended to provide for the public dissemination of block transactions. *See* Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 FR 32866 (May 31, 2013) (adopting release). The Part 43, Part 45, and Part 49 rules, as amended, are hereinafter referred to collectively as the ''swap reporting rules.''

and multiple entities have registered with the CFTC as swap data repositories.[760] Most of the participants in the SBS market are also participants in the swap market, including the two entities that previously sought registration with the Commission as SDRs.[761] The Commission understands that these market participants and swap data repositories have invested in systems and developed policies and procedures to comply with the CFTC's swap reporting rules. Although Regulation SBSR's Compliance Date 1 has not yet been determined, certain persons subject to both the swap and SBS reporting rules have identified operational inefficiencies that could arise from differences between these rules. For example, two commenters have argued that differences among the data fields, reporting mechanics, and cross-border application of the swap and SBS reporting rules limit the ability of affected entities to use common systems across the two rulesets.[762]

The Commission also is cognizant that the CFTC has announced a review of the swap reporting rules with a ''focus on changes to the existing regulations and guidance with two goals in mind: (a) To ensure that the CFTC receives accurate, complete, and high quality data on swaps transactions for its regulatory oversight role; and (b) to streamline reporting, reduce messages that must be reported, and right-size the number of data elements that are reported to meet the agency's priority use-cases for swaps data.'' [763] As part of that effort, the CFTC earlier in 2019 proposed amendments to its rules for swap data repositories [764] and indicated that this was the first of three anticipated rulemakings to revise the swap reporting rules.[765]

The Commission is mindful of the time and costs that may be incurred by swap data repositories and swap market participants to implement aspects of the SBS reporting rules that have no analog in, or are not wholly consistent with, the swap reporting rules. Implementation of SEC-specific requirements could require changes to the systems, policies, and procedures currently utilized to comply with the swap reporting rules. These burdens could be exacerbated if affected parties must begin complying with the SBS reporting rules at or near the same time that they are making changes to their systems, policies, and procedures to accommodate amendments made by the CFTC to the swap reporting rules.

The Commission believes that implementation of the SBS reporting rules can and should be done in a manner that carries out the fundamental policy goals of the SBS reporting rules while minimizing burdens as much as practicable. The Commission continues to believe that this should be done pursuant to the compliance schedule noted above.[766] However, in light of the Commission's efforts to promote harmonization, the CFTC's announced reconsideration of its swap reporting rules, and ongoing concerns among market participants about incurring unnecessary burdens, the Commission takes the following position with respect to the SBS reporting rules for four years following Regulation SBSR's Compliance Date 1 in each SBS asset class. After the first SDR that can accept transaction reports in a particular SBS class is registered by the Commission, certain actions with respect to the SBS reporting rules will not provide a basis for a Commission enforcement action, as set forth below:[767]

1. With respect to Rule 901(a) of Regulation SBSR if a person with a duty to report an SBS transaction (or a duty to participate in the selection of the reporting side) under Rule 901(a) does not report the transaction (or does not participate in the selection of the reporting side) because, under the swap reporting rules in force at the time of the transaction, a different person (or no person) would have the duty to report a comparable swap transaction.

2. With respect to Rules 901(c)(2)–(7) and 901(d) of Regulation SBSR, if a person with a duty to report a data element of an SBS transaction, as required by any provision of Rules 901(c)(2)–(7) and 901(d), does not report that data element because the swap reporting rules in force at the time of the transaction do not require that data element to be reported.

3. With respect to Rule 901(e) of Regulation SBSR, if a person does not report a life cycle event of an SBS transaction in a manner consistent with Rule 901(e) and the person acts instead in a manner consistent with the swap reporting rules for the reporting of life cycle events that are in force at the time of the life cycle event.

4. With respect to Rule 902 of Regulation SBSR, if a registered SDR does not disseminate an SBS transaction in a manner consistent with Rule 902 but instead disseminates (or does not disseminate) the SBS transaction in a manner consistent with Part 43 of the CFTC's swap reporting rules in force at the time of the transaction, provided that for an SBS based on a single credit instrument or a narrow-based index of credit instruments having a notional size of $5 million or greater, the registered SDR that receives the report of the SBS transaction does not utilize any capping or bucketing convention under Part 43 of the CFTC's swap reporting rules but instead disseminates a capped size of $5 million (*e.g.,* ''$5MM+'' or similar) in lieu of the true notional size.[768]

5. With respect to Rule 903(b), a registered SDR permits the reporting or public dissemination of SBS transaction information that includes codes in place of certain data elements even if the information necessary to interpret such codes is not widely available to users of the information on a non-fee basis.[769]

6. With respect to Rule 906(a) of Regulation SBSR, if a registered SDR does not send reports of missing unique identification codes to its participants.

7. With respect to Rule 906(b) of Regulation SBSR, if a registered SDR does not collect ultimate parent and affiliate information from its participants.

8. With respect to Rule 907(a)(1) of Regulation SBSR, if a registered SDR does not enumerate in its policies and procedures for reporting transaction information one or more specific data elements that are required by Rule 901(c) or 901(d) of Regulation SBSR,

[760] *See https://sirt.cftc.gov/sirt/sirt.aspx?Topic=DataRepositories.*

[761] *See* Exchange Act Release No. 77699 (April 22, 2016), 81 FR 25475 (April 28, 2016) (notice of filing of SDR application of ICE Trade Vault); Exchange Act Release No. 78216 (June 30, 2016), 81 FR 44379 (July 7, 2016) (notice of filing of SDR application of DDR).

[762] *See* Memorandum prepared by Institute of International Bankers and Securities Industry and Financial Markets Associated (June 21, 2018), available at: *https://www.sec.gov/comments/s7-05-14/s70514-3938974-167037.pdf.*

[763] CFTC Letter 17–33 (July 10, 2017), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/17-33.pdf.*

[764] *See* Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044 (May 13, 2019) (proposing release).

[765] *See id.* at 21045–46.

[766] *See* note 719, *supra.*

[767] Unless specified otherwise, all terms shall have the definitions set forth in Section 3(a) of the Exchange Act, 15 U.S.C. 78c, and the rules and regulations thereunder, including Regulation SBSR.

[768] The Commission notes that the Financial Industry Regulatory Authority applies a $5 million cap when disseminating transaction reports of economically similar cash debt securities. *See, e.g.,* FINRA Regulatory Notice 12–39, available at *https://www.finra.org/rules-guidance/notices/12-39.*

[769] An international initiative has been developing a system for the assignment of unique product identifiers (''UPIs'') for products involved in over-the-counter derivatives transactions. The UPIs that would be assigned by a UPI Service Provider are anticipated to serve as product IDs under Regulation SBSR. As this initiative continues to develop, the Commission anticipates that it will inform market participants of the availability of UPIs and address any related issues raised under Rule 903(b) of Regulation SBSR.

because such data element(s) are not required under the swap reporting rules, except that the registered SDR's policies and procedures must set out how a participant must identify the SBS and any security underlying the SBS and thereby comply with Rule 901(c)(1).

9. With respect to Rule 907(a)(3) of Regulation SBSR, if a registered SDR does not enumerate in its policies and procedures for handling life cycle events provisions that are not required under swap reporting rules that pertain to the reporting of life cycle events.

10. With respect to Rule 907(a)(4) of Regulation SBSR, if a registered SDR does not have policies and procedures for establishing and directing its participants to use condition flags in the reporting of SBS transactions, provided that the registered SDR instead complies with analogous CFTC rules regarding condition flags or other trade indicators.

11. With respect to Rule 907(a)(5) of Regulation SBSR, if a registered SDR does not have policies and procedures for assigning UICs.

12. With respect to Rule 907(a)(6) of Regulation SBSR, if a registered SDR does not have policies and procedures for obtaining from its participants information about each participant's ultimate parent and affiliates.

Notwithstanding the above, the Commission's position with respect to Rule 901(a) of Regulation SBSR does not extend to instances where a transaction falls within Rule 901(a)(2)(ii)(E) and one or both sides is relying on the exception to the *de minimis* counting requirement for ANE transactions (*i.e.,* is a ''relying entity''). The Commission expects that a foreign dealing entity that is a relying entity would utilize staff of an affiliated U.S. registered SBS dealer or broker-dealer to report an ANE transaction.[770]

Furthermore, the Commission's position with respect to Rule 902(a) of Regulation SBSR does not extend to: (1) A covered inter-dealer security-based swap transaction that at least one side of the transaction arranges, negotiates, or executes in reliance on the exception in Rule 3a71–3(d); or (2) a security based swap transaction between a relying entity and a registered SBS dealer (whether or not it is a U.S. person). All other aspects of the Commission's position extend to the transactions described in this paragraph.

Similarly, the Commission takes the position that, for a period of four years following Regulation SBSR's Compliance Date 1 in a particular SBS asset class, certain actions with respect to the SDR rules will not provide a basis for a Commission enforcement action against a registered SDR that can accept transaction reports in that asset class, as set forth below.

1. With respect to Section 13(n)(5)(B) of the Exchange Act[771] and Rule 13n–4(b)(3) thereunder,[772] if a registered SDR does not confirm with both counterparties to the SBS the accuracy of the data that was submitted to the SDR.

2. With respect to Rule 13n–5(b)(1)(iii) under the Exchange Act, if a registered SDR does not establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the SDR is complete and accurate, and clearly identifies the source for each trade side and the pairing method (if any) for each transaction in order to identify the level of quality of the transaction data that was submitted to the SDR.

3. A registered SDR does not adhere to any provision of Section 11A(b) of the Exchange Act[773] pertaining to securities information processors.

The Commission will assess an application to register as an SDR and make applicable findings pursuant to Rule 13n–1(c) under the Exchange Act[774] in light of this position. Thus, an applicant will not need to include materials in its application explaining how it would comply with the provisions noted above, and could instead rely on its discussion about how it complies with comparable CFTC requirements. Specifically, an entity wishing to register with the Commission as an SDR must still submit an application on Form SDR. However, the entity need not provide an Exhibit S to describe its functions as a securities information processor and may instead represent in its application that it: (1) Is registered with the CFTC as an swap data repository; (2) is in compliance with applicable requirements under the swap reporting rules; (3) satisfies the standard for Commission registration of an SDR under Rule 13n–1(c); and (4) intends to rely on this position for the period set forth in this release with respect to any SBS asset class(es) for which it intends to accept transaction reports. Furthermore, an entity submitting an application to register would not need to comply with the requirement in Rule 13n–1(b) and Rule 13n–11(f)(5) to file Form SDR and all amendments ''electronically in a tagged data format'' but instead would be able to submit such documents to the Commission electronically as portable document format (PDF) files, consistent with the CFTC SDR application procedures under Part 49.3(a)(1).[775]

The Commission believes that the approach outlined above would result in useful transaction data being made available to the Commission, other relevant authorities, and the public while the Commission assesses whether and, if so, how to take further steps toward harmonization and the CFTC undertakes its review of swap reporting rules.[776]

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[770] The Commission notes that Rule 906(c) of Regulation SBSR, in relevant part, requires each participant of a registered SDR that is a registered SBS dealer or a registered broker-dealer that incurs reporting duties to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with any obligation to report information to a registered SDR in the manner consistent with Regulation SBSR. In light of the rule amendments adopted today regarding ANE transactions, the Commission expects a registered SBS dealer or registered broker-dealer that arranges, negotiates, or executes SBS transactions on behalf of a foreign affiliate that is a relying entity to include in its Rule 906(c) policies and procedures a mechanism for noting, with respect to a specific security-based swap transaction, the foreign affiliate on whose behalf it is arranging, negotiating, or executing the transaction; for ensuring that any such transaction is reported to a registered SDR (or, as applicable, ensuring that it engages with the other side to select which side will incur the reporting duty); and for ensuring that inter-dealer ANE transactions where it is acting on behalf of the reporting side are publicly disseminated. The Commission may review the Rule 906(c) policies and procedures of registered SBS dealers and registered broker-dealers to evaluate whether the Commission's position is being applied as set forth in this statement.

[771] 15 U.S.C. 78m(n)(5)(B).

[772] 17 CFR 240.13n–4(b)(3).

[773] 15 U.S.C. 78k–1.

[774] 17 CFR 240.13n–1(c) (''The Commission shall grant the registration of a security-based swap data repository if the Commission finds that such security-based swap data repository is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a security-based swap data repository, comply with any applicable provision of the federal securities laws and rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of section 13(n) of the [Exchange] Act and the rules and regulations thereunder.'').

[775] Accordingly, compliance with General Instructions I on Form SDR or the applicable provisions of Regulation S–T also would not be required.

[776] This relief is consistent with the Commission's efforts to harmonize other of its Title VII requirements with the CFTC's. For example, in the Capital, Margin, and Segregation Adopting Release, the Commission adopted new Rule 18a–10 under the Exchange Act, 17 CFR 240.18a–10, which permits an SBS dealer that is also registered with the CFTC as a swap dealer to comply with the capital, margin, and segregation requirements of the CEA and the CFTC's rules—rather than comparable SEC rules—provided that the firm's SBS business is not a significant part of the SBS market and predominantly involves dealing in swaps as compared to SBS. *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43943–44. The Commission stated that Rule 18a–10 was designed to ''address the concern raised by the commenters that it would be inefficient to impose differing requirements on a firm that is predominantly a swap dealer.'' *Id.* at 43944. Also, in the Recordkeeping and Reporting Adopting

The Commission's position applies only to the exercise of its enforcement discretion and is expressly limited to the Commission's SBS reporting rules discussed above. Nothing in this position excuses compliance with the other SBS reporting rules or any other Commission rule, including a rule that implements one or more other provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. This position will remain in effect until the earlier of (1) four years following Regulation SBSR's Compliance Date 1 in a particular SBS asset class, or (2) 12 months after the Commission provides notice that the position will expire.

D. Effect on Existing Commission Exemptive Relief

Compliance with certain provisions of the Exchange Act and certain rules and regulations thereunder in connection with security-based swap transactions, positions, and/or activity is currently subject to temporary exemptive relief granted by the Commission.[777] As set forth in the Commission's prior releases, certain portions of this temporary exemptive relief will expire on the Registration Compliance Date,[778] while certain other portions of this relief are subject to conditions that will be triggered upon the Registration Compliance Date.[779] Other portions of this temporary relief are scheduled to expire on February 5, 2020.[780] Similarly, the Commission's 2018 statement of position regarding certain actions with respect to provisions of the Commission's business conduct rules for SBS Entities contains a sunset provision that will begin to run starting on the Registration Compliance Date.[781]

XI. Statutory Basis and Text of the Rule Amendments

Pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly Sections 3(a)(71), 3(b), 15F (as added by Section 764(a) of the Dodd-Frank Act), 17(a), 23(a) and 30(c) thereof, and Section 761(b) of the Dodd-Frank Act, the Commission is amending Rule of Practice 194 and Rules 0–13, 3a71–3, 15Fb2–1 and 18a–5 under the Exchange Act. Additionally, the Commission is adopting Rule 3a71–3(d)(4) under the Exchange Act pursuant to Exchange Act Sections 15(a) and 36 and Rule 3a71–3(d)(5) under the Exchange Act pursuant to Exchange Act Section 36.

List of Subjects

17 CFR Part 201

Administrative practice and procedure, Brokers, Claims, Confidential business information, Equal access to justice, Lawyers, Penalties, Securities.

17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Text of Final Rules

For the reasons stated in the preamble, the Commission is amending Title 17, Chapter II of the Code of the Federal Regulations as follows:

PART 201—RULES OF PRACTICE

■ 1. The authority citation for subpart D is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 77sss, 77ttt, 78(c)(b), 78d–1, 78d–2, 78*l,* 78m, 78n, 78o(d), 78o–3, 78o–10(b)(6), 78s, 78u–2, 78u–3, 78v, 78w, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, 80b–12, 7202, 7215, and 7217.

■ 2. Amend § 201.194 by redesignating paragraph (c) as paragraph (c)(1), adding paragraph (c) subject heading, and adding paragraph (c)(2) to read as follows:

§ 201.194 Applications by security-based swap dealers or major security-based swap participants for statutorily disqualified associated persons to effect or be involved in effecting security-based swaps.

* * * * *

(c) *Exclusions.*

* * * * *

(2) *Exclusion for certain associated natural persons.* A security-based swap dealer or major security-based swap participant shall be excluded from the prohibition in section 15F(b)(6) of the Exchange Act (15 U.S.C. 78o–10(b)(6)) with respect to an associated person who is a natural person who (i) is not a U.S. person (as defined in 17 CFR 240.3a71–3(a)(4)(i)(A)) and (ii) does not effect and is not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons (as defined in 17 CFR 240.3a71–3(a)(4)), other than a security-based swap transaction conducted through a foreign branch (as that term is defined in 17 CFR 240.3a71–3(a)(3)) of a counterparty that is a U.S. person; *provided, however,* that this exclusion shall not be available if the associated person of that security-based swap dealer or major security-based swap participant is currently subject to any order described in subparagraphs (A) and (B) of section 3(a)(39) of the Exchange Act, with the limitation that an order by a foreign financial regulatory authority described in subparagraphs (B)(i) and (B)(iii) of section 3(a)(39) (15 U.S.C. 78c(a)(39)(B)(i) and (B)(iii)) shall only apply to orders by a foreign financial regulatory authority in the jurisdiction where the associated person is employed or located.

* * * * *

Release, the Commission added the recordkeeping and reporting requirements to that alternative compliance mechanism and crafted a ''limited alternative compliance mechanism'' that allow an SBS dealer or major SBS participant to comply with the recordkeeping requirements of the CEA and the rules thereunder applicable to swap dealers and major swap participants in lieu of complying with the requirements in Rules 17a–3 and 18a–5 under the Exchange Act, 17 CFR 240.17a–3 and 240.18a–5, to make and keep current trade blotters, customer account ledgers, and stock records solely with respect to information required to be included in these records regarding SBS transactions and positions, subject to certain conditions. *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68593–94.

[777] *See, e.g.,* Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps, Exchange Act Release No. 64678 (June 15, 2011), 76 FR 36287 (June 22, 2011); Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revisions of the Definition of ''Security'' to Encompass Security-Based Swaps, Exchange Act Release No. 64795 (July 1, 2011), 76 FR 39927 (July 7, 2011); Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With Portfolio Margining of Swaps and Security-Based Swaps, Exchange Act Release No. 68433 (Dec. 14, 2012), 77 FR 75211 (Dec. 19, 2012) (''Portfolio Margining Order'').

[778] *See, e.g.,* Order Pursuant to Sections 15F(b)(6) and 36 of the Securities Exchange Act of 1934 Extending Certain Temporary Exemptions and an Temporary and Limited Exception Related to Security-Based Swaps, Exchange Act Release No. 75919 (Sept. 15, 2015), 80 FR 56519, 56522 (Sept. 18, 2015); Registration Adopting Release, 80 FR at 49003; Business Conduct Adopting Release, 81 FR at 29967–68; Trade Acknowledgment and Verification Adopting Release, 81 FR at 39825 n.189; Capital, Margin, and Segregation Adopting Release, 84 FR at 43955–57; Recordkeeping and Reporting Adopting Release, 84 FR at 68001–02.

[779] *See* Portfolio Margining Order, 77 FR 75211; Capital, Margin, and Segregation Adopting Release, 84 FR at 43956–57.

[780] *See* Order Granting a Limited Exemption From the Exchange Act Definition of ''Penny Stock'' for Security-Based Swap Transactions Between Eligible Contract Participants; Granting a Limited Exemption From the Exchange Act Definition of ''Municipal Securities'' for Security-Based Swaps; and Extending Certain Temporary Exemptions Under the Exchange Act in Connection With the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, Exchange Act Release No. 84991, (Jan. 25, 2019), 84 FR 863 (Jan. 31, 2019).

[781] *See* Commission Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 84511 (Oct. 31, 2018), 83 FR 55486 (Nov. 6, 2018).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.;* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112–106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 4. Amend § 240.0–13 by revising the section heading and paragraphs (a), (b), and (e) to read as follows:

§ 240.0–13 Commission procedures for filing applications to request a substituted compliance or listed jurisdiction order under the Exchange Act.

(a) The application shall be in writing in the form of a letter, must include any supporting documents necessary to make the application complete, and otherwise must comply with § 240.0–3. All applications must be submitted to the Office of the Secretary of the Commission, by a party that potentially would comply with requirements under the Exchange Act pursuant to a substituted compliance or listed jurisdiction order, or by the relevant foreign financial regulatory authority or authorities. If an application is incomplete, the Commission may request that the application be withdrawn unless the applicant can justify, based on all the facts and circumstances, why supporting materials have not been submitted and undertakes to submit the omitted materials promptly.

(b) An applicant may submit a request electronically. The electronic mailbox to use for these applications is described on the Commission's website at *www.sec.gov* in the ''Exchange Act Substituted Compliance and Listed Jurisdiction Applications'' section. In the event electronic mailboxes are revised in the future, applicants can find the appropriate mailbox by accessing the ''Electronic Mailboxes at the Commission'' section.

* * * * *

(e) Every application (electronic or paper) must contain the name, address, telephone number, and email address of each applicant and the name, address, telephone number, and email address of a person to whom any questions regarding the application should be directed. The Commission will not consider hypothetical or anonymous requests for a substituted compliance or listed jurisdiction order. Each applicant shall provide the Commission with any supporting documentation it believes necessary for the Commission to make such determination, including information regarding applicable requirements established by the foreign financial regulatory authority or authorities, as well as the methods used by the foreign financial regulatory authority or authorities to monitor and enforce compliance with such rules. Applicants should also cite to and discuss applicable precedent.

* * * * *

■ 5. Amend § 240.3a71–3 by adding paragraphs (a)(10) through (13), revising paragraph (b)(1)(iii)(C), and adding paragraph (d) to read as follows:

§ 240.3a71–3 Cross-border security-based swap dealing activity.

(a) * * *

(10) An entity is a *majority-owned affiliate* of another entity if the entity directly or indirectly owns a majority interest in the other, or if a third party directly or indirectly owns a majority interest in both entities, where ''majority interest'' is the right to vote or direct the vote of a majority of a class of voting securities of an entity, the power to sell or direct the sale of a majority of a class of voting securities of an entity, or the right to receive upon dissolution, or the contribution of, a majority of the capital of a partnership.

(11) *Foreign associated person* means a natural person domiciled outside the United States who—with respect to a non-U.S. person relying on the exception set forth in paragraph (d) of this section—is a partner, officer, director, or branch manager of such non-U.S. person (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such non-U.S. person, or any employee of such non-U.S. person.

(12) *Listed jurisdiction* means any jurisdiction that the Commission by order has designated as a listed jurisdiction for purposes of the exception specified in paragraph (d) of this section.

(13) *Covered inter-dealer security-based swap* means any security-based swap between:

(i) A non-U.S. person relying on the exception in paragraph (d) of this section; and

(ii) A non-U.S. person that is, or is an affiliate of, a registered security-based swap dealer or registered broker that has filed with the Commission a notice pursuant to paragraph (d)(1)(vi) of this section; *provided, however,* that a covered inter-dealer security-based swap does not include a security-based swap with a non-U.S. person that the non-U.S. person relying on the exception in paragraph (d) of this section reasonably determines at the time of execution of the security-based swap is neither a registered security-based swap dealer or registered broker that has filed with the Commission a notice pursuant to paragraph (d)(1)(vi) of this section nor an affiliate of such a registered security-based swap dealer or registered broker.

(b) * * *

(1) * * *

(iii) * * *

(C) Except as provided in paragraph (d) of this section, or unless such person is a person described in paragraph (a)(4)(iii) of this section, security-based swap transactions connected with such person's security-based swap dealing activity that are arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office; and

* * * * *

(d) *Exception from counting certain transactions.* The counting requirement described by paragraph (b)(1)(iii)(C) of this section will not apply to the security-based swap dealing transactions of a non-U.S. person if the conditions of paragraph (d)(1) of this section have been satisfied.

(1) *Conditions*—(i) *Entity conducting U.S. activity.* All activity that otherwise would cause a security-based swap transaction to be described by paragraph (b)(1)(iii)(C) of this section—namely, all arranging, negotiating or executing activity that is conducted by personnel of the entity (or its agent) located in a branch or office in the United States—is conducted by such U.S. personnel in their capacity as persons associated with an entity that:

(A) Is registered with the Commission as:

(*1*) A broker registered under section 15 of the Act (15 U.S.C. 78o) that is subject to and complies with § 240.15c3–1(a)(7);

(*2*) A broker registered under section 15 of the Act (15 U.S.C. 78o), other than a broker that is subject to § 240.15c3–1(a)(7), that complies with § 240.15c3–1(a)(10), as if that entity were registered with the Commission as a security-based swap dealer, if it is not so registered; or

(*3*) A security-based swap dealer; and

(B) Is a majority-owned affiliate of the non-U.S. person relying on this exception.

(ii) *Compliance with specified security-based swap dealer requirements*—(A) *Compliance required.* In connection with such transactions, the registered entity described in paragraph (d)(1)(i) of this section complies with the requirements described in paragraph (d)(1)(ii)(B) of this section

(*1*) As if the counterparties to the non-U.S. person relying on this exception also were counterparties to that entity; and

(*2*) As if that entity were registered with the Commission as a security-based swap dealer, if it is not so registered.

(B) *Applicable requirements.* The compliance obligation described in paragraph (d)(1)(ii)(A) of this section applies to the following provisions of the Act and the rules and regulations thereunder:

(*1*) Section 15F(h)(3)(B)(i), (ii) and § 240.15Fh–3(b), including in connection with material incentives and conflicts of interest associated with the non-U.S. person relying on the exception;

(*2*) Section 240.15Fh–3(f)(1); *provided, however,* that if the registered entity described in paragraph (d)(1)(i) of this section reasonably determines that the counterparty to whom it recommends a security-based swap or trading strategy involving a security-based swap is an ''institutional counterparty'' as defined in § 240.15Fh–3(f)(4), the registered entity instead may fulfill its obligations under § 240.15Fh–3(f)(1)(ii) if it discloses to the counterparty that it is not undertaking to assess the suitability of the security-based swap or trading strategy involving a security-based swap for the counterparty;

(*3*) Section 15F(h)(3)(C) of the Act and § 240.15Fh–3(g); and

(*4*) Sections 240.15Fi–1 and 240.15Fi–2.

(iii) *Commission access to books, records and testimony.* (A) The non-U.S. person relying on this exception promptly provides representatives of the Commission (upon request of the Commission or its representatives or pursuant to a supervisory or enforcement memorandum of understanding or other arrangement or agreement reached between any foreign securities authority, including any foreign government, as specified in section 3(a)(50) of the Act, and the Commission or the U.S. Government) with any information or documents within the non-U.S. person's possession, custody, or control, promptly makes its foreign associated persons available for testimony, and provides any assistance in taking the evidence of other persons, wherever located, that the Commission or its representatives requests and that relates to transactions subject to this exception; *provided, however,* that if, after exercising its best efforts, the non-U.S. person is prohibited by applicable foreign law or regulations from providing such information, documents, testimony, or assistance, the non-U.S. person may continue to rely on this exception until the Commission issues an order modifying or withdrawing an associated ''listed jurisdiction'' determination pursuant to paragraph (d)(2)(iii) of this section.

(B) The registered entity described in paragraph (d)(1)(i) of this section:

(*1*) Creates and maintains books and records relating to the transactions subject to this exception that are required, as applicable, by §§ 240.17a–3 and 240.17a–4, or by §§ 240.18a–5 and 240.18a–6, including any books and records requirements relating to the provisions specified in paragraph (d)(1)(ii)(B) of this section;

(*2*) Obtains from the non-U.S. person relying on the exception, and maintains for not less than three years following the activity described in paragraph (d)(1)(i) of this section, the first two years in an easily accessible place, documentation regarding such non-U.S. person's compliance with the condition in paragraph (d)(1)(vii) of this section;

(*3*) Obtains from the non-U.S. person relying on the exception, and maintains for not less than three years following the activity described in paragraph (d)(1)(i) of this section, the first two years in an easily accessible place, documentation encompassing all terms governing the trading relationship between the non-U.S. person and its counterparty relating to the transactions subject to this exception, including, without limitation, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, allocation of any applicable regulatory reporting obligations, governing law, valuation, and dispute resolution; and

(*4*) Obtains from the non-U.S. person relying on this exception, and maintains for not less than three years following the activity described in paragraph (d)(1)(i) of this section, the first two years in an easily accessible place, written consent to service of process for any civil action brought by or proceeding before the Commission, providing that process may be served on the non-U.S. person by service on the registered entity in the manner set forth in the registered entity's current Form BD, SBSE, SBSE–A or SBSE–BD, as applicable.

(iv) *Counterparty notification* In connection with the transaction, the registered entity described in paragraph (d)(1)(i) of this section notifies the counterparties of the non-U.S. person relying on this exception that the non-U.S. person is not registered with the Commission as a security-based swap dealer, and that certain Exchange Act provisions or rules addressing the regulation of security-based swaps would not be applicable in connection with the transaction, including provisions affording clearing rights to counterparties. Such notice shall be provided contemporaneously with, and in the same manner as, the arranging, negotiating, or executing activity at issue; *provided, however,* that during a period in which a counterparty is neither a customer (as such term is defined in § 240.15c3–3) of the registered entity described in paragraph (d)(1)(i) of this section (if such registered entity is a registered broker or dealer) nor a counterparty to a security-based swap with the registered entity described in paragraph (d)(1)(i) of this section, such notice need only be provided contemporaneously with, and in the same manner as, the first such arranging, negotiating, or executing activity during such period. This disclosure will not be required if the identity of that counterparty is not known to that registered entity at a reasonably sufficient time prior to the execution of the transaction to permit such disclosure.

(v) *Subject to regulation of a listed jurisdiction.* The non-U.S. person relying on this exception is subject to the margin and capital requirements of a listed jurisdiction when engaging in the transactions subject to this exception.

(vi) *Notice by registered entity.* Before an associated person of the registered entity described in paragraph (d)(1)(i) of this section commences the activity described in paragraph (d)(1)(i) of this section, such registered entity shall file with the Commission a notice that its associated persons may conduct such activity. Such registered entity shall file this notice by submitting it to the electronic mailbox described on the Commission's website at *www.sec.gov* at the ''ANE Exception Notices'' section. The Commission shall publicly post such notice on the same section of its website.

(vii) *Limitation for covered inter-dealer security-based swaps.* The aggregate gross notional amount of covered inter-dealer security-based swap positions connected with dealing activity subject to the exception in this paragraph (d) engaged in by persons described in paragraph (d)(6)(i) of this section over the course of the immediately preceding 12 months does not exceed $50 billion.

(2) *Order for listed jurisdiction designation.* The Commission by order, may conditionally or unconditionally determine that a foreign jurisdiction is a listed jurisdiction for purposes of this section. The Commission may make listed jurisdiction determinations in response to applications, or upon the Commission's own initiative.

(i) *Applications.* Applications for an order requesting listed jurisdiction status may be made by a party or group of parties that potentially would seek to rely on the exception provided by paragraph (d) of this section, or by any foreign financial regulatory authority or authorities supervising such a party or its security-based swap activities. Applications must be filed pursuant to the procedures set forth in § 240.0–13.

(ii) *Criteria considered.* In considering a foreign jurisdiction's potential status as a listed jurisdiction, the Commission may consider factors relevant for purposes of assessing whether such an order would be in the public interest, including:

(A) Applicable margin and capital requirements of the foreign financial regulatory system; and

(B) The effectiveness of the supervisory compliance program administered by, and the enforcement authority exercised by, the foreign financial regulatory authority in connection with such requirements, including the application of those requirements in connection with an entity's cross-border business.

(iii) *Withdrawal or modification of listed jurisdiction status.* The Commission may, on its own initiative, by order after notice and opportunity for comment, modify or withdraw a jurisdiction's status as a listed jurisdiction, if the Commission determines that continued listed jurisdiction status no longer would be in the public interest, based on:

(A) The criteria set forth in paragraph (d)(2)(ii) of this section;

(B) Any laws or regulations that have had the effect of preventing the Commission or its representatives, on request, to promptly access information or documents regarding the activities of persons relying on the exception provided by this paragraph (d), to obtain the testimony of their foreign associated persons, and to obtain the assistance of persons relying on this exception in taking the evidence of other persons, wherever located, as described in paragraph (d)(1)(iii)(A) of this section; and

(C) Any other factor the Commission determines to be relevant to whether continued status as a listed jurisdiction would be in the public interest.

(3) *Exception for person that engages in arranging, negotiating, or executing activity as agent.* The registered entity described in paragraph (d)(1)(i) of this section need not count, against the *de minimis* thresholds described in § 240.3a71–2(a)(1), the transactions described by paragraph (d) of this section.

(4) *Limited exemption from registration as a broker.* A registered security-based swap dealer and its associated persons who conduct the activities described in paragraph (d)(1)(i) of this section shall not be subject to registration as a broker pursuant to section 15(a)(1) of the Act solely because the registered entity or the associated person conducts any activity described in paragraph (d)(1)(i) of this section with or for a person that is an eligible contract participant, *provided* that:

(i) The conditions of paragraph (d)(1) of this section are satisfied in connection with such activities; and

(ii) If § 240.10b–10 would apply to an activity subject to the exception in paragraph (d)(1)(i), such registered security-based swap dealer provides to the customer the disclosures required by § 240.10b–10(a)(2) (excluding § 240.10b–10(a)(2)(i) and (ii)) and § 240.10b–10(a)(8) in accordance with the time and form requirements set forth in § 240.15Fi–2(b) and (c) or, alternatively, promptly after discovery of any defect in the registered security-based swap dealer's good faith effort to comply with such requirements.

(5) *Exemption from* § 240.*10b–10.* A broker or dealer that is also a registered security-based swap dealer or registered broker described in paragraph (d)(1)(i) of this section shall be exempt from the requirements of § 240.10b–10 with respect to activity described in paragraph (d)(1)(i) of this section, *provided* that such broker or dealer:

(i) Complies with paragraph (d)(1)(ii)(B)(*4*) of this section in connection with such activity; and

(ii) Provides to the customer the disclosures required by § 240.10b–10(a)(2) (excluding § 240.10b–10(a)(2)(i) and (ii)) and § 240.10b–10(a)(8) in accordance with the time and form requirements set forth in § 240.15Fi–2(b) and (c) or, alternatively, promptly after discovery of any defect in the broker or dealer's good faith effort to comply with such requirements.

(6) *Limitation for covered inter-dealer security-based swaps*—(i) *Scope of limitation for covered inter-dealer security-based swaps.* The threshold described in paragraph (d)(1)(vii) of this section applies to covered inter-dealer security-based swap positions connected with dealing activity subject to the exception in this paragraph (d) engaged in by any of the following persons:

(A) The non-U.S. person relying on the exception in this paragraph (d); and

(B) Any affiliate of such person, except for an affiliate that is deemed not to be a security-based swap dealer pursuant to Rule 3a71–2(b).

(ii) *Impact of exceeding exception threshold.* If the threshold described in paragraph (d)(1)(vii) of this section is exceeded, then

(A) As of the date the condition in paragraph (d)(1)(vii) of this section is no longer satisfied, the non-U.S. person that is no longer able to satisfy that condition may not rely on the exception in this paragraph (d) for future security-based swap transactions.

(B) For purposes of calculating the amount of security-based swap positions connected with dealing activity under § 240.3a71–2(a)(1), the non-U.S. person that is no longer able to satisfy the condition in paragraph (d)(1)(vii) of this section shall include all covered inter-dealer security-based swap positions connected with dealing activity subject to the exception in this paragraph (d) engaged in by persons described in paragraph (d)(6)(i) of this section over the course of the immediately preceding 12 months, such positions to be included in such calculation as of the date that the condition in paragraph (d)(1)(vii) of this section is no longer satisfied.

* * * * *

■ 6. Section 240.15Fb2–1 is amended by revising paragraphs (d) and (e) to read as follows:

§ 240.15Fb2–1 Registration of security-based swap dealers and major security-based swap participants

* * * * *

(d) *Conditional registration.* (1) An applicant that has submitted a complete Form SBSE–C (§ 249.1600c of this chapter) and a complete Form SBSE (§ 249.1600 of this chapter) or Form SBSE–A (§ 249.1600a of this chapter) or Form SBSE–BD (§ 249.1600b of this chapter), as applicable, in accordance with paragraph (c) within the time periods set forth in § 240.3a67–8 (if the

person is a major security-based swap participant) or § 240.3a71–2(b) (if the person is a security-based swap dealer), and has not withdrawn its registration shall be conditionally registered.

(2) Notwithstanding paragraph (d)(1) of this section, an applicant that is a nonresident security-based swap dealer or nonresident major security-based swap participant (each as defined in § 240.15Fb2–4(a)) that is unable to provide the certification and opinion of counsel required by § 240.15Fb2–4(c)(1) shall instead provide a conditional certification and opinion of counsel as discussed in paragraph (d)(3) of this section, and upon the provision of such conditional certification and opinion of counsel, shall be conditionally registered, if the nonresident applicant submits a Form SBSE–C (§ 249.1600c of this chapter) and a Form SBSE (§ 249.1600 of this chapter), SBSE–A (§ 249.1600a of this chapter) or SBSE–BD (§ 249.1600b of this chapter), as applicable, in accordance with paragraph (c) of this section within the time periods set forth in § 240.3a67–8 (if the person is a major security-based swap participant) or § 240.3a71–2(b) (if the person is a security-based swap dealer), that is complete in all respects but for the failure to provide the certification and the opinion of counsel required by § 240.15Fb2–4(c)(1), and has not withdrawn from registration.

(3) For purposes of this section, a conditional certification and opinion of counsel means a certification as required by § 240.15Fb2–4(c)(1)(i) and an opinion of counsel as required by § 240.15Fb2–4(c)(1)(ii) that identify, and are conditioned upon, the occurrence of a future action that would provide the Commission with adequate assurances of prompt access to the books and records of the nonresident security-based swap dealer or nonresident major security-based swap participant, and the ability of the nonresident security-based swap dealer or nonresident major security-based swap participant to submit to onsite inspection and examination by the Commission. Such future action could include:

(i) Entry by the Commission and the foreign financial regulatory authority of the jurisdiction(s) in which the nonresident security-based swap dealer or nonresident major security-based swap participant maintains the books and records that are addressed by the certification and opinion of counsel required by § 240.15Fb2–4(c)(1) into a memorandum of understanding, agreement, protocol, or other regulatory arrangement providing the Commission with adequate assurances of:

(A) Prompt access to the books and records of the nonresident security-based swap dealer or nonresident major security-based swap participant; and

(B) The ability of the nonresident security-based swap dealer or nonresident major security-based swap participant to submit to onsite inspection or examination by the Commission; or

(ii) Issuance by the Commission of an order granting substituted compliance in accordance with § 240.3a71–6 to the jurisdiction(s) in which the nonresident security-based swap dealer or nonresident major security-based swap participant maintains the books and records that are addressed by the certification and opinion of counsel required by § 240.15Fb2–4(c)(1); or

(iii) Any other action that would provide the Commission with the assurances required by § 240.15Fb2–4(c)(1)(i) and by § 240.15Fb2–4(c)(1)(ii).

(e) *Commission Decision.* (1) The Commission may deny or grant ongoing registration to a security-based swap dealer or major security-based swap participant based on a security-based swap dealer's or major security-based swap participant's application, filed pursuant to paragraph (a) of this section. The Commission will grant ongoing registration if it finds that the requirements of section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) are satisfied. The Commission may institute proceedings to determine whether ongoing registration should be denied if it does not or cannot make such finding or if the applicant is subject to a statutory disqualification (as described in sections 3(a)(39)(A) through (F) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)(A)–(F)), or the Commission is aware of inaccurate statements in the application. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing. At the conclusion of such proceedings, the Commission shall grant or deny such registration.

(2) If an applicant that is a nonresident security-based swap dealer or nonresident major security-based swap participant has become conditionally registered in reliance on paragraph (d)(2) of this section, the applicant will remain conditionally registered until the Commission acts to grant or deny ongoing registration in accordance with (e)(1) of this section. If none of the future actions in paragraph (d)(3) that are included in an applicant's conditional certification and opinion of counsel occurs within 24 months of the compliance date for § 240.15Fb2–1, and there is not otherwise a basis that would provide the Commission with the assurances required by § 240.15Fb2–4(c)(1)(i) and by § 240.15Fb2–4(c)(1)(ii), the Commission may institute proceedings thereafter to determine whether ongoing registration should be denied, in accordance with paragraph (e)(1) of this section.

■ 7. Section 240.18a–5 is amended by adding paragraphs (a)(10)(iii) and (b)(8)(iii) to read as follows:

§ 240.18a–5 Records to be made by certain security-based swap dealers and major security-based swap participants

* * * * *

(a) * * *

(10) * * *

(iii) Notwithstanding paragraph (a)(10)(i) of this section:

(A) A security-based swap dealer or major security-based swap participant is not required to make and keep current a questionnaire or application for employment executed by an associated person if the security-based swap dealer or major security-based swap participant is excluded from the prohibition in section 15F(b)(6) of the Exchange Act (15 U.S.C. 78o–10(b)(6)) with respect to such associated person; and

(B) A questionnaire or application for employment executed by an associated person who is not a U.S. person (as that term is defined in § 240.3a71–3(a)(4)(i)(A)) need not include the information described in paragraphs (a)(10)(i)(A) through (H) of this section, unless the security-based swap dealer or major security-based swap participant is required to obtain such information under applicable law in the jurisdiction in which the associated person is employed or located or obtains such information in conducting a background check that is customary for such firms in that jurisdiction and the creation or maintenance of records reflecting that information, would not result in a violation of applicable law in the jurisdiction in which the associated person is employed or located; *provided, however,* the security-based swap dealer or major security-based swap participant must comply with section 15F(b)(6) of the Exchange Act (15 U.S.C. 78o–10(b)(6)).

* * * * *

(b) * * *

(8) * * *

(iii) Notwithstanding paragraph (b)(8)(i) of this section;

(A) A security-based swap dealer or major security-based swap participant is not required to make and keep current a questionnaire or application for employment executed by an associated

person if the security-based swap dealer or major security-based swap participant is excluded from the prohibition in section 15F(b)(6) of the Exchange Act (15 U.S.C. 78o–10(b)(6)) with respect to such associated person; and

(B) A questionnaire or application for employment executed by an associated person who is not a U.S. person (as that term is defined in § 240.3a71–3(a)(4)(i)(A)) need not include the information described in paragraphs (b)(8)(i)(A) through (H) of this section, unless the security-based swap dealer or major security-based swap participant is required to obtain such information under applicable law in the jurisdiction in which the associated person is employed or located or obtains such information in conducting a background check that is customary for such firms in that jurisdiction and the creation or maintenance of records reflecting that information would not result in a violation of applicable law in the jurisdiction in which the associated person is employed or located; *provided, however,* the security-based swap dealer or major security-based swap participant must comply with Section 15F(b)(6) of the Exchange Act (15 U.S.C. 78o–10(b)(6)).

* * * * *

By the Commission.

Dated: December 18, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–27760 Filed 2–3–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87781]

Order Designating Certain Jurisdictions as ''Listed Jurisdictions'' for Purposes of Applying the Security-Based Swap Dealer De Minimis Exception of Rule 3a71–3(d) Under the Exchange Act to Certain Cross-Border Security-Based Swap Transactions

I. Introduction

Rule 3a71–3 under the Securities Exchange Act of 1934 (the ''Exchange Act'') in part addresses the cross-border application of the ''security-based swap dealer'' definition, including the cross-border application of the *de minimis* exception to that definition.[1] Under the rule, non-U.S. persons that engage in security-based swap dealing activity are required to count—against the thresholds associated with the *de minimis* exception—their dealing transactions with non-U.S. counterparties if those dealing transactions were ''arranged, negotiated, or executed'' using U.S. personnel.[2]

By separate action, the Commission has amended Rule 3a71–3 by adding new paragraph (d) to incorporate a conditional exception from the ''arranged, negotiated, or executed'' counting requirement.[3] That conditional exception is intended to address certain operational and market concerns that otherwise could arise were transactions to be counted against the applicable *de minimis* thresholds requirement solely because a transaction between two non-U.S. counterparties results from activity by U.S. personnel.[4] The Rule 3a71–3(d) exception is subject to a number of conditions designed to help protect the important interests that underpin the ''arranged, negotiated, or executed'' counting requirement. Those include, *inter alia,* the ''listed jurisdiction'' condition that is the subject of this Order.[5]

II. ''Listed Jurisdiction'' Condition to the Exception

A. The ''Listed Jurisdiction'' Condition

To take advantage of the Rule 3a71–3(d) exception, the non-U.S. person must be subject to the margin and capital requirements of a ''listed jurisdiction'' when engaging in transactions subject to the exception from the ''arranged, negotiated, or executed'' counting requirement.[6]

The Commission has explained that the ''listed jurisdiction'' condition is intended to deter dealers from attempting to use the exception to avoid Title VII ''by simply booking their transactions to entities in jurisdictions that do not effectively require security-based swap dealers or comparable entities to meet certain financial responsibility standards.'' [7] Otherwise, the exception could ''provide a competitive advantage to non-U.S. persons that conduct security-based swap dealing activity in the United States without being subject to sufficient financial responsibility standards.'' [8] The Commission also expressed the view that the ''listed jurisdiction'' condition is consistent with the view that applying capital and margin requirements to transactions between two non-U.S. persons that have been arranged, negotiated, or executed in the United States can help mitigate the potential for financial contagion to spread to U.S. market participants and to the U.S. financial system more generally.[9]

B. Designation of ''Listed Jurisdictions''

The exception provides that the Commission conditionally or unconditionally may determine ''listed jurisdictions'' by order, in response to applications or upon the Commission's own initiative.[10] The Commission by order, after notice and opportunity for comment, may modify or withdraw a listed jurisdiction determination if it determines that continued listed jurisdiction status no longer would be in the public interest based on a number of factors.[11]

When evaluating a foreign jurisdiction's potential status as a ''listed jurisdiction,'' the Commission may consider factors relevant for purposes of assessing whether such an order would be in the public interest. These may include the ''[a]pplicable margin and capital requirements of the foreign financial regulatory system.'' [12] These also may include the ''effectiveness of the supervisory compliance program administered by, and the enforcement authority exercised by, the foreign financial regulatory authority in connection with such requirements, including the application of those requirements in connection

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[1] The term ''security-based swap dealer'' is defined in Exchange Act Section 3(a)(71) and further defined by Exchange Act Rules 3a71–1 through 3a71–5. Section 3(a)(71)(D) provides that the Securities and Exchange Commission (the ''SEC'' or the ''Commission'') shall promulgate regulations to establish factors with respect to the making of any determination to exempt a security-based swap dealer that engages in a *de minimis* quantity of security-based swap dealing. Persons whose dealing activities exceed the *de minimis* thresholds set by the Commission will be required to register as security-based swap dealers.

Regulation of security-based swap dealers is a key component of the security-based swap market oversight that was granted to the Commission by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'').

[2] *See* Exchange Act Rule 3a71–3(b)(1)(iii)(C). The ''arranged, negotiated, or executed'' counting rule advances a number of important regulatory interests, in part by helping to protect against the potential that market participants would use booking practices to engage in an unregistered security-based swap dealing business in the United States. The use of those ''arranged, negotiated, or executed'' criteria further reflect the activity focus of the ''security-based swap dealer'' definition, as well as considerations regarding competitive disparities, market fragmentation and public transparency.

[3] *See* Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements, Exchange Act Release No. 87780 (Dec. 18, 2019) (''Cross-Border Amendments Adopting Release''). That release also addressed a number of additional topics in connection with the cross-border application of security-based swap dealer requirements.

[4] Those included concerns that non-U.S. dealers would avoid using U.S. personnel, and potentially would relocate U.S. personnel, as well as concerns that application of the counting requirement would be burdensome and would result in market fragmentation and lower liquidity levels. The exception also addressed concerns that the counting requirement could lead financial groups to have to register multiple entities, and concerns regarding disparate approaches from those followed by the Commodity Futures Trading Commission. *See* Part II of the Cross-Border Amendments Adopting Release.

[5] *See* paragraph (d)(1) to Rule 3a71–3 for the conditions to the conditional exception.

[6] *See* paragraph (d)(1)(v) to Rule 3a71–3. The term ''listed jurisdiction'' is defined as ''any jurisdiction that the Commission by order has designated as a listed jurisdiction'' for purposes of the exception. *See* paragraph (a)(12) to Rule 3a71–3.

[7] *See* Part II.C.5.b of the Cross-Border Amendments Adopting Release.

[8] *Id.*

[9] *Id.*

[10] *See* paragraph (d)(2) to Rule 3a71–3. Applications may be made by a party or group of parties that potentially would seek to rely on the exception, or by any foreign financial regulatory authority or authorities supervising such a party or its security-based swap activities. *See* paragraph (d)(2)(i) to Rule 3a71–3. Exchange Act Rule 0–13 sets forth the procedures for filing ''listed jurisdiction'' applications.

[11] *See* paragraph (d)(2)(iii) to Rule 3a71–3. In light of the importance of the Commission being able to access information outside the United States regarding the transactions at issue, the determination to modify or withdraw listed jurisdiction status may be based on a jurisdiction's laws or regulations that have had the effect of preventing the Commission or its representatives on request to promptly access information or documents regarding the activities of the non-U.S. persons relying on the exception. *See* paragraph (d)(2)(iii)(B) to Rule 3a71–3. Withdrawal or modification further may be based on any other factor the Commission determines to be relevant. *See* paragraph (d)(2)(iii)(C) to Rule 3a71–3.

[12] *See* paragraph (d)(2)(ii)(A) to Rule 3a71–3. In addition, in assessing a jurisdiction's applicable margin and capital requirements, the Commission would expect to consider whether the margin and capital requirements at issue would apply to entities who transact in security-based swaps and limit a designation accordingly. *See* Part II.C.5.b of the Cross-Border Amendments Adopting Release.

with an entity's cross-border business.'' [13]

In adopting the exception, the Commission rejected a commenter view that all G–20 jurisdictions should be deemed to be ''listed jurisdictions.'' [14] While the Commission recognizes that reforms initiated by the G–20 can be relevant for assessing listed jurisdiction status, the implementation of capital and margin requirements, as well as associated supervision or enforcement practices, has the potential to vary significantly across G–20 jurisdictions. Also, many G–20 jurisdictions do not have substantial swap or security-based swap markets, and thus may not necessarily have the incentives or resources needed to promote the effective oversight of those markets.

The Commission also distinguished the evaluation of ''listed jurisdictions'' from the Commission's consideration of whether substituted compliance is appropriate in connection with foreign capital and margin requirements.[15] Although ''listed jurisdiction'' determinations may raise issues that are analogous to those that would accompany applications for substituted compliance, the determinations are made in materially distinct contexts. The Commission accordingly may reach different conclusions when considering substituted compliance than it does when considering listed jurisdiction status for the same jurisdiction.[16]

III. Designation of Specific ''Listed Jurisdictions''

For the reasons set forth below, the Commission has determined that it is in the public interest to designate the following jurisdictions as ''listed jurisdictions'' for purposes of the exception: Australia, Canada, France, Germany, Japan, Singapore, Switzerland, and the United Kingdom (the ''Initial Listed Jurisdictions'').[17]

[13] *See* paragraph (d)(2)(ii)(B) to Rule 3a71–3.

[14] *See* Part II.C.5.b of the Cross-Border Amendments Adopting Release.

[15] *See* Part II.C.5.b of the Cross-Border Amendments Adopting Release.

[16] For example, in designating a jurisdiction as a ''listed jurisdiction'' for purposes of the exception, the Commission would not assess whether the foreign margin and capital regime is comparable to the applicable requirements under the Exchange Act. *Cf.* Exchange Act Rule 3a71–6(a)(2)(i) (in a substituted compliance determination the requirements of the foreign regulatory system must be comparable). In addition, unlike the context of substituted compliance, the entities at issue would not be registered with the Commission.

[17] In proposing the conditional exception to the ''arranged, negotiated, or executed'' counting requirement, the Commission solicited comment regarding whether listed jurisdiction status would be appropriate for those jurisdictions, along with Hong Kong. *See* Proposed Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements, Exchange Act Release No. 85823 (May 10, 2019), 84 FR 24206, 24226 (May 24, 2019)(''Cross-Border Proposing Release''). As noted above, one commenter suggested that all G–20 jurisdictions should be deemed to be listed jurisdictions—a view that the Commission does not share. *See* note 14, *supra,* and accompanying text. No other commenters directly addressed whether listed jurisdiction status was appropriate for any of the named jurisdictions. The Commission notes that The Hong Kong Monetary Authority has proposed heightened capital requirements to address the risks presented by non-centrally cleared derivatives that follow the G–20 recommendations but has not yet implemented those requirements. As such the Commission has not designated Hong Kong at this time. In accordance with Rule 3a71–3(d)(2)(i), the Commission will consider applications for orders for listed jurisdiction designation from a party or group of parties that would potentially seek to rely on the Rule 3a71–3(d) exception or by any foreign regulatory authority supervising such a party or its security-based swap activities.

On the basis of DTCC Derivatives Repository Limited Trade Information Warehouse (''TIW'') transactions and positions data on single-name credit swaps, the Commission believes that entities currently transacting in security-based swaps in the Initial Listed Jurisdictions are highly likely to be engaged in security-based swap transactions that they would otherwise be required to count toward the *de minimis* thresholds. For this purpose, the analysis of the current state of the security-based swap market is based on data obtained from the TIW, especially data regarding the activity of market participants in the single-name CDS market during the period from 2008 to 2017.

[18] *See* Exchange Act Section 15F(e)(3).

[19] *See* G–20, Leaders Statement: Pittsburgh Summit (Sept. 24–25, 2009) (''G–20 2009 Statement''), *available at www.g20.utoronto.ca/2009/2009communique0925.html.*

[20] *See* G–20, Cannes Summit Final Declaration (Nov. 4, 2011), *available at www.g20.utoronto.ca/2011/2011-cannes-declaration-111104-en.html.*

[21] Earlier this year, the Commission adopted capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants. *See* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Exchange Act Release No. 86175 (Jun. 21, 2019), 84 FR 43872 (Aug. 22, 2019) (''Capital, Margin and Segregation Adopting Release''). The objective of the new capital requirements is to ensure that entities maintain sufficient liquid assets to satisfy liabilities promptly and to provide a cushion of liquid assets in excess of liabilities to cover potential market, credit and other risks. Capital, Margin and Segregation Adopting Release, 84 FR at 43947. The G–20 capital framework serves to improve the OTC derivatives market through higher capital requirements for non-centrally cleared contracts. *See* G–20 2009 Statement. Further, the Capital, Margin and Segregation Adopting Release adopted final margin rules for non-centrally cleared derivatives that address counterparty risks arising from these transactions. *See* Exchange Act Rule 18a–3; *see also* Capital, Margin and Segregation Adopting Release, 84 FR at 43910.

[22] Measures adopted by the APRA to address these risks include, among other things, the SA–CCR approach and capital requirements for bank exposures to central counterparties consistent with the G–20 framework. *See* APRA, Prudential Standard APS 180, Capital Adequacy: Standardized Approach to Credit Risk (July 2019).

Only non-U.S. persons that are subject to the margin and capital requirements applicable to entities that transact in security-based swaps of an Initial Listed Jurisdiction may rely on the listed jurisdiction designations that are the subject of this Order.

A. Implementation of Financial Responsibility Reforms

The Commission's action in part reflects consideration of financial responsibility regulation in the Initial Limited Jurisdictions, as well as the steps that those jurisdictions have taken to implement financial responsibility reforms. To offset the greater risk to security-based swap dealers from non-cleared security-based swaps, the Dodd-Frank Act mandated financial responsibility reform through capital and margin requirements that would help ensure the safety and soundness of security-based swap dealers and be appropriate for the risk associated with non-cleared security-based swaps.[18] In 2009, the G–20 made recommendations for financial responsibility reforms intended in part to reduce systemic risk attributable to over-the-counter (''OTC'') derivatives, including a recommendation that non-centrally cleared derivatives contracts should be subject to higher capital requirements.[19] As noted below, each of the Initial Listed Jurisdictions has adopted heightened capital requirements that address the risks presented by OTC derivatives.

In 2011, the G–20 recommended that margin requirements on non-centrally cleared derivatives be added to the reforms.[20] As noted below, each of the Initial Listed Jurisdictions has implemented margin requirements that address the counterparty risks presented by these derivatives products. While recognizing that the capital and margin rules and regulations of the Initial Listed Jurisdictions are not the same as those of the Commission,[21] the Commission believes that those jurisdictions' rules and regulations apply sufficient financial responsibility requirements on the relevant entities to support designation as ''listed jurisdictions.''

1. Australia

The Australian Prudential Regulation Authority (''APRA'') has adopted capital requirements for ''authorized deposit-taking institutions'' designed to address the unique risks of OTC derivatives.[22] Further, the APRA has adopted margin requirements to address the counterparty risks of non-centrally cleared derivatives. To do this, among other things, APRA's margin regime incorporates variation and initial margin

calculations and methodologies and additional risk mitigation requirements.[23]

2. Canada

Canada's Office of the Superintendent of the Financial Institutions (''OSFI'') has adopted capital requirements for federally regulated financial institutions that reflect heightened capital for non-centrally cleared derivatives.[24] In addition, OSFI has adopted margin requirements that address the counterparty risks of non-centrally cleared derivatives and which, among other things, establish minimum standards for variation and initial margin and collateral requirements for non-centrally cleared derivative transactions undertaken by federally regulated financial institutions.[25]

3. France/Germany/United Kingdom [26]

In 2012, the European Commission (''EC'') adopted the European Market Infrastructure Regulation (''EMIR'') in response to the G–20 leaders' statements on reform of the OTC derivatives market. Pursuant to EMIR, the EC adopted and has since revised capital requirements for financial institutions which are intended to address the risks of the OTC derivatives market and that reflect heightened capital for non-centrally cleared derivatives.[27] In addition, the EC has issued margin standards which set forth risk mitigation techniques for non-centrally cleared derivatives, including variation and initial margin calculations and methodologies, with the objective of reducing counterparty credit risk and mitigating systematic risk.[28] The capital and margin standards are found in EC regulations which are directly applicable to all EU member states without any further implementing measures.

4. Japan

The Japan Financial Services Agency (''JFSA'') has implemented specific financial responsibility reforms that include capital and margin requirements to address the risks of non-centrally cleared derivative products.[29] For example, the JFSA margin requirements include variation and initial margin calculations and methodologies that address the counterparty risks of non-centrally cleared derivatives.[30]

5. Singapore

The Monetary Authority of Singapore (''MAS'') has adopted heightened capital requirements in response to the G–20 recommendations for non-centrally cleared derivatives.[31] Further, the MAS has implemented a margin regime including variation and initial margin standards and collateral requirements with regard to non-centrally cleared derivatives.[32]

6. Switzerland

As part of its financial responsibility rules reform, the Swiss Federal Council has implemented heightened capital requirements to address the risks of

[23] The margin requirements adopted by the APRA are based on the Basel Committee on Banking Supervision (''BCBS'') and International Organization of Securities Organizations (''IOSCO'') standards on margining for non-centrally cleared derivatives. *See* APRA, Prudential Standard CPS 226, Margining and Risk Mitigation for Non-Centrally Cleared Derivatives (October 2019) (''CPS 226''). Consistent with the G–20 framework, the regulatory objectives of CPS 226 are to improve prudential safety, reduce systemic risk and promote central clearing. *See* CPS 226 Explanatory Statement, Page 4.

[24] *See* Office of the Superintendent of Financial Institutions, Guideline: Capital Adequacy Requirements (October 2018) (''CAR Guideline''). OSFI's CAR Guideline provides a framework for assessing the capital adequacy of federally regulated institutions and includes, among other things, the implementation of the SA–CCR methodology consistent with the G–20 framework. The CAR Guideline is updated periodically to ensure that capital requirements continue to reflect underlying risks and developments in the financial industry. *See* CAR Guideline.

[25] *See* Office of the Superintendent of Financial Institutions, Guideline E–22: Margin Requirements for Non-centrally Cleared Derivatives (October 2016) (''Guideline E–22'').

For the purposes of the OSFI Guidelines, federally regulated financial institutions refer to ''banks, foreign bank branches, bank holding companies, trust and loan companies, cooperative credit associations, cooperate retail associations, life insurance companies, property and casualty insurance companies and insurance holding companies.'' *See* Footnote 1 of Guideline E–22. The provincial Canadian securities regulators have not yet adopted margin and collateral requirements for non-centrally cleared derivatives but continue to monitor international developments as they consider recommendations of the Canadian Securities Administrators based on the G–20 framework. See Canadian Securities Administrators Staff Notice 95–301 Margin and Collateral Requirements for Non-Centrally Cleared Derivatives (Aug. 22, 2019).

[26] The United Kingdom has published its OTC derivatives regime that will come into force on the day it leaves the European Union (''EU''), which follows the existing body of applicable EU derivatives law. *See* Draft Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018.

[27] Addressing the risks of non-centrally cleared derivatives, the EU capital requirements are more risk sensitive than previous methods and include, among other things, the SA–CCR, consistent with the BCBS–IOSCO standard. Regulation (EU) 2019/876 of the European Parliament and of the Council of May 20, 2019 Amending Regulation (EU) No. 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (''CRR2''). In addition, the EC issued a directive related to supervisory functions of the EU member states as they relate to CRR2. *See* Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU. A directive is a legal act of the European Union that requires member states to achieve a particular result without dictating the means of achieving that result. Directives are distinguished from regulations which are self-executing and do not require any implementing measures. As a regulation, CRR2 will be directly applicable to all EU member states without any implementing measures. The Commission notes that, while CRR2 has been adopted, it will not be in force until June 28, 2021; however, this date is consistent with the compliance dates of the applicable U.S. security-based swap market rules adopted under the Dodd-Frank Act. The related supervisory directive requires action by individual member states to implement.

[28] Commission Delegated Regulation (EU) No. 2016/2251 of October 5, 2016 Supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of July 4, 2012 on OTC Derivatives, Central Counterparties and Trade Repositories with Regard to Regulatory Technical Standards for Risk-Mitigation Techniques for OTC Derivate Contracts Not Cleared by a Central Party (as corrected by Commission Delegated Regulation (EU) 2017/323 of January 20, 2017 and Regulation (EU) 2019/834 of May 20, 2019) (''RTS''). The RTS supplements the requirements of EMIR with more detailed direction with respect to margin requirements and, as a regulation, is directly applicable in all countries that are members of the EU. *See* RTS, Explanatory Memorandum at 3.

[29] *See https://www.fsa.go.jp/en/newsletter/weekly2018/287.html.* The JFSA capital rules include the standardized capital requirements consistent with the BCBS–IOSCO framework, although the JFSA has allowed certain interim capital requirements to remain in place as a transitional measure to address cross-border concerns. In addition, the JFSA promulgated margin requirements and guidelines under the Financial Instruments and Exchange Act, No. 25 of 1948.

[30] *See* Cabinet Office Ordinance on Financial Instruments Business (Cabinet Office Ordinance No. 52 of August 6, 2007), including supplementary provisions; Comprehensive Guideline for Supervision of Major Banks, etc., Comprehensive Guidelines for Supervision of Regional Financial Institutions, Comprehensive Guidelines for Supervision of Cooperate Financial Institutions, Comprehensive Guideline for Supervision of Financial Instruments Business Operators, etc., Comprehensive Guidelines for Supervision of Insurance Companies, and Comprehensive Guidelines for Supervision of Trust Companies, etc.; JFSA Public Notification No. 15 of March 31, 2016, JFSA Public Notification No. 16 of March 31, 2016, JFSA Public Notification No. 17 of March 31, 2016.

[31] For example, among other things, the MAS capital requirements incorporate the SA–CCR approach and capital requirements for bank exposures to central counterparties. MAS Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore (14 September 2012)(last revised 10 June 2019). The MAS has provided a transitional period during which compliance with the new standards is voluntary.

[32] *See* MAS Guidelines on Margin Requirements for Non-Centrally Cleared OTC Derivatives Contracts, Guideline No. SFA 15–G03, Issue Date: 6 December 2016 (last revised July 26, 2019 to exclude security-based swaps from the variation margin and initial margin requirements until February 29, 2020).

non-centrally cleared derivatives.[33] In addition, to reduce systemic risk, the Swiss Federation has adopted standards on margining and risk mitigation requirements to address the risks associated with non-centrally cleared derivatives which include variation and initial margin calculations and methodologies, along with other collateral requirements.[34]

B. Supervisory or Enforcement Practices

This action further recognizes that, based upon the Commission's current experience with regulators and authorities in each of the Initial Listed Jurisdictions, including, for example, cooperative experiences in matters of supervision or enforcement with the securities and financial regulators in the Initial Listed Jurisdictions as well as joint participation in certain international organizations and bodies,[35] the Commission does not have reason to believe that the supervisory or enforcement practices in those jurisdictions would encourage market participants to restructure and book transactions into those jurisdictions to take advantage of a regulatory environment that as a practical matter does not require firms to comply with heightened capital requirements for OTC derivatives positions.[36]

C. Location of Firms Likely To Engage in Security-Based Swap Dealing Activity Using Personnel Located in the United States

This action also accounts for the Commission's understanding of which non-U.S. firms are most likely to transact in security-based swaps using personnel located in the United States in such volume that designation of that jurisdiction by the Commission as a listed jurisdiction is warranted. This analysis is relevant both with regard to whether the foreign jurisdiction has a security-based swaps market that demonstrates a need for designation as a listed jurisdiction, and with regard to whether the applicable regulators have an incentive to effectively oversee the market. In particular, based on available data, including the volume of single-name credit default swap transactions referencing U.S. underliers, the Commission believes that dealing entities in the Initial Listed Jurisdictions are highly likely to be engaged in security-based swap transactions that they would otherwise be required to count toward the *de minimis* thresholds.[37]

More generally, the Commission also believes that the security-based swap markets in the Initial Listed Jurisdictions are sufficiently developed that, coupled with the initiatives the applicable foreign financial regulators have taken in response to the G–20 leaders' statements regarding regulation of OTC derivatives, designation as a listed jurisdiction would be in the public interest.

IV. Conclusion

For the reasons discussed above, the Commission concludes that it is in the public interest to designate the following jurisdictions as ''listed jurisdictions'' for purposes of the conditional exception, set forth in Exchange Act Rule 3a71–3(d), from having to count certain transactions involving U.S. activity against the thresholds associated with the security-based swap dealer *de minimis* exception. Accordingly,

It is hereby ordered, pursuant to Exchange Act Rule 3a71–3(a)(12) and 3a71–3(d)(2), that the following jurisdictions are designated as listed jurisdictions:

1. Australia;
2. Canada;[38]
3. France;
4. Germany;
5. Japan;
6. Singapore;
7. Switzerland; and
8. United Kingdom.

By the Commission.

Dated: December 18, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–27761 Filed 2–3–20; 8:45 am]

BILLING CODE 8011–01–P

[33] The Swiss Federal Council included, among other things, the SA–CCR and capital requirements for bank exposures to central counterparties in its Capital Adequacy Ordinance applicable to banks and securities dealers. *See* Swiss Federal Council, 952.03 Ordinance concerning Capital Adequacy and Risk Diversification for Banks and Securities Dealers (status as of 9 April 2019). The transition period for implementation of the SA–CCR has been extended to January 1, 2020 or longer for smaller banks with no or insignificant derivatives positions.

[34] *See* Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 19 June 2015 (status as of 1 January 2019) and Ordinance on Financial Market Infrastructure and Market Conduct in Securities and Derivatives Trading of 25 November 2015 (status as of 1 January 2019).

[35] Staff of the Commission has worked, consulted and coordinated with foreign regulatory authorities from the Initial Listed Jurisdictions through participation in numerous bilateral and multilateral discussions addressing the regulation of OTC derivatives. In addition, the Commission's staff has been able to gather information about foreign regulatory reform efforts through its participation in various international organizations including the Financial Stability Board (''FSB''), the BCBS, IOSCO, and committees, task forces and working groups thereof, such as the FSB's Working Group on OTC Derivatives Regulation and IOSCO's Working Group on Margining Requirements.

[36] The Commission notes that supervision and enforcement of the EU derivatives regulatory regime is conducted at the member state level and, therefore, in considering ''listed jurisdiction'' status, the Commission considered the status of derivatives market supervision and enforcement at the member state level.

[37] *See* note 17, *supra.*

[38] With respect to Canada's ''listed jurisdiction'' designation, only federally regulated financial institutions that are subject to the OSFI requirements may rely on the ''listed jurisdiction'' condition that is the subject of this Order.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–87782; File No. S7–28–18]

RIN 3235–AL83

Risk Mitigation Techniques for Uncleared Security-Based Swaps

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is adopting final rules requiring the application of specific risk mitigation techniques to portfolios of uncleared security-based swaps. In particular, these final rules establish requirements for each registered security-based swap dealer (''SBS dealer'') and each registered major security-based swap participant (''major SBS participant'') (each SBS dealer and each major SBS participant hereafter referred to as an ''SBS Entity'' and together referred to as ''SBS Entities'') with respect to, among other things, reconciling outstanding security-based swaps with applicable counterparties on a periodic basis, engaging in certain forms of portfolio compression exercises, as appropriate, and executing written security-based swap trading relationship documentation with each of its counterparties prior to, or contemporaneously with, executing a security-based swap transaction. In addition, the Commission is issuing an interpretation addressing the application of the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements to cross-border security-based swap activities and is amending its regulations to address the potential availability of substituted compliance in connection with those requirements. Lastly, the final rules include corresponding amendments to the recordkeeping, reporting, and notification requirements applicable to SBS Entities.

DATES:

Effective Date: These final rules and rule amendments are effective April 6, 2020.

Compliance Date: The compliance date is discussed in Section V of this adopting release.

FOR FURTHER INFORMATION CONTACT: Carol McGee, Assistant Director, or Andrew Bernstein, Senior Special Counsel, at (202) 551–5870, Office of Derivatives Policy, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8010.

SUPPLEMENTARY INFORMATION: The Commission is adopting the following new rules:

Commission reference	CFR citation (17 CFR)
Securities Exchange Act of 1934 (''Exchange Act''): [1]	
Rule 15Fi–3	§ 240.15Fi–3.
Rule 15Fi–4	§ 240.15Fi–4.
Rule 15Fi–5	§ 240.15Fi–5.

The Commission also is adopting amendments to:

Commission reference	CFR citation (17 CFR)
Exchange Act:	
Rule 3a71–6	§ 240.3a71–6.
Rule 15Fi–1	§ 240.15Fi–1.
Rule 17a–3	§ 240.17a–3.
Rule 17a–4	§ 240.17a–4.
Rule 18a–5	§ 240.18a–5.
Rule 18a–6	§ 240.18a–6.

Table of Contents

[1] 15 U.S.C. 78a *et seq.*

I. Background

Section 15F(i)(1) of the Exchange Act, as added by Section 764(a) of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''),[2] requires each SBS Entity to conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.[3] Section 15F(i)(2) of the Exchange Act provides that the Commission shall adopt rules governing documentation standards for SBS Entities.[4]

In June 2016, the Commission adopted rules requiring SBS Entities to provide trade acknowledgments and to verify those trade acknowledgments with their counterparties to security-based swap transactions.[5] At the time, however, the Commission had not proposed rules concerning other documentation requirements, such as portfolio reconciliation, portfolio compression, or trading relationship documentation. By contrast, in 2012 the Commodity Futures Trading Commission (''CFTC'') implemented rules setting forth standards for the timely and accurate confirmation of swaps, as well as addressing the reconciliation and compression of swap portfolios and setting forth requirements for documenting the swap trading relationship between swap dealers or major swap participants (each swap dealer and each major swap participant hereafter referred to as a ''Swap Entity'' and together referred to as ''Swap Entities'') and their counterparties.[6]

Accordingly, on December 19, 2018, the Commission proposed Rules 15Fi–3, 15Fi–4, and 15Fi–5, which would establish requirements applicable to SBS Entities addressing, among other things, reconciling and compressing portfolios of uncleared security-based swaps and executing written trading relationship documentation with each counterparty prior to or contemporaneously with executing an uncleared security-based swap.[7] As the Commission explained in the Trade Acknowledgement and Verification Adopting Release, the process of confirming the terms of a transaction is essential for SBS Entities ''to effectively measure and manage market and credit risk.'' [8] In particular, ''a backlog of unconfirmed trades could hinder the settlement process, particularly if errors go undetected or a counterparty disputes the terms of a transaction.'' [9] Such disruptions or breakdowns in the settlement process resulting from unconfirmed trades could, in turn, lead to broader market instability in the case of a credit event involving a reference entity on which many different counterparties have, in the aggregate, a large notional outstanding exposure.[10]

In this regard, portfolio reconciliation addresses many of these same issues, but unlike the confirmation process, which occurs at the outset of a transaction, reconciliation operates throughout the life of the transaction. If a discrepancy is *not* identified during the trade acknowledgement and verification process, such discrepancy could still be identified during a subsequent reconciliation exercise. Furthermore, even if a security-based swap transaction is accurately confirmed by both parties during the trade acknowledgement and verification process, reconciliation would help to identify any discrepancies in terms that do not remain constant throughout the life of a trade.

Accordingly, portfolio reconciliation serves as an important mechanism for promoting risk mitigation by requiring security-based swap counterparties to have established processes for identifying and resolving discrepancies involving key terms of their transactions. To illustrate this point, if a term necessary for calculating the market value of a security-based swap is not accurately confirmed during the trade acknowledgment and verification process, due for example to some form of systems or human error, that discrepancy could lead to complications at various points throughout the life of the transaction, which could become particularly problematic if it remains undetected until the parties are required to perform on their obligations.[11] Thus, portfolio reconciliation could help to mitigate the possibility of a discrepancy unexpectedly affecting performance under the security-based swap

[2] Public Law 111–203, 124 Stat. 1376 (2010). Unless otherwise indicated, references to ''Title VII'' in this release are to Subtitle B of Title VII of the Dodd-Frank Act.

[3] 15 U.S.C. 78o–10(i)(1).

[4] 15 U.S.C. 78o–10(i)(2).

[5] *See* Trade Acknowledgment and Verification of Security-Based Swap Transactions, Exchange Act Release No. 78011 (June 8, 2016), 81 FR 39807 (June 17, 2016) (''Trade Acknowledgment and Verification Adopting Release'').

[6] *See* Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904 (Sept. 11, 2012) (''CFTC Risk Mitigation Adopting Release''). Other jurisdictions, such as the European Commission (''EC'') and Republic of Singapore, have implemented similar measures. *See* Commission Delegated Regulation (European Union (EU)) No. 149/2013 (Dec. 18, 2012) supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for over-the-counter (''OTC'') derivatives contracts not cleared by a central counterparty (Feb. 23, 2013), *available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0011:0024:en:PDF;* and Monetary Authority of Singapore, Guidelines on Risk Mitigation Requirements for Non-Centrally Cleared Over-The-Counter Derivatives Contracts, (published on Apr. 25, 2019), *available at: https://www.mas.gov.sg/regulation/guidelines/guidelines-on-risk-mitigation-requirements-for-non-centrally-cleared-otc-derivatives-contracts.* Regulatory authorities in other jurisdictions (*e.g.,* the Hong Kong Monetary Authority) have also proposed requirements similar to those adopted by the CFTC and the EC. In addition, the Canadian Securities Administrators (''CSA'') published a consultation paper in 2016 proposing a requirement that financial institutions enter into a written agreement documenting the material terms and conditions of any non-centrally cleared derivative, including standards related to the maintenance, review, and contents of that documentation. *See* CSA Consultation Paper 95–401—Margin and Collateral Requirements for Non-Centrally Cleared Derivatives (Jul. 7, 2016), *available at: http://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20160707_95-401_collateral-requirements-cleared-derivatives.pdf.*

[7] *See* Risk Mitigation Techniques for Uncleared Security-Based Swaps, Exchange Act Release No. 84861 (Dec. 19, 2018), 84 FR 4614 (Feb. 15, 2019) (''Proposing Release'').

[8] *See* Proposing Release, 84 FR at 4616 (citing Trade Acknowledgement and Verification Adopting Release, 81 FR at 39833).

[9] *Id.*

[10] *Id.*

[11] *See* Summary of OTC Commitments, Attachment to the July 31, 2008 letter from the Operations Management Group to Timothy Geithner, President, Federal Reserve Bank of New York (''FRBNY''), *available at: https://www.newyorkfed.org/medialibrary/media/newsevents/news/markets/2008/CommitmentSummaryTable.pdf* (''Positive affirmation of trade economics is a key risk mitigation technique for OTC derivatives because it assures that each counterparty's risk management systems accurately reflect the economic details of trades that have not yet been matched.''). Although this specific commitment was made in the context of the trade affirmation process, we believe that the same basic principle supports the need to reconcile terms throughout the life of a trade, even if a term is accurately reflected in a firm's system as a result of the affirmation process, particularly in the case of terms that do not remain constant during the life of a trade.

transaction by increasing the likelihood that the parties are and remain in agreement with respect to all material terms.[12]

Portfolio reconciliation is especially relevant with respect to terms used to perform a valuation of the financial instrument. Specifically, unresolved discrepancies regarding the value of a security-based swap can lead to, among other things, difficulties in the application of any processes that depend on the valuation being accurate, such as determining the amount of margin that must be posted or collected during the life of a security-based swap transaction. In the aggregate, such errors and other complications could result in significant uncollateralized exposure in the uncleared security-based swap markets (or, alternatively, potentially inefficient overcollateralization).[13]

In addition, valuation discrepancies identified during reconciliation could help to identify problems with one or both of the counterparties' internal valuation systems and models, or possibly even with a firm's internal controls. For example, in a report analyzing federal assistance to American International Group, Inc. (''AIG'') following the events of September 2008, the General Accountability Office (''GAO'') noted that in structuring this relief one of the many open issues the FRBNY had to address was the number of collateral disputes AIG had with its counterparties.[14] GAO further explained that ''[t]o the extent that lower valuations (more CDO value lost) produced greater collateral postings, counterparties had an interest in seeking lower valuations. Similarly, to the extent that higher valuations (less CDO value lost) meant smaller collateral postings, AIG had an interest in seeking higher valuations.'' [15]

Portfolio compression is another process that should help SBS Entities better manage their outstanding security-based swap transactions, albeit in a different way. Portfolio compression generally refers to a post-trade processing exercise that allows two or more market participants to eliminate redundant derivatives transactions within their portfolios in a manner that does not change their net exposure. Compression exercises typically take place in ''cycles,'' whereby each participating counterparty designates particular contracts within its portfolio as being eligible for compression and specifies its risk tolerances with respect to the composition of its derivatives portfolio following completion of the cycle.[16] Following an analysis of the submitted contracts, counterparties may be provided with the option of terminating or modifying those contracts and replacing them with a smaller number of substantially similar contracts. In most cases, the gross notional value of the position is reduced, although the counterparty's net exposure, represented by the replacement and remaining contracts, typically remains the same.[17]

By reducing the total number of open contracts, portfolio compression is intended to help market participants manage their post-trade risks in a number of important ways. For example, two or more counterparties that are active in the OTC derivatives markets might have built up positions in the same (or comparable) products that, when analyzed at the portfolio level across all applicable counterparties, offset each other. Eliminating these offsetting and redundant uncleared derivatives transactions through compression—as measured both by the number of contracts and the total notional value—reduces a market participant's gross exposure to its direct counterparties, including by eliminating all exposure to certain counterparties.[18] Reducing the total number of outstanding contracts within a derivatives portfolio also provides important operational benefits and efficiencies for market participants in that there are fewer open contracts to manage, maintain, and settle, resulting in fewer opportunities for processing errors, failures, or other problems that could develop throughout the lifecycle of a transaction.[19] Accordingly, the Commission believes that the use of portfolio compression by SBS Entities, where appropriate (and to the extent that such activity is not already occurring), should provide important processing improvements consistent with the overall framework of Section 15F(i) of the Exchange Act.[20]

Finally, just as portfolio reconciliation is designed to allow counterparties to manage their internal risks by better ensuring agreement with respect to the material terms and valuation of the transaction (and thereby avoiding complications at various points throughout the life of the transaction), requiring each SBS Entity to document the terms of the trading relationship with each of its counterparties before executing a new security-based swap transaction should promote sound collateral and risk management practices by enhancing transparency and legal certainty regarding each party's rights and obligations under the transaction. This, in turn, should help to reduce counterparty credit risk and promote certainty regarding the agreed-upon valuation and other material terms of a security-based swap.[21] Having

[12] *See* Proposing Release, 84 FR at 4616.

[13] *See id.*

[14] *See* GAO, Financial Crisis: Review of Federal Reserve System Financial Assistance to American International Group, Inc., GAO–11–616 (Sept. 2011), *available at: http://www.gao.gov/assets/590/585560.pdf* (''According to information we reviewed, on a [collateralized debt obligation (''CDO'')] portfolio of $71 billion . . ., AIG and its counterparties had valuation differences totaling $4.3 billion. Among a group of 15 counterparties, 9 had valued their assets differently than AIG.'').

[15] *Id.* at 82.

[16] *See, e.g.,* ISDA Study, Interest Rate Swaps Compression: A Progress Report, (Feb. 2012), *available at: http://www2.isda.org/attachment/NDAzMw==/IRS%20compression%20progress%20report%20-%20Feb%202012.pdf.*

[17] In 2011, the Commission issued an order granting temporary exemptions from the requirement to register as a clearing agency under Section 17A of the Exchange Act for entities providing certain clearing services for security-based swaps including, among other things, tear-up and compression services. That order contains general descriptions of the portfolio compression process, based on discussions between Commission staff and market participants prior to the issuance of the exemptive order. *See* Order Pursuant to Section 36 of the Securities Exchange Act of 1934 Granting Temporary Exemptions from Clearing Agency Registration Requirements under Section 17A(b) of the Exchange Act for Entities Providing Certain Clearing Services for Security-Based Swaps, Exchange Act Release No. 64796 (Jul. 1, 2011), 76 FR 39963 (Jul. 7, 2011) (''Clearing Services Exemptive Order'').

[18] *See* Darrell Duffie, Ada Li, and Theo Lubke, Policy Perspectives of OTC Derivatives Market Infrastructure, FRBNY Staff Report No. 424, dated Jan. 2010, as revised Mar. 2010, *available at: http://www.newyorkfed.org/research/staff_reports/sr424.pdf* (''FRBNY OTC Derivatives Report'') (''In some types of derivatives that are not cleared, major market participants tend to build offsetting positions with different counterparties, long with one set of counterparties, and short with the others. In many cases, these offsetting positions are redundant. They serve no useful business purpose and create counterparty risk. Market participants should continue to engage in regular market-wide portfolio compression exercises in order to eliminate these redundant positions.''). *See also,* John Kiff, *et al.,* Credit Derivatives: Systemic Risks and Policy Options, IMF Working Paper No. 254 (Nov. 2009), *available at: http://www.imf.org/external/pubs/ft/wp/2009/wp09254.pdf* (''Multilateral netting, typically operationalized via 'tear-up' or 'compression' operations that eliminate redundant contracts, reduces both individual and system counterparty credit risk.'').

[19] *See* Portfolio compression platform launched to reduce CDS operational risk, Hedgeweek (Sept. 8, 2008) (explaining that a portfolio compression platform ''reduces operational risk while leaving market risk profiles unchanged,'' which is achieved ''by terminating existing trades and replacing them with a smaller number of new replacement trades that carry the same risk profile and cash flows as the initial portfolio but have less capital exposure'').

[20] *See* 15 U.S.C. 78*o*–10(i).

[21] *See, e.g.,* Sylvie A. Durham, Terminating Derivatives Transactions: Risk Mitigation and Close-Out Netting § 8:1 (Nov. 2010) (''[L]egal contractual provisions are the foundation on which

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adequate written documentation prior to, or contemporaneously with, executing a security-based swap should also facilitate the ability of the counterparties to engage in portfolio reconciliation in an efficient and cost-effective manner.

In consideration of the above, the Commission proposed new Rules 15Fi–3, 15Fi–4, and 15Fi–5 under the Exchange Act.[22] As proposed, Rule 15Fi–3 generally would have required SBS Entities, in connection with uncleared security-based swaps, to (1) engage in portfolio reconciliation with counterparties who are SBS Entities and (2) establish, maintain, and follow written policies and procedures reasonably designed to ensure that they engage in portfolio reconciliation with counterparties who are *not* SBS Entities. In both cases, the frequency of the portfolio reconciliation is based on the number of outstanding transactions with the applicable counterparty. In addition, proposed Rule 15Fi–4 would have required SBS Entities to establish, maintain, and follow written policies and procedures related to periodic bilateral and multilateral compression of uncleared security-based swaps, as well as periodic offset of uncleared security-based swaps. Finally, proposed Rule 15Fi–5 would have established certain requirements for SBS Entities related to the use of written trading relationship documentation in connection with their uncleared security-based swap transactions.

The Commission is adopting Rules 15Fi–3 through 15Fi–5, largely as proposed.[23] In developing this rulemaking, both at proposal and adoption, we have consulted and coordinated with the CFTC, the prudential regulators,[24] and foreign regulatory authorities in accordance with the consultation mandate of the Dodd-Frank Act.[25] We also have consulted and coordinated with foreign regulatory authorities through Commission staff participation in numerous bilateral and multilateral discussions with foreign regulatory authorities addressing the regulation of OTC derivatives.[26] Through these multilateral and bilateral discussions, and Commission staff's participation in various international task forces and working groups, we have gathered information about foreign regulatory reform efforts and their effect on, and relationship with, the U.S. regulatory regime. The Commission has taken, and will continue to take, these discussions into consideration in developing rules, forms, and interpretations for implementing Title VII of the Dodd-Frank Act.

Finally, the Commission continues to recognize that the CFTC rules pertaining to portfolio reconciliation, portfolio compression, and written trading relationship documentation have been in effect since 2012, and that any SBS Entity that also is registered with the CFTC as a Swap Entity will already have incurred systems and compliance costs in connection with the corresponding CFTC requirements. Accordingly, we have endeavored throughout this rulemaking to harmonize the final rules with the existing CFTC rules wherever possible. There are, however, a very limited number of provisions where we continue to believe it is appropriate to diverge from a particular aspect of the CFTC rules. Each of those differences is described below, along with an explanation of the Commission's reasons for adopting the different approach. To the extent that no such substantive difference is described, it is because we have not identified any such differences or identified only technical differences.

II. Discussion of Final Rules

A. Rule 15Fi–3: Portfolio Reconciliation

1. Scope of the Portfolio Reconciliation Requirements

As part of adopting Rule 15Fi–3, we also are amending existing Rule 15Fi–1 to add four new definitions. First, Rule 15Fi–1(l) defines ''portfolio reconciliation'' to mean any process by which the counterparties to one or more uncleared security-based swaps:

- Exchange the material terms of all security-based swaps in the security-based swap portfolio between the counterparties;
- Exchange each counterparty's valuation of each security-based swap in the security-based swap portfolio between the counterparties as of the close of business on the immediately preceding business day; and
- Resolve any discrepancy in valuations or material terms.[27]

Second, Rule 15Fi–1(o) defines the term ''security-based swap portfolio'' to mean all security-based swaps currently in effect between a particular SBS Entity

the rights and obligations of the parties are based, and sound collateral and risk management practices may be ineffective if the legal rights of the parties are not clearly set forth.'').

[22] Unless otherwise noted, all references to rules without an accompanying statutory reference are to rules adopted under the Exchange Act.

[23] As described in greater detail below, the Commission is making three changes to the proposal. First, we are adopting a single definition of ''material terms'' for purposes of the portfolio reconciliation requirements in Rule 15Fi–3 that is generally consistent with the definition used in the corresponding CFTC rule. This is in contrast to the proposed bifurcated definition. *See infra* Section II.A.1. Second, Rule 15Fi–5, unlike in the proposal, does not require an SBS Entity's written trading relationship documentation to address the allocation of any applicable regulatory reporting obligations. *See infra* Section II.C.1. Both of those changes involve provisions that were included in the proposal as part of a request for comment on how such provisions could potentially help address how a security-based swap data repository (''SDR'') may satisfy its obligation to verify the terms of each security-based swap with both counterparties to the transaction. *See* Proposing Release at 4633–4635. Finally, the Commission is modifying the scope of the exception for uncleared security-based swaps in each of Rules 15Fi–3, 15Fi–4, and 15Fi–5 to include (1) security-based swaps that are, directly or indirectly, submitted to and cleared by a clearing agency (as opposed to limiting it to security-based swaps that have a clearing agency as a direct counterparty) and (2) security-based swaps that are cleared by a clearing agency that the Commission has exempted from registration by rule or order pursuant to Section 17A of the Exchange Act (as opposed to limiting it to security-based swaps cleared at a registered clearing agency). *See infra* Sections II.A.6, II.B.3, and II.C.5.

[24] For purposes of this statement, the term ''prudential regulator'' is defined in Section 1a(39) of the Commodity Exchange Act (''CEA''), 7 U.S.C. 1a(39), and that definition is incorporated by reference into Section 3(a)(74) of the Exchange Act, 15 U.S.C. 78c(a)(74). Pursuant to that definition, the Board of Governors of the Federal Reserve System (''Federal Reserve Board''), the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation (''FDIC''), the Farm Credit Administration, or the Federal Housing Finance Agency (collectively, the ''prudential regulators'') is the ''prudential regulator'' of an SBS Entity if the entity is directly supervised by that regulator. Separately, we are adopting a definition of ''prudential regulator,'' to be used for purposes of the new portfolio reconciliation and trading relationship documentation requirements. *See infra* note 73. That new definition also references Section 3(a)(74) of the Exchange Act and includes the same list of agencies as noted above.

[25] Section 712(a)(2) of the Dodd-Frank Act provides in part that the Commission shall ''consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.''

In addition, Section 752(a) of the Dodd-Frank Act provides, in part, that ''[i]n order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators . . . as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps.''

[26] Staff participates in a number of international standard-setting bodies and workstreams working on OTC derivatives reforms. For example, Commission staff participated in the International Organization of Securities Commissions' (''IOSCO'') preparation of a report regarding risk mitigation standards for non-centrally cleared OTC derivatives. *See* Risk Mitigation Standards for Non-centrally Cleared OTC Derivatives (Jan. 28, 2015), *available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD469.pdf.* IOSCO developed those standards in consultation with the Basel Committee on Banking Supervision (''BCBS'') and the Committee on Payments and Market Infrastructures.

[27] The corresponding CFTC definition is in 17 CFR 23.500(i).

and a particular counterparty.[28] Third, Rule 15Fi–1(q) defines ''valuation'' to mean the current market value or net present value of a security-based swap.[29] Finally, Rule 15Fi–1(i) defines ''material terms'' to mean each term that is required to be reported to a registered SDR or the Commission pursuant to 17 CFR 242.901 (Rule 901 under the Exchange Act); [30] provided, however, that such definition does not include any term that is not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap.[31]

These definitions are intended to establish the scope of the portfolio reconciliation requirements in Rule 15Fi–3, including by (1) defining ''portfolio reconciliation,'' (2) defining the two categories of information that must be exchanged during a reconciliation (*i.e.,* the ''valuation'' and ''material terms'' of each relevant security-based swap), and (3) identifying the specific transactions that are included in a ''security-based swap portfolio'' between an SBS Entity and each of its counterparties. Moreover, for consistency with the corresponding CFTC rules applicable to Swap Entities, these four definitions are substantively identical to the CFTC's corresponding definitions, which we continue to believe are appropriately scoped for purposes of Rule 15Fi–3.[32]

The Commission received no comments on the proposed definitions of ''portfolio reconciliation,'' ''security-based swap portfolio,'' and ''valuation,'' each of which we are adopting as proposed. However, the two comment letters we received both raised concerns with the proposed definition of ''material terms.'' [33] That proposed definition was bifurcated, and depended on whether the relevant security-based swap transaction had already been included in a security-based swap portfolio and reconciled pursuant to proposed Rule 15Fi–3.[34] With respect to any security-based swap that had *not* yet been reconciled as part of a security-based swap portfolio, the proposed definition of ''material terms'' included each term that is required to be reported to a registered SDR pursuant to Rule 901 under the Exchange Act.[35] With respect to all other security-based swaps within a security-based swap portfolio, the proposed definition of ''material terms'' continued to be based on the reporting requirements in Rule 901, but excluded any term not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap.

In contrast to the proposed definition of ''material terms,'' the CFTC's corresponding definition is not bifurcated and contains a list of 24 data fields that are excluded from the definition (and therefore excluded from the portfolio reconciliation requirements in CFTC Rule § 23.502) for all purposes. Those excluded fields include, among others: (1) The status of either counterparty as a swap dealer, major swap participant, financial entity, or U.S. person; (2) an indication that the swap will be allocated and certain information regarding the agent and the original swap; (3) an indication that the swap is a multi-asset swap and a further indication of its primary and secondary asset class; (4) an indication that the swap is a mixed swap and the identification of any non-CFTC registered swap data repository to which it is also reported (if applicable); (5) the block trade indicator, execution timestamp, and timestamp for submission to a swap data repository; (6) the clearing indicator and clearing venue; and (7) certain information regarding the application of the end user exception from mandatory clearing.[36] When the CFTC amended its definition of ''material terms'' in 2016, it explained that ''the removal of these terms from reconciliations would alleviate the burden of resolving discrepancies in terms of a swap that are not relevant to the ongoing rights and obligations of the parties and the valuation of the swap without impairing the [CFTC]'s regulatory mission.'' [37]

The Commission continues to believe that the data set submitted to an SDR under Rule 901 is an appropriate starting point for determining which terms should be reconciled pursuant to Rule 15Fi–3. This approach is consistent with the one taken by the CFTC, which also defines ''material terms'' by reference to the information required to be reported to a swap data repository, and reflects our continued belief that one of the fundamental goals of the portfolio reconciliation process is to help ensure that both counterparties to a security-based swap are in agreement on all of the terms necessary for developing a comprehensive understanding of each of their rights and obligations under the security-based swap, and that they remain in such agreement throughout the life of the transaction.[38] To further that objective, ''portfolio reconciliation'' has been defined in part to include the exchange of the ''material terms'' of all security-based swaps in the security-based swap portfolio between the counterparties. Similarly, in adopting Regulation SBSR, the Commission explained that the Title VII regulatory reporting requirement ''is designed to allow the Commission and other relevant authorities to have access to comprehensive information about security-based swap activity in registered SDRs.'' [39] The Commission therefore remains of the view that the terms that must be reported to an SDR under Regulation SBSR are a good proxy for identifying the ''material terms'' that should be subject to the portfolio reconciliation requirements.

The Commission also continues to believe that basing the definition of ''material terms'' on what is required to be reported to an SDR provides certainty for SBS Entities regarding what

[28] The corresponding CFTC definition is in 17 CFR 23.500(k).

[29] The corresponding CFTC definition is in 17 CFR 23.500(m).

[30] Rule 901 is part of Regulation SBSR, which governs the reporting and publication of security-based swap transaction data. *See* 17 CFR 242.900 to 242.909. Further, Section 3(a)(75) of the Exchange Act defines the term ''security-based swap data repository'' to mean ''any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.'' *See* 15 U.S.C. 78c(a)(75).

[31] The corresponding CFTC definition is in 17 CFR 23.500(g).

[32] Because of differences between the Commission's and CFTC's security-based swap and swap data reporting rules, the application of the definition of ''material terms'' in Rule 15Fi–1(i) may differ from the application of the corresponding CFTC definition. However, in order to make the two definitions as substantively identical in their application as possible, Rule 15Fi–1(i), as adopted, excludes from that definition ''any term that is not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap.'' *See also infra* notes 51–52 (describing the Commission's recently issued policy statement on compliance with Regulation SBSR).

[33] *See* Letter dated April 16, 2019, from Steven Kennedy, Global Head of Public Policy, the International Swaps and Derivatives Association (''ISDA'') and Kyle Brandon, Managing Director, Head of Derivatives Policy, the Securities Industry and Financial Markets Association (''SIFMA'') (''ISDA/SIFMA Letter''); *see also* Letter dated April 16, 2019, from Katherine Delp, Executive Director, the Depository Trust & Clearing Corporation (''DTCC''), in conjunction with its swap data repository, and Kara Dutta, General Counsel, ICE Trade Vault (''DTCC/ICE Trade Vault Letter'').

[34] *See* Proposing Release at 4617–4618.

[35] Rule 901 (17 CFR 242.901) is part of Regulation SBSR, which governs the reporting to registered SDRs of security-based swap data and public dissemination by registered SDRs of a subset of that data. *See* 17 CFR 242.900 to 242.909.

[36] *See* 17 CFR 23.500(g).

[37] *See* Definitions of ''Portfolio Reconciliation'' and ''Material Terms'' for Purposes of Swap Portfolio Reconciliation, 81 FR 27309 (May 6, 2016).

[38] *See* Proposing Release, 84 FR at 4618.

[39] *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Final Rule, Exchange Act Release No. 74244 (Feb. 11, 2015), 80 FR 14563, 14646 (Mar. 19, 2015) (''Regulation SBSR Adopting Release'').

information must be reconciled, which should in turn reduce the burdens on those entities without lessening the benefits of the rule (which are described earlier in this section and in the Economic Analysis section below).[40] Such an approach also is designed to allow affected counterparties to leverage the same systems used for SDR reporting for purposes of the portfolio reconciliation requirements, should such synergies exist.

With respect to the proposed bifurcated definition of ''material terms,'' such approach was part of a broader request for comment that the Commission included in the Proposing Release to identify ways to potentially resolve an issue previously identified in connection with the rules applicable to the registration and ongoing regulation of SDRs.[41] Specifically, the proposed definition was intended to help establish a basis by which registered SDRs could potentially comply with the requirement in Section 13(n)(5)(B) of the Exchange Act and 17 CFR 240.13n–4(b)(3) (Rule 13n–4(b)(3)) thereunder that they ''confirm with both counterparties to the security-based swap the accuracy of the data that was submitted.'' [42]

In their joint comment letter, ISDA and SIFMA expressed strong reservations to that proposed definition, noting that portfolio reconciliation and trade reporting are two different processes involving different systems and third party vendors, and that expanding the reconciliation process to include non-economic data fields would require the two associations' members to incur significant operational and technological development costs and time, with no tangible benefit for an SBS Entity's risk mitigation activity.[43] Those commenters also posited that requiring reconciliation of non-economic terms for initial, but not subsequent, reconciliations would require further operational and technological development to manage the portfolio reconciliation process over the course of certain security-based swap life-cycle events, and would impose on SBS Entities the ongoing burden of maintaining three processes for portfolio reconciliation, one to comply with the CFTC's rules, one for any security-based swap that has not yet been included in a portfolio reconciliation, and one for all other security-based swaps.[44]

The DTCC and ICE Trade Vault expressed general support for leveraging certain aspects of the proposed rules (including the proposed bifurcated definition of ''material terms'') as a possible way of resolving, at least in part, the SDR verification issue, but suggested that those provisions would not provide SDRs with the regulatory certainty necessary to rely on an SBS Entity's submission to satisfy the SDR's verification obligation under Section 13(n)(5)(B) and Rule 13n–4(b)(3).[45] DTCC and ICE Trade Vault also noted their belief that evaluating an SBS Entity for these purposes goes beyond the SDR's proper role to store and report data, which would impose a burden on the resources of an SDR outside the statutory requirements.[46] Accordingly, those commenters concluded, reliance on the submissions by or on behalf of an SBS Entity to provide the definitive report of a given security-based swap is not a complete solution to the SDR verification issue, regardless of whether the SBS Entity was subject to a requirement that it initially reconcile with its counterparty all of the terms required to be reported to the SDR.[47]

As an alternative to the approach set out in the Proposing Release, DTCC and ICE Trade Vault requested that the Commission address the issue through interpretive guidance or exemptive relief and make clear that (1) the relief is permanent and (2) the scope of the relief is broad enough to cover all submissions to the SDR not covered under an approach applicable only to SBS Entity submissions.[48] DTCC and ICE Trade Vault did not, however, provide any additional information or potential conditions to support their suggested approach.

After careful review and consideration of the comments received and upon further consideration, the Commission is adopting a single, non-bifurcated definition of ''material terms'' that better aligns with the CFTC's corresponding definition. Specifically, and as described above, Rule 15Fi–1(i) defines ''material terms'' to include each term that is required to be reported to a registered SDR or the Commission pursuant to Rule 901 under the Exchange Act; provided, however, that such definition does not include any term that is not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap. In light of the comments we received, which indicated that the costs and burdens imposed on SBS Entities of implementing the proposed bifurcated approach were not justified in light of what commenters viewed as an incomplete and partial solution to the SDR verification issue (absent the Commission providing interpretive guidance or exemptive relief), the Commission believes that it is appropriate and less burdensome for SBS Entities to harmonize the definition of ''material terms'' in Rule 15Fi–1(i) with the corresponding CFTC definition by not adopting the proposed bifurcated approach.[49]

In addition to expressing their opposition to the proposed bifurcated approach to the definition of ''material terms,'' ISDA and SIFMA also requested that the Commission (1) align its trade reporting rules with those of the CFTC and (2) prescribe an enumerated list of the ''terms that are not relevant to the ongoing rights and obligations of the parties,'' and thus do not need to be reconciled in any portfolio reconciliation process required by Rule 15Fi–3.[50] The Commission has carefully considered these comments and has determined not to make either of the two requested changes to the definition. The Commission believes that the comment about aligning the two agencies' trade reporting rules is outside the scope of this rulemaking because, although Rule 15Fi–3 references the reporting rules in order to identify the terms that must be reconciled, the purpose of this rulemaking is not to amend the underlying reporting requirements themselves.[51]

[40] *See also* Proposing Release, 84 FR at 4618.

[41] For a more detailed discussion of this issue, including the concerns raised by SDRs as to the difficulty of requiring them to reach out to counterparties who are not their members to verify accuracy of the data, *see* Proposing Release, 84 FR at 4633–35.

[42] *See* 15 U.S.C. 78m(n)(5) and Rule 13n–4(b)(3). The Commission also included a provision in proposed Rule 15Fi–5(b)(1) that was intended to serve the same purpose. *See infra* note 110–113 and accompanying text. Further, the Commission requested comment on whether those two aspects of the proposal could provide a sufficient basis, in whole or in part, for an SDR to assess whether it can reasonably rely on a SBS Entity's verification of transaction data as the basis to meet the verification requirements. *See* Proposing Release, 84 FR at 4635.

[43] *See* ISDA/SIFMA Letter.

[44] *Id.* ISDA and SIFMA also questioned ''the suitability of this proposed shift in regulatory responsibility'' and noted that counterparties that are not members of the SDR may also not be involved in meaningful portfolio reconciliation processes.

[45] *See* DTCC/ICE Trade Vault Letter.

[46] *See id.*

[47] *See id.*

[48] *See id.*

[49] As described above, DTCC and ICE requested that the Commission address the issue of SDR verification through interpretive guidance or exemptive relief. This release focuses on specific documentation requirements related to risk mitigation techniques. And while the Commission is not addressing the SDR verification issue in this release, it may do so at a future date.

[50] *See* ISDA/SIFMA Letter.

[51] In addition, in a separate release adopting rules that address the cross-border application of certain security-based swap requirements the Commission also has issued a policy statement regarding

Moreover, although the Commission understands that there may be benefits of providing an enumerated list of terms that are ''not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap,'' we also note that Rule 901 of Regulation SBSR, unlike the CFTC's swap data reporting rules, does not contain a list of required data fields, but rather a requirement setting forth broad categories of information that must be reported to an SDR (or the Commission). Because Rule 901 is used to identify the data elements that are considered to be ''material terms'' for purposes of the portfolio reconciliation requirements in Rule 15Fi–3, the application of the CFTC's portfolio reconciliation rules may differ from the application of Rule 15Fi–3 due to differences in the operation of the underlying reporting rules, as described above.[52] However, although the Commission is not providing a definitive list of excluded data fields because of the underlying differences between Regulation SBSR and the CFTC's swap data reporting rules, we would consider the information required to be reported to an SDR pursuant to Rule 901 of Regulation SBSR that corresponds to the 24 excluded fields in CFTC Rule § 23.500(g) to be not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap, and therefore such information may appropriately be excluded from the definition of ''material terms'' in Rule 15Fi–1(i) for purposes of the portfolio reconciliation requirements in Rule 15Fi–3.[53]

2. Rule 15Fi–3(a): Portfolio Reconciliation With Other SBS Entities

The particular portfolio reconciliation requirements in Rule 15Fi–3 that apply to a specific security-based swap portfolio will depend on the type of counterparty with which the SBS Entity transacts. For transactions between two SBS Entities, Rule 15Fi–3(a) requires the two sides to engage in portfolio reconciliation at frequencies that are based on the size of the security-based swap portfolio between the two parties, expressed in ranges (or tiers). Under this tiered approach, if the two SBS Entity counterparties maintain a security-based swap portfolio that includes 500 or more security-based swaps, portfolio reconciliation will need to occur once each business day for as long as the portfolio exceeds this threshold. If a security-based swap portfolio between two SBS Entities includes more than 50 but fewer than 500 security-based swaps on any business day during a week, portfolio reconciliation will be required to occur on a weekly basis. For a security-based swap portfolio between two SBS Entities that includes no more than 50 security-based swaps at any time during the calendar quarter, portfolio reconciliation will be required on a quarterly basis.[54]

For the reasons noted in the Proposing Release, the Commission continues to believe that the tiering of obligations, whereby the frequency of the portfolio reconciliation is based on the number of outstanding transactions with the applicable counterparty, represents a reasonable attempt to calibrate the costs to the benefits expected from reconciling a person's security-based swap portfolio at regular intervals.[55] Moreover, the CFTC has adopted rules that utilize identical levels as Rule 15Fi–3(a), and the adoption by the Commission of different thresholds could lead to additional costs and other inefficiencies for SBS Entities that are also registered with the CFTC as Swap Entities.[56]

In addition to the requirements regarding the frequency of the reconciliation, Rule 15Fi–3(a)(1) also requires SBS Entities to agree in writing with each of their counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation.[57] In practice, an SBS

compliance with the rules for SDRs and Regulation SBSR (''Regulation SBSR/SDR Policy Statement''). *See* Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements. Exchange Act Release No. 87780 (Dec. 18, 2019) (''Cross-Border Amendments Adopting Release''). That policy statement, which will be in effect for four years following the first compliance date for Regulation SBSR, states that certain specified actions with respect to the security-based swap reporting rules will not provide a basis for a Commission enforcement action. For example, one of the identified fact patterns includes a situation where a person with a duty to report a data element of a security-based swap transaction, as required by any provision of Rules 901(c)(2)–(7) and 901(d) of Regulation SBSR, does not report that data element because the CFTC's swap reporting rules in force at the time of the transaction do not require that data element to be reported. *See id.* During the pendency of the Regulation SBSR/SDR Policy Statement, SBS Entities that elect to follow the CFTC's swap reporting rules pursuant to the Regulation SBSR/SDR Policy Statement also may look to the CFTC's reporting requirements with respect to which terms are the ''material terms'' for purposes of complying with the portfolio reconciliation requirements in Rule 15Fi–3.

[52] However, the Commission's position in the Regulation SBSR/SDR Policy Statement could, by addressing compliance with certain aspects of the CFTC's swap reporting rules (in lieu of Regulation SBSR) for a period of four years following the compliance date for SBSR, further alleviate any potential differences between Rule 15Fi–3 and CFTC § 23.502 that may flow from differences between the two agencies' Title VII data reporting rules. For example, to the extent that an SBS Entity reports security-based swap data to an SDR based on the data fields set forth in CFTC's swap data reporting rules in 17 CFR part 45, such SBS Entity would be able to identify the exact data fields that may be excluded from the definition of ''material terms'' in Rule 15Fi–1(i), and therefore not subject to the portfolio reconciliation requirements in Rule 15Fi–3. *See id.*

[53] *See supra* note 37 and accompanying text (explaining that in 2016 when the CFTC adopted amendments to Rule § 23.500(g) to exclude the 24 specific fields from the definition of ''material terms,'' it described such terms as being ''not relevant to the ongoing rights and obligations of the parties and the valuation of the swap.'').

[54] For the avoidance of doubt, if a security-based swap portfolio between two SBS Entity counterparties crosses from one threshold to another, both sides would be required to comply with the relevant frequency requirements of Rule 15Fi–3(a) as of the date the threshold is crossed. For example, if two SBS Entities that have long maintained a portfolio of 50 or fewer security-based swaps (and accordingly reconcile on a quarterly basis) exceed the 50 transaction threshold, the two sides would become subject to the weekly reconciliation requirement as of the first day that the portfolio exceeds 50 security-based swaps (or the daily reconciliation requirement if the portfolio increases to 500 or more security-based swaps). By contrast, if two SBS Entities that maintain a security-based swap portfolio of more than 500 transactions subsequently fall below that threshold, they could begin reconciling on a weekly basis as of the first business day after the date on which they were able to verify that their security-based swap portfolio has fallen below 500 transactions.

[55] *See* Proposing Release, 84 FR at 4619.

[56] When it adopted the same numerical thresholds in 2012, the CFTC noted that the requirement to reconcile portfolios with 500 or more swaps on a daily basis was consistent with the commitments made by the OTC Derivatives Steering Group's 14 major dealers (''G–14 dealers'') in December 2008 as well as international regulatory efforts underway at the time of the CFTC's release. *See CFTC Risk Mitigation Adopting Release,* 77 FR at 55928, nn. 35 and 36. *See also* Summary of OTC Commitments, Attachment to the June 2, 2009 letter from G–14 dealers and certain buy-side participants to William C. Dudley, President, FRBNY, *available at: https://www.newyorkfed.org/medialibrary/media/newsevents/news/markets/2009/060209table.pdf* (committing, ''[b]y June 30, 2009, [to] execute daily collateralized portfolio reconciliations for collateralized portfolios in excess of 500 trades between [Operations Management Group] dealers as detailed in the December 31, 2008 Collateral Update letter''). *See also* Attachment to the Mar. 31, 2011 letter from the G–14 dealers and certain buy-side participants to William C. Dudley, President, FRBNY, *available at: https://www.newyorkfed.org/medialibrary/media/newsevents/news/markets/2011/SCL0331.pdf* (''We commit to reduce the threshold for routine portfolio reconciliation of collateralized portfolios from those exceeding 1,000 transactions to those exceeding 500 transactions starting June 30, 2011. These portfolios will be reconciled at least monthly.'') (internal citation omitted).

[57] Rule 15Fi–3(a)(2) provides that portfolio reconciliation may be performed either on a bilateral basis by the counterparties or by a third party selected by the counterparties in accordance with paragraph (a)(1) of the rule. The Commission notes that CFTC Rule § 23.502(a)(2), which is analogous to Rule 15Fi–3(a)(2), uses the term ''qualified third party.'' When it adopted that provision in 2012, the CFTC explained that it ''expects that parties will determine if the third-party is qualified based on their own policies.'' *See*

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Entity could satisfy such requirement by including the terms governing the portfolio reconciliation process in the written security-based swap trading relationship documentation that the SBS Entity executes with its counterparty pursuant to Rule 15Fi–5, as opposed to agreeing with the counterparty on the terms of the reconciliation on a transaction-by-transaction basis, which is likely to be significantly more burdensome.[58] This practice should help to ensure that portfolio reconciliation begins without delay after execution of the transaction and is designed to minimize the number of disagreements regarding the portfolio reconciliation process itself.

Finally, the definition of ''business day'' for purposes of Rule 15Fi–3 (regardless of the status of the counterparty) includes ''any day other than a Saturday, Sunday, or legal holiday.'' This definition, which the Commission adopted in 2016 in connection with the trade acknowledgement and verification requirements in Rule 15Fi–2, is not being amended in this rulemaking.[59] As explained in the Proposing Release, we believe that the existing definition of ''business day'' has the benefit of providing market participants with the flexibility to determine the holidays that are ''legal holidays'' for purposes of the portfolio reconciliation requirements in Rule 15Fi–3, which should be particularly useful given the cross-border nature of the OTC derivatives market.[60]

3. Rule 15Fi–3(a): Resolution of Discrepancies With Other SBS Entities

Rule 15Fi–3(a) also requires each SBS Entity to take additional actions in the event of a discrepancy with a counterparty that is an SBS Entity. Specifically, Rule 15Fi–3(a)(4) requires the two SBS Entity counterparties to resolve *immediately* any discrepancy in a material term, whether identified directly as part of the portfolio reconciliation or otherwise. For the reasons discussed in the Proposing Release, we continue to believe that this timeframe is appropriate given the ongoing nature of security-based swap transactions, as well as the potential for disagreements between the counterparties regarding the terms of a transaction to compound over the course of the security-based swap transaction.[61]

Also, and recognizing that *valuation* discrepancies could be particularly difficult to resolve in a short period of time, Rule 15Fi–3(a)(5) requires SBS Entities to have policies and procedures reasonably designed to resolve a valuation discrepancy no later than five business days from the date that it was discovered, which we believe to be both a reasonable and appropriate amount of time to resolve such discrepancies. As a condition to this requirement, however, Rule 15Fi–3(a)(5) requires that each SBS Entity establish, maintain, and follow written policies and procedures reasonably designed to identify how it will comply with any variation margin requirements under Section 15F(e) of the Exchange Act[62] and any related regulations pending resolution of the valuation discrepancy. Although we understand the need to provide counterparties with sufficient time to resolve valuation discrepancies, as reflected in the five business day period provided to resolve them, we also believe it to be important for those counterparties to take reasonable steps during the pendency of the resolution to ensure that they are continuing to manage their credit risk to each other by way of exchanging variation margin.

Further, Rule 15Fi–3(a)(5) provides that for purposes of the requirement to resolve a valuation discrepancy within five business days of it being identified, a difference between the lower valuation and the higher valuation of less than 10% of the higher valuation need not be deemed a discrepancy. This 10% threshold would apply on a transaction-by-transaction basis and not on a portfolio level. As discussed in greater detail in the Proposing Release, the Commission believes that this buffer is designed to focus the internal resources of both counterparties on the largest discrepancies.[63] At the same time, however, the Commission believes that, in most cases, prudent risk mitigation of a firm's security-based swap portfolio and proper governance over an entity's operations would involve ensuring that, at least to a certain degree, most valuation discrepancies are ultimately resolved.

4. Rule 15Fi–3(b): Portfolio Reconciliation With Other Counterparties

Rule 15Fi–3(b) establishes reconciliation requirements for security-based swap portfolios between an SBS Entity and a counterparty that is *not* an SBS Entity. Although there is some broad similarity between Rule 15Fi–3(b) and the rules applicable to security-based swap portfolios between two SBS Entities, we have taken a more streamlined approach with respect to security-based swaps with non-SBS Entity counterparties, similar to the CFTC's approach.[64]

Pursuant to Rule 15Fi–3(b), each SBS Entity is required to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation with non-SBS Entity counterparties as set forth in the rule.[65] This policies and procedures requirement is in contrast to Rule 15Fi–3(a), which expressly requires portfolio reconciliation with respect to

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CFTC Risk Mitigation Release, 77 FR at 55929. In addition, the CFTC's portfolio reconciliation requirements for transactions between Swap Entities and counterparties that are *not* Swap Entities do not require the relevant third party to be ''qualified'' and, instead, provide that ''[t]he portfolio reconciliation may be performed on a bilateral basis by the counterparties or by one or more third parties *selected by the counterparties*.'' *See* 17 CFR 23.502(b)(2) (emphasis added). Accordingly, the Commission has decided not to refer to a ''qualified third party'' and, instead, uses the term ''third party selected by the counterparties'' for purposes of Rule 15Fi–3(a)(2). We believe that it is sufficient for our purposes to refer solely to the fact that a third party has been selected.

[58] Specifically, once the two parties have agreed in writing on the terms of the portfolio reconciliation for the first time, the requirement could then be satisfied in connection with any new security-based swap transaction executed by the two sides merely by agreeing in writing to abide by the existing agreement regarding the reconciliation process.

[59] Upon the effective date of these final rules, the definition of ''business day'' currently in Rule 15Fi–1(a) will be renumbered as Rule 15Fi–1(b).

[60] *See* Proposing Release, 84 FR at 4619 (describing the rationale for relying on the existing definition of ''business day'' in Rule 15Fi–1 (as opposed to proposing a separate definition for purposes of the portfolio reconciliation requirements) and comparing that existing definition with the corresponding CFTC definition of ''business day'' in 17 CFR 1.3). As a reminder, SBS entities are required to agree in writing with each of their counterparties on the terms of the portfolio reconciliation pursuant to Rule 15Fi–3(a)(1) (in the case of security-based swap portfolios with other SBS Entities) and Rule 15Fi–3(b)(1) (in the case of security-based swap portfolios with all other counterparties).

[61] *See* Proposing Release, 84 FR at 4619–20.

[62] 15 U.S.C. 78o–10(e).

[63] *See* Proposing Release, 84 FR at 4620. For the avoidance of doubt, an SBS Entity that identifies a valuation discrepancy in excess of 10% would be in compliance with Rule 15Fi–3(a)(5) if it resolves such discrepancy to a level below 10%, even if the entire discrepancy is not completely eliminated. For example, an SBS Entity would not be required to reduce an 11% valuation discrepancy down to zero. Similarly, an SBS Entity with a 9% valuation discrepancy would already be below the 10% threshold and would have no further obligations under Rule 15Fi–3(a)(5).

[64] For additional discussion of the Commission's rationale for applying a more streamlined set of requirements in the case of a security-based swap portfolio between an SBS Entity and a non-SBS Entity counterparty, *see* Proposing Release, 84 FR at 4620.

[65] Rule 15Fi–3(b) contains a slight deviation from corresponding CFTC Rule § 23.502(b) to eliminate language that we believe to be redundant. We do not intend for such clarification to signify any substantive differences between Rule 15Fi–3(b) and CFTC Rule § 23.502(b).

transactions where both counterparties are SBS Entities. The policies and procedures required by Rule 15Fi–3(b) will need to provide that the portfolio reconciliation be performed no less frequently than: (1) Once each calendar quarter for each security-based swap portfolio that includes more than 100 security-based swaps at any time during the calendar quarter and (2) once annually for each security-based swap portfolio that includes no more than 100 security-based swaps at any time during the calendar year. For the reasons noted in the Proposing Release, the Commission continues to believe that basing the required frequency of the portfolio reconciliation on the number of outstanding transactions with the applicable counterparty represents a reasonable attempt to calibrate the costs and benefits of reconciling a person's security-based swap portfolio at regular intervals.[66]

In addition, paragraph (b)(1) of Rule 15Fi–3 requires that the applicable policies and procedures be reasonably designed to ensure that each SBS Entity agrees in writing with each of its non-SBS Entity counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation. Paragraph (b)(2) provides that the portfolio reconciliation may be performed on a bilateral basis by the counterparties or by one or more third parties selected by the counterparties. To the extent that the counterparties elect to use a third party to provide these services, the policies and procedures should be reasonably designed to ensure that the SBS Entity and its counterparty agree on the selection of that third party in writing in accordance with the requirements set forth in Rule 15Fi–3(b)(1).[67]

Finally, Rule 15Fi–3(b)(4) requires each SBS Entity to establish, maintain, and follow written procedures reasonably designed to resolve any discrepancies in the valuation or a material term of each security-based swap identified as part of a portfolio reconciliation or otherwise with a non-SBS Entity counterparty in a timely fashion.[68] We are not providing a fixed definition of ''timely fashion'' in the context of resolving discrepancies with counterparties who are not SBS Entities because such counterparties may vary considerably in terms of their size, sophistication, and background. Although it may be possible to resolve most valuation discrepancies with large hedge funds and pension funds within the five-business-day period applicable to transactions between two SBS Entities, that timeframe may be much more challenging with respect to transactions with smaller buy-side firms.[69]

5. Reporting of Valuation Disputes

Rule 15Fi–3(c) requires each SBS Entity to promptly notify the Commission of any security-based swap valuation dispute in excess of $20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level,[70] if not resolved within: (1) Three business days, if the dispute is with a counterparty that is an SBS Entity; or (2) five business days, if the dispute is with a counterparty that is not an SBS Entity.[71] Such notification must be in a form and manner acceptable to the Commission,[72] and must be sent to any applicable prudential regulator (*i.e.,* in the case of any SBS Entity that is also a bank).[73]

We also note that the CFTC has adopted a nearly identical requirement with the same $20,000,000 threshold and timeframes, and that adoption of the Commission of different requirements could lead to additional costs and other inefficiencies for SBS Entities that are also registered with the CFTC as Swap Entities.[74] When the CFTC adopted this requirement, it explained that ''the $20,000,000 materiality threshold for reporting is sufficiently high to eliminate unnecessary 'noise' from over-reporting, but not so high as to eliminate reporting that the [CFTC] may find of regulatory value, such as a large number of relatively small disputes that in aggregate could provide the [CFTC] with information regarding a widespread market disruption.'' [75] We continue to concur with that justification, and

[66] *See* Proposing Release, 84 FR at 4620. Also, and similar to the provisions governing portfolio reconciliation between two SBS Entities, the CFTC has adopted rules with identical thresholds and frequencies, and any divergence from those thresholds could lead to additional costs and other inefficiencies for SBS Entities that are also registered with the CFTC as Swap Entities. *See supra* note 56 (discussing how the CFTC arrived at setting the numerical thresholds for the requirement to engage in portfolio reconciliation as between two Swap Entities.).

[67] As noted in the discussion of the corresponding provision in Rule 15Fi–3(a)(1), an SBS Entity could in practice satisfy such requirement by including the terms governing the portfolio reconciliation process in the written security-based swap trading relationship documentation that it executes with its counterparty, which, pursuant to Rule 15Fi–5, will need to be executed prior to, or contemporaneously with, the two parties executing any new security-based swap transaction. In addition, once the two parties have agreed in writing on the terms of the portfolio reconciliation for the first time, the requirement could then be satisfied in connection with any new security-based swap transaction executed by the two sides merely by agreeing in writing to abide by the existing agreement regarding the reconciliation process. *See supra* notes 57 and 58 and accompanying text.

[68] Similar to the requirement for security-based swap portfolios between two SBS Entities, Rule 15Fi–3(b)(4) provides that a difference between the lower valuation and the higher valuation of less than 10% of the higher valuation need not be deemed a discrepancy. *See supra* note 63 and accompanying text (discussing the 10% threshold in the context of Rule 15Fi–3(a)(5)).

[69] *See* Proposing Release, 84 FR at 4621.

[70] The language ''at either the transaction or portfolio level'' is not included in CFTC Rule § 23.502(c), which is the corresponding requirement applicable to Swap Entities. The specific requirements as to the operation of CFTC Rule § 23.502(c) are contained in the rules of the National Futures Association (''NFA''), which the CFTC has authorized to, among other things, receive and review notices of reportable swap valuation disputes. *See* Performance of Certain Functions by the National Futures Association Related to Notices of Swap Valuation Disputes Filed by Swap Dealers and Major Swap Participants, 81 FR 3390 (Jan. 21, 2016).

[71] *See* Proposing Release, 84 FR at 4621 (discussing the rationale for this notification provision, particularly as it relates to the potential risks to the counterparties of a security-based swap that could result from a lack of agreement on its valuation).

[72] As explained in the Proposing Release, the requirement that the notice be provided ''in a form and manner acceptable to the Commission'' is intended to provide SBS Entities with flexibility to determine the most efficient and cost-effective means of making such submissions, so long as it is deemed to be acceptable by the Commission. *See* Proposing Release, 84 FR at 4621, n. 47 and accompanying text. At the same time, however, we also understand that SBS Entities may prefer to have more specific direction as to how to report these disputes to the Commission (and any applicable prudential regulator). Accordingly, we requested comment on whether we should establish a specific process for how SBS Entities would need to provide notices of valuation disputes to the Commission pursuant to proposed Rule 15Fi–3(c). We received no comments on this aspect of the proposal, which we are adopting without modification.

[73] Additionally, the Commission is amending existing Rule 15Fi–1 to add the term ''prudential regulator,'' which includes the Federal Reserve Board, the Office of the Comptroller of the Currency, the FDIC, the Farm Credit Association, and the Federal Housing Finance Agency, as applicable to the specific type of SBS Entity. This definition, which is numbered as Rule 15Fi–1(m), has the same meaning given to the term in Section 3(a)(74) of the Exchange Act. *See* 15 U.S.C. 78c(a)(74).

[74] *See* CFTC Risk Mitigation Adopting Release, 77 FR at 55914.

[75] *Id.* The CFTC has a nearly identical requirement in its Rule § 23.502(c), except that it also requires Swap Entities to send such notices to the Commission when the dispute involves a swap that is also a security-based swap agreement, of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein. *See* 17 CFR 23.502(c) (citing the inclusion of security-based swap agreements in the definition of ''swap'' in 7 U.S.C. 1a(47)(v)). Because there is no corresponding inclusion of ''swap agreements'' in the definition of ''security-based swap agreement'' in Section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)), Rule 15Fi–3(c) does not contain a requirement to provide notices of any security-based swap valuation disputes to the CFTC.

believe that these notifications could assist the Commission in identifying potential issues with respect to an SBS Entity's internal valuation methodology.[76]

Finally, in the Proposing Release, the Commission summarized the NFA Interpretive Notice entitled, ''NFA Interpretive Notice to Compliance Rule 2–49: Swap Valuation Dispute Filing Requirements'' (''NFA Interpretive Notice to Rule 2–49''), and requested comment on whether any aspects of that notice should be incorporated directly into proposed Rule 15Fi–3(c).[77] Among other things, that interpretive notice describes the types of disputes that would trigger a notice requirement as well as requirements related to the timing and frequency for providing notices of valuation disputes.[78] In their letter, ISDA and SIFMA suggested that incorporating NFA Interpretive Notice to Rule 2–49 into Rule 15Fi–3 could become problematic should the NFA update or revise its guidance in the future, such that it would create discrepancies between the two sets of requirements.[79] ISDA and SIFMA instead requested that the Commission put in place a process to ensure that any NFA guidance applicable to Swap Entities with respect to the CFTC's portfolio reconciliation requirements should also automatically apply to SBS Entities with respect to the Commission's requirements in Rule 15Fi–3(c), even when such NFA guidance is updated or changed.[80]

After careful review and consideration, the Commission has determined to incorporate one aspect of NFA Interpretive Guidance to Rule 2–49 into Rule 15Fi–3(c). Specifically, we have modified the rule to provide that SBS Entities are required to notify the Commission, in a form and manner acceptable to the Commission, and any applicable prudential regulator, if the amount of any security-based swap valuation dispute that was the subject of a previous notice increases or decreases by more than $20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level. Such amended notice shall be provided to the Commission and any applicable prudential regulator no later than the last business day of the calendar month in which the applicable security-based swap valuation dispute increases or decreases by the applicable dispute amount.[81] This change, which is consistent with NFA Interpretive Guidance to Rule 2–49,[82] is intended to clarify that SBS Entities are not required to file the same notice of a valuation dispute for each day the dispute remains outstanding after the initial three- or five-business day requirement, while also helping to ensure that the Commission is made aware of significant changes to existing valuation disputes using the same increments that Swap Entities are required to use when amending swap valuation dispute notices pursuant to CFTC Rule § 23.502(c) (as administered by the NFA).[83]

The Commission has not incorporated any other provision of NFA Interpretive Guidance to Rule 2–49 into Rule 15Fi–3(c) in order to provide SBS Entities with the flexibility to submit the required information to the Commission in a manner that is most efficient for each SBS Entity.[84] Finally, the Commission is not including in Rule 15Fi–3(c) a process to ensure that the NFA's guidance for Swap Entities would also apply to the requirements in Rule 15Fi–3(c) for SBS Entities, as requested by commenters. The Commission recognizes that subsequent revisions to the NFA's guidance could potentially result in divergences between the application of the Commission's requirements regarding notices of valuation disputes and the corresponding CFTC requirements (as administered by NFA). However, to the extent that future changes to the NFA's requirements create divergences between Rule 15Fi–3(c) and application of CFTC Rule § 23.502(c), market participants are encouraged to contact Commission staff to discuss such divergences.

6. Application of Rule 15Fi–3 to Cleared Security-Based Swaps

As proposed, the portfolio reconciliation requirements in Rule 15Fi–3 would not have applied to a ''clearing transaction'' which, pursuant to existing Rule 15Fi–1(c), is defined as a security-based swap that has a clearing agency as a direct counterparty.[85] As the

[76] We are not providing a fixed definition of the term ''promptly'' in the context of when the SBS Entity would need to provide the Commission of an applicable security-based swap valuation dispute. Although we would expect that SBS Entities would be able to provide these notices to the Commission as soon as the disputes exceed the applicable timeframes (*e.g.,* the beginning of fourth business day in the case of a dispute between two SBS Entities), we also understand that some notices may take longer to prepare, such as in cases when the counterparties are unable to agree even on the size of the dispute.

[77] *See* Proposing Release, 84 FR at 4621–22 (summarizing the NFA Interpretive Notice to Rule 2–49). The NFA notice is *available at: https://www.nfa.futures.org/rulebook/rules.aspx?Section=9&RuleID=9072.*

[78] *See id.*

[79] *See* ISDA/SIFMA Letter.

[80] *See id.*

[81] The NFA requires amendments from Swap Entities to be filed on the 15th (or the following business day if the 15th is a weekend or holiday) and last business day of each month. To the extent that an SBS Entity that also is registered with the CFTC as a Swap Entity has existing systems in place to send out amendments on both the 15th (or the following business day if the 15th is a weekend or holiday) and last business day of each month, the earlier filing would of course satisfy the requirements of Rule 15Fi–3(c).

[82] Specifically, NFA Interpretive Guidance to Rule 2–49 provides that ''[Swap Entities] should not file a daily notice of a previously reported dispute even if the valuation dispute amount changes. [Swap Entities] are required, however, to notify NFA of certain changes to the dispute amount on the 15th (or the following business day if the 15th is a weekend or holiday) and last business day of each month by amending any previously filed notice where the dispute amount has increased in $20 million incremental bands. For example, if a [Swap Entity] files a notice of a $30 million dispute, an amended notice updating the dispute amount is required if that dispute increases to $40 million or more and each subsequent $20 million increment (*i.e.,* dispute amount increases to $60 million or more, $80 million or more, etc.). [Swap Entities] are also required to amend a previously filed notice to update the dispute amount if the amount decreases at these $20 million increments. The determination of whether an amended notice is required is based on the dispute amount on the reporting date.''

[83] Among other things, NFA Interpretive Notice to Rule 2–49 requires Swap Entities to file termination notices of disputes that are no longer reportable under CFTC Rule § 23.502(c) on the 15th (or the following business day if the 15th is a weekend or holiday) and the last business day of the month based on the dispute amount on the reporting date. *See* Proposing Release, 84 FR at 4621–22 (summarizing NFA Interpretive Notice to Rule 2–49). In addition, the NFA issued another notice, entitled ''Effective date of Interpretive Notice to NFA Compliance Rule 2–49: Swap Valuation Dispute Filing Requirement'' which, among other things, requires that all swap valuation disputes include: (1) The swap dealer's NFA ID and legal entity identifier (''LEI''), (2) the dispute reportable date, (3) the dispute type, (4) the dispute termination date, (5) the receiver/payer, (6) the disputed amount, in U.S. Dollars (''USD''), (7) the counterparty name, and (8) counterparty LEI or Privacy Law Identifier. For initial and variation margin disputes, the swap dealer is also required to provide (1) the unique swap identifier, (2) the base currency notional amount, (3) the base currency code, (4) the notional value USD equivalent, (5) the asset type, and (6) the product type. For disputes where no collateral is exchange, NFA Interpretive Notice to Rule 2–49 also requires Swap Entities to include in the notice the credit support annex/netting agreement ID. *See* Proposing Release, 84 FR at 4622, n. 57 (describing NFA Notice to Members I–17–30, which incorporates NFA Notice to Members I–17–30).

[84] As a general matter, we believe it likely that a notice provided to the Commission with respect to a security-based swap valuation dispute that is compliant with NFA Interpretive Guidance to Rule 2–49 (but for the fact that such notice pertains to a security-based swap) would also be compliant with 17 CFR 240.15F–5(c) (Rule 15F–5(c)). SBS Entities that have questions about using a system designed to accommodate the NFA guidance to comply with Rule 15Fi–5(c) are encouraged to contact Commission staff to discuss such questions.

[85] Under existing Rule 15Fi–1(b) (which is renumbered as Rule 15Fi–1(c) under these final rules), the term ''clearing agency'' means a clearing agency registered with the Commission pursuant to Section 17A of the Exchange Act and that provides central counterparty services for security-based swap transactions.

Commission explained in the Proposing Release, the exception reflected the Commission's belief that the function of reconciling the terms of cleared trades is more appropriately addressed by the rules governing a clearing agency's risk management practices, as well as by the documentation governing the relationship between a clearing agency and its members.

We did, however, request comment on whether the scope of the exception for cleared security-based swaps should be modified, such as by including transactions that are cleared at a clearing agency that is not registered with the Commission pursuant to Section 17A of the Exchange Act, whether because of an applicable exemption from registration or because the Exchange Act does not cover the activities of the clearing agency. For example, security-based swaps cleared at a foreign clearing agency that is not registered with the Commission would not be deemed to be ''cleared'' for these purposes, and would therefore be subject to Rule 15Fi–3. In their comment letter, ISDA and SIFMA expressed broad general support for expanding the scope of the transactions considered to be cleared for purposes of this exception, and stated that they would consider such a change to be a clarification, and not a deviation from the corresponding CFTC rules.[86]

After careful review and consideration of the comments received and upon further consideration, the Commission is making two changes to Rule 15Fi–3(d). First, we are expanding the exception to include not only security-based swaps that have a clearing agency as a direct counterparty, but also those that are, directly or indirectly, submitted to and cleared by a clearing agency. As the Commission explained when it adopted the trade acknowledgment and verification requirements, under the agency model of clearing, cleared security-based swap transactions are new transactions created to replace a bilateral transaction that was submitted to, and has been accepted for clearing by, a clearing agency. Upon acceptance for clearing, the clearing agency becomes the new direct counterparty to each of the counterparties of the original bilateral transaction. Therefore, these transactions (known colloquially as the ''beta'' and ''gamma'') effectively mirror the original bilateral transaction (known as the ''alpha'') that was extinguished in the process of acceptance for clearing.[87]

By virtue of relying on the current definition of ''clearing transaction,'' which applies to the trade acknowledgment and verification requirements in existing Rule 15Fi–2, the proposed exception in Rule 15Fi–3(d) would have applied only to the ''beta'' and ''gamma'' transactions, and not to the original bilateral transaction (*i.e.,* the ''alpha''). Although the obligation to reconcile the original bilateral security-based swap transaction would no longer exist as soon as the transaction is novated to the clearing agency, the Commission nevertheless believes that requiring the initial transaction to be reconciled during the period between trade execution and novation would be inconsistent with the approach taken by both the CFTC in its portfolio reconciliation rules and by the Commission in 17 CFR 240.18a–3 (Rule 18a–3), which sets forth the uncleared security-based swap margin requirements for non-bank SBS Entities, and in 17 CFR 240.18a–4 (Rule 18a–4), which sets forth the segregation requirements for certain SBS dealers.[88]

For the reasons set forth above, the Commission is revising the exception in Rule 15Fi–3(d) such that it includes those original ''alpha'' security-based swap transactions. This modification is reflective of the fact that the original transaction, once submitted to and cleared by a clearing agency, no longer exists. In addition, the exception also will apply to security-based swap transactions cleared by a clearing agency that the Commission has exempted from registration by rule or order pursuant to Section 17A of the Exchange Act (in addition to transactions cleared by a registered clearing agency). We are making this change in response to commenters, as well as to better align the operation of Rule 15Fi–3 with CFTC Rule § 23.502 and the Commission's security-based swap margin requirements in Rule 18a–3.[89] Accordingly, Rule 15Fi–3(d) provides an exception from the portfolio reconciliation requirements for any security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to Section 17A of the Exchange Act or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to Section 17A of the Exchange Act.[90] Finally, the Commission believes that the justifications for modifying the clearing exception in Rule 15Fi–3 apply equally to the portfolio compression requirements in Rule 15Fi–4 and to the trading relationship documentation requirements in Rule 15Fi–5, and we

[86] *See* ISDA/SIFMA Letter. Although ISDA and SIFMA made this comment solely in connection with the portfolio compression requirements in Rule 15Fi–4, we view this issue as applying equally to the portfolio reconciliation requirements in Rule 15Fi–3 and the trading relationship documentation requirements in Rule 15Fi–5. As a result, the discussion that follows, including the change we are making to the scope of the clearing transactions subject to the clearing exception, applies to all three new rules.

[87] *See* Trade Acknowledgement and Verification Adopting Release, 81 FR at 39820–21. In that release, the Commission also noted that if both direct counterparties to the alpha transaction are members of the clearing agency, the direct counterparties would submit the transaction to the clearing agency directly and the resulting beta transaction would be between the clearing agency and one clearing member, and the gamma transaction would be between the clearing agency and the other clearing member. However, if the direct counterparties to the alpha transaction are a clearing member and a non-clearing member (a ''customer''), the customer's side of the trade would be submitted for clearing by a clearing member acting on behalf of the customer. When the clearing agency accepts the alpha transaction for clearing, one of the resulting transactions—in this case, assume the beta transaction—would be between the clearing agency and the customer, with the customer's clearing member acting as guarantor for the customer's trade. The other resulting transaction—the gamma transaction—would be between the clearing agency and the clearing member that was a direct counterparty to the alpha transaction. *See id.* (citing Regulation SBSR Adopting Release, 80 FR 14563 at n. 292).

[88] Rule 18a–3(b)(5) defines ''non-cleared security-based swap'' as a security-based swap that is not, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to section 17A of the [Exchange] Act (15 U.S.C. 78q–1) or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to section 17A of the [Exchange] Act (15 U.S.C. 78q1). *See* 17 CFR 240.18a–3(b)(5). Similarly, Rule 18a–4(a)(1) defines ''cleared security-based swap'' as ''a security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered with the Commission pursuant to section 17A of the Act (15 U.S.C. 78q–1).'' *See* 17 CFR 240.18a–4(a)(1).

[89] *See* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872, 43919 (Aug. 22, 2019) (''Capital, Margin, and Segregation Adopting Release'') (''[t]he language regarding exemption from registration was added to the final rule to align the definition more closely with the definitions used in the margin rules of the CFTC and prudential regulators.'').

[90] These revisions have been incorporated directly into the operative exception in Rule 15Fi–3(d), which no longer cross-references to the existing definition of ''clearing transaction'' in Rule 15Fi–1(d) (re-numbered from paragraph (c)). In addition, we have amended the existing definition of ''clearing agency'' in Rule 15Fi–1(c) (re-numbered from paragraph (b)) to provide that it applies only to the trade acknowledgement and verification requirements in Rule 15Fi–2. That modification was necessary because the trade acknowledgement and verification requirements in Rule 15Fi–2 contain an exception only for security-based swap transactions cleared by a registered clearing agency, and not for those transactions cleared by an exempted clearing agency (in contrast to the clearing exceptions from the requirements in Rules 15Fi–3, 15Fi–4, and 15Fi–5).

have made corresponding revisions to both of those rules.[91]

B. Rule 15Fi–4: Portfolio Compression

1. Scope of Rule 15Fi–4—Portfolio Compression Exercises

For purposes of Rule 15Fi–4, the phrase ''portfolio compression exercise'' generally refers to an exercise by which security-based swap counterparties wholly terminate or change the notional value of some or all of the security-based swaps submitted by the counterparties for inclusion in the portfolio compression exercise and, depending on the methodology employed, replace the terminated security-based swaps with other security-based swaps whose combined notional value (or some other measure of risk) is less than the combined notional value (or some other measure of risk) of the terminated security-based swaps in the exercise.[92] In order to incorporate that concept into these final rules, we are amending existing Rule 15Fi–1 to incorporate definitions for both ''bilateral portfolio compression exercise'' [93] and ''multilateral portfolio compression exercise.'' [94] These two definitions are nearly identical, with the sole difference being that the former applies to a portfolio compression exercise that includes only two security-based swap counterparties, while the latter applies to a portfolio compression exercise that includes more than two security-based swap counterparties.[95]

Pursuant to Rule 15Fi–4(a)(2) and (3), SBS Entities are required to establish, maintain, and follow written policies and procedures for periodically engaging in both bilateral portfolio compression exercises and multilateral portfolio compression exercises, in each case when appropriate, with any counterparties that are SBS Entities. To the extent that an SBS Entity transacts with a counterparty that is *not* an SBS Entity, Rule 15Fi–4(b) provides that the policies and procedures required under the rule will need to provide that portfolio compression exercises occur when appropriate and only to the extent requested by any such counterparty.[96]

The definitions of ''bilateral portfolio compression exercise'' and ''multilateral portfolio compression exercise'' are designed to be sufficiently broad as to provide market participants with maximum flexibility when complying with Rule 15Fi–4, while also retaining the key elements necessary to achieve the important risk-reducing benefits discussed throughout this release—namely the reduction of counterparty and operational risk achieved by terminating offsetting security-based swap transactions. Accordingly, with one exception, the rule does not include specific requirements as to the contents of the policies and procedures created to comply with these rules.[97] In addition, for consistency with the rules applicable to Swap Entities, these definitions are substantively identical to the CFTC's corresponding definitions, which we continue to believe are appropriately scoped for purposes of Rule 15Fi–4.

The Commission recognizes that a decision to engage in a process that could ultimately result in the termination or modification of existing contracts, and the potential entry into new ones, should be made in accordance with policies and procedures that are tailored to the specific risks and operations of the relevant SBS Entity. Such policies and procedures should, in the Commission's view, be permitted to take into account the specific risk tolerances of the regulated entity, including with respect to such areas as operational, funding, liquidity, and credit risk, and also reflect the possibility that firms may have legitimate business reasons for maintaining certain offsetting security-based swap positions, even if in theory they could be compressed.

For example, the Commission understands that an SBS Entity might be unable to participate in a particular portfolio compression exercise that could result in it transacting with certain counterparties (*e.g.,* because a counterparty poses an unacceptable level of credit risk), or in certain types of transactions. To the extent that such limitations exist and are reflected in the policies and procedures required pursuant to Rules 15Fi–4(a) and (b), an SBS Entity will be in compliance with those rules so long as it follows those policies and procedures, even if it determines not to engage in a particular compression exercise.

Further, in comparing Rules 15Fi–4(a) and (b) with the analogous rules adopted by the CFTC, we note three main differences, the first two of which we believe to be minor and technical in nature. First, CFTC Rule § 23.503(a)(3)(i) requires that any policies and procedures related to multilateral portfolio compression address, among other things, participation in all multilateral portfolio compression exercises required by CFTC regulation or order. Although the Commission would expect that any comprehensive policy or procedure would, as a matter of course, reflect any applicable laws and regulations expressly mandating participation in certain types of portfolio compression exercises, there is no comparable requirement in Rule 15Fi–4(a)(3).

Second, CFTC Rule § 23.503(a)(3)(ii) requires that any policies and procedures related to *multilateral* portfolio compression exercises evaluate, among other things, any services that are initiated, offered, or sponsored by any third party.[98] The CFTC did not, however, include such a requirement in the corresponding provision related to policies and procedures addressing *bilateral* portfolio compression exercises.[99] Although the inclusion of a specific requirement in the rule should not be interpreted as creating an exhaustive list of what we would expect SBS Entities to include in their policies and procedures, we understand that bilateral portfolio compression services are currently being offered by third-party vendors. Evaluating those services would seem to be a natural part of the process of broadly analyzing the applicability of bilateral compression in general. Therefore, we have included a similar requirement in *both* Rules 15Fi–4(a)(2) (policies and procedures regarding bilateral compression) and 15Fi–4(a)(3) (policies and procedures regarding multilateral compression).[100]

[91] *See infra* Sections II.B.3 and II.C.5.

[92] The corresponding CFTC rule is 17 CFR 23.503. The structure of the CFTC rule, including the subsections, mirrors the structure of Rule 15Fi–4.

[93] The corresponding CFTC definition is in 17 CFR 23.500(b).

[94] The corresponding CFTC definition is in 17 CFR 23.500(h).

[95] As noted below in Section I.C.4, Rule 15Fi–4 is applicable only to uncleared security-based swaps.

[96] As we noted in discussing the portfolio reconciliation requirements in Rule 15Fi–3, the Commission believes it appropriate to impose more prescriptive requirements in cases where both entities are subject to the SEC's requirements for registered entities.

[97] The one exception to this statement is the requirement in Rules 15Fi–4(a)(2) and (a)(3) that such policies and procedures address the evaluation of portfolio compression exercises that are initiated, offered, or sponsored by any third party. The Commission believes that the decision of which party to use (or not use) to conduct a compression exercise is of critical importance to the overall determination of whether to participate in compression. Although the Commission takes no position with respect to the type or identity of the party used to conduct a compression exercise, we recognize that a number of parties are currently offering such services, including third-party vendors and some self-regulatory organizations (*e.g.,* clearing agencies). The Commission also understands that there may be some instances where compression could be performed without the use of a third-party service provider.

[98] *See* 17 CFR 23.503(a)(3)(ii).

[99] *See* 17 CFR 23.503(a)(2).

[100] The Commission received no comments on this particular issue.

Third, CFTC Rule § 23.503(b), which is the corresponding CFTC compression rule applicable to transactions with counterparties that are *not* Swap Entities, does not contain the caveat that the compression or offset covered by the applicable policies and procedures would only need to occur ''when appropriate.'' By contrast, Rule 15Fi–4(b) does contain such qualifier. In their comment letter, ISDA and SIFMA expressed support for this approach, which we are adopting today as proposed, and also requested that the Commission clarify in the final rule that SBS Entities can always determine whether it is appropriate to engage in such activity.[101] Despite this divergence from the approach previously adopted by the CFTC, we continue to be believe it prudent to allow an SBS Entity to engage in bilateral offset or compression exercises (to the extent requested by its non-SBS Entity counterparty) only in circumstances when doing so was appropriate for the SBS Entity in light of the particular facts and circumstances involved. However, as we stated in the Proposing Release, the discretion we intended to provide SBS Entities in connection with this requirement should not be used by an SBS Entity arbitrarily not to honor the request by its counterparty to engage in portfolio compression.[102]

Finally, ISDA and SIFMA raised questions about the impact of Rule 15Fi–4 on existing counterparty documentation, noting that ''the industry has a strong interest in not having to address any deviations regarding the portfolio compression process (or other substantive areas covered by industry standard documentation intended to achieve compliance with CFTC swap rules) as this may trigger more detailed review, explanation and negotiation between relevant counterparties, which will be challenging, costly and time consuming without commensurate benefit to regulatory oversight.'' Those commenters further requested that, to the extent any differences remain between the Commission's and CFTC's portfolio compression rules, the Commission should allow, on an on-going basis, firms that qualify as both SBS Entities and Swap Entities to comply with Rule 15Fi–4 by complying with CFTC Rule § 23.503 without any further conditions. The Commission has carefully considered this comment and has concluded that such action should not be necessary as we believe that any SBS Entity that is in compliance with CFTC Rule § 23.503 as it exists at this time also will be in compliance with Rule 15Fi–4. As the Commission previously stated, we believe that any differences between Rule 15Fi–4 and CFTC § 23.503 are either technical in nature or provide SBS Entities with greater flexibility as compared to Swap Entities (*e.g.,* the inclusion of the phrase ''when appropriate'' in Rule 15Fi–4(b)).

2. Scope of Rule 15Fi–4—Bilateral Offset

As we previously noted, the Commission does not believe it prudent to suggest a preference as to the use of any particular type of compression, or as to the type or identity of the party conducting the exercise. Instead, we have crafted broad definitions of the terms ''bilateral portfolio compression exercise'' and ''multilateral portfolio compression exercise'' in Rules 15Fi–1(a) and 15Fi–1(j), respectively. In addition, the Commission recognizes that there may be other ways for market participants to reduce the size of their derivatives portfolios that may not be considered to be ''portfolio compression exercises'' for purposes of those two definitions.

In light of those considerations, Rule 15Fi–4(a)(1) requires each SBS Entity to establish, maintain, and follow written policies and procedures for terminating each ''fully offsetting security-based swap'' that it maintains with another SBS Entity in a timely fashion, when appropriate.[103] To the extent that an SBS Entity transacts with a counterparty that is *not* an SBS Entity, the requirements of Rule 15Fi–4(b) are identical to those in Rule 15Fi–4(a)(1), except that the required policies and procedures only need to address engaging in bilateral offset when appropriate and to the extent requested by the counterparty. The Commission believes that by not adopting prescriptive requirements as to the form of bilateral offset that would need to be reflected in an SBS Entity's policies and procedures, the rules regarding bilateral offset allow the counterparties flexibility in the manner in which they undertake to reduce the size of their security-based swap portfolios in light of each counterparty's unique risks and operations.

The rules regarding bilateral offset also have been designed to reflect the Commission's understanding that firms may have legitimate business reasons for maintaining fully offsetting security-based swap transactions that otherwise could be terminated. As such, Rules 15Fi–4(a)(1) and (b) require a firm's policies and procedures to address the termination of fully offsetting security-based swaps only ''when appropriate.''

Finally, for purposes of Rule 15Fi–4(a)(1), the Commission expects to generally consider an SBS Entity to have terminated each fully offsetting security-based swap in a ''timely fashion'' so long as (1) termination of the offsetting security-based swaps occurs within a period that is reasonable in light of the circumstances of each particular transaction and (2) the relevant SBS Entity is otherwise in compliance with its policies and procedures regarding bilateral offset.

3. Application of Rule 15Fi–4 to Cleared Security-Based Swaps

As proposed, the portfolio compression requirements in Rule 15Fi–4 would not have applied to a ''clearing transaction'' which, pursuant to existing Rule 15Fi–1(c), is defined as a security-based swap that has a clearing agency as a direct counterparty.[104] Notwithstanding this provision, the Commission understands that portfolio compression is not limited to uncleared swaps and that compression services may be offered either by a clearing agency itself or by a third-party vendor that works collaboratively with the clearing agency.[105] Although the Commission recognizes the risk-reducing benefits that could be realized through the compression of cleared security-based swaps, we nonetheless believe that the issue of whether and when compression should occur within a clearing agency is best addressed by the rules governing the clearing agency's risk management practices, as well as by the documentation governing the

[101] *See* ISDA/SIFMA Letter.

[102] *See* Proposing Release, 84 FR at 4625, n.70.

[103] The Commission also is amending existing Rule 15Fi–1 to add, as paragraph (h), the term ''fully offsetting security-based swaps,'' which is defined as ''security-based swaps of equivalent terms where no net cash flow would be owed to either counterparty after the offset of payment obligations thereunder.'' For consistency with the rules applicable to Swap Entities, this definition is substantively identical to the CFTC's corresponding definition in 17 CFR 23.500(f), which we continue to believe is appropriately scoped for purposes of Rule 15Fi–4.

[104] *See supra* note 85 and accompanying text.

[105] Notwithstanding the applicability of the requirements of Rule 15Fi–4, the Commission reminds any third parties performing compression or offset services to keep in mind any potential requirements under other provisions of the securities laws. For example, the Commission has stated that the provision of tear-up and compression services for security-based swaps would qualify these participants as clearing agencies and therefore trigger the statutory requirement to register as clearing agencies pursuant to Section 17A of the Exchange Act, absent exemptive relief (which the Commission provided on a conditional temporary basis in July 2011). *See* Clearing Services Exemptive Order, 76 FR at 39964.

relationship between the clearing agency and its members.[106]

Accordingly, Rule 15Fi–4(c) provides an exception from the portfolio compression requirements for any security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to Section 17A of the Exchange Act or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to Section 17A of the Exchange Act. This exception has been modified from the proposal, as described in detail in Section II.A.6.

C. Rule 15Fi–5: Trading Relationship Documentation

1. Scope of Rule 15Fi–5

In light of the important risk mitigating factors described in Section I of this release, the Commission is adopting Rule 15Fi–5, which establishes certain requirements for SBS Entities related to the use of written trading relationship documentation in connection with their security-based swap transactions.[107] Specifically, Rule 15Fi–5(a)(2) requires each SBS Entity to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes written security-based swap trading relationship documentation with each of its counterparties prior to, or contemporaneously with, executing a security-based swap with any counterparty.[108] The rule further requires that the policies and procedures required thereunder be approved in writing by a senior officer of the SBS Entity, and that a record of the approval be retained.[109]

Pursuant to Rule 15Fi–5(b)(1), the security-based swap trading relationship documentation subject to the policies and procedures requirement in Rule 15Fi–5(a)(2) must be in writing. Such documentation also must include all terms governing the trading relationship between the SBS Entity and its counterparty, including, without limitation, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, governing law, valuation, and dispute resolution.

As proposed, Rule 15Fi–5(b)(1) also would have required that the applicable policies and procedures provide that the trading relationship documentation include terms governing ''applicable regulatory reporting obligations (including pursuant to Regulation SBSR).'' CFTC Rule § 23.504 does not contain a comparable provision. Nevertheless, the Commission included this requirement in the proposal as a means to potentially help address the SDR verification issue that is discussed in detail in Section II.A.1 above and Section I.E. of the Proposing Release.[110]

In their comment letter, ISDA and SIFMA expressed their view that trading relationship documentation, such as ISDA Master Agreements, including amendments effectuated by protocol or otherwise, are not the appropriate place to memorialize regulatory reporting obligations and should not address reporting obligations that go beyond what is required under Regulation SBSR.[111] ISDA and SIFMA also stated that the proposed documentation requirement would have essentially mirrored the reporting requirements in Regulation SBSR, including the reporting hierarchy established by that rule, which would be duplicative, burdensome and impose additional costs on SBS Entities, and that such requirement also may not address the underlying SDR verification issue.[112]

The Commission has carefully considered these comments and has modified Rule 15Fi–5(b)(1), such that the required policies and procedures no longer need to be reasonably designed to ensure that the trading relationship documentation include terms governing applicable regulatory reporting obligations. In particular, the comments we received indicated that the inclusion of the proposed requirement would not serve as a basis for potentially addressing the SDR verification issue, and that such requirement would introduce additional burdens on SBS Entities, which commenters asserted were not justified in light of the fact that the expected benefits the Commission referred to in the Proposing Release were already addressed by other requirements, namely in certain aspects of Regulation SBSR.[113]

In addition, pursuant to Rule 15Fi–5(b)(2), all trade acknowledgements and verifications of security-based swap transactions required under Rule 15Fi–2 will be deemed to be security-based swap trading relationship documentation, as they often may contain one or more terms contemplated by the policies and procedures required by Rule 15Fi–5. Further, the Commission understands that in some transactions, the parties may choose to document their trading relationship by using a stand-alone ''long-form confirmation'' that includes all of the terms governing the relationship. Rule 15Fi–5 is not intended to interfere with this practice. Accordingly, we believe that the use of a ''long-form confirmation'' would comply with Rule 15Fi–5 so long as such document is: (1) In written form and includes all of the elements of the trading relationship required under the rule (whether by incorporating them by reference from a standard master agreement or by expressly restating them in the confirmation) and (2) executed prior to, or contemporaneously with, the execution of each relevant security-based swap.

Pursuant to Rule 15Fi–5(b)(3), the policies and procedures required by Rule 15Fi–5(a)(2) also need to provide that the security-based swap trading relationship documentation include credit support arrangements. Such credit support arrangements must

[106] The corresponding CFTC rule is 17 CFR 23.503(c).

[107] The corresponding CFTC rule is 17 CFR 23.504. The structure of the CFTC rule, including the subsections, mirrors the structure of Rule 15Fi–5.

[108] Among other exceptions discussed below in Section II.C.5, Rule 15Fi–5 does not apply to security-based swap that is directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to Section 17A of the Exchange Act or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to Section 17A of the Exchange Act.

[109] For purposes of this requirement, the Commission views the term ''senior officer'' as covering only the most senior executives in the organization, such as a firm's chief executive officer, chief financial officer, chief legal officer, chief compliance officer, president, or other person at a similar level. This approach is similar to how the Commission has previously interpreted the term in the context of other requirements applicable to SBS Entities. *See* Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48964, 48968 n. 29 (Aug.14, 2015) (''SBS Entity Registration Adopting Release''). By contrast, CFTC Rule § 23.504 uses the term ''senior management,'' which is not further defined in either CFTC Rules § 23.500 or § 23.504. We view this difference as a clarification and do not believe that it represents a substantive difference between the two sets of rules.

[110] *See* Proposing Release, 84 FR at 4633–35. The Commission stated its view that clarifying the counterparties' reporting arrangements in advance of a transaction generally should prove beneficial to the OTC derivatives market due to the importance of ensuring that a security-based swap transaction is reported accurately and in a timely manner.

[111] *See* ISDA/SIFMA Letter.

[112] *See id.* In particular, ISDA and SIFMA noted that the proposed requirement could force institutions to ''re-paper.'' or enter into new documentation with clients, where there is potential for security-based swap reporting obligations to arise.

[113] *See id.* For example, ISDA and SIFMA stated that ''Regulation SBSR establishes which parties to the trade have a reporting obligation without the need for any further contractual agreement among the parties.'' As such, requiring that an SBS Entity's trading relationship documentation include terms governing applicable regulatory reporting obligations would be both redundant with, and an expansion of, the requirements in Regulation SBSR.

contain, in accordance with applicable requirements under regulations adopted by the Commission or any prudential regulators,[114] and without limitation, the following:

- initial and variation margin requirements, if any;
- types of assets that may be used as margin and asset valuation haircuts, if any;
- investment and re-hypothecation terms for assets used as margin for uncleared security-based swaps, if any; and
- custodial arrangements for margin assets, including whether margin assets are to be segregated with an independent third party, in accordance with the notice requirement in Section 3E(f)(1)(A) of the Exchange Act (and either 17 CFR 240.15c3–3(p)(4)(i) (Rule 15c3–3(p)(4)(i)) or Rule 18a–4(d)(1) thereunder, as applicable), if any.[115]

As the Commission has previously explained, ensuring that uncleared OTC derivatives transactions are appropriately collateralized was one of the key elements of the Title VII reforms.[116] Accordingly, requiring that an SBS Entity's policies and procedures be reasonably designed to ensure that the counterparties clearly document the applicable processes and requirements for calculating and exchanging margin in connection with a security-based swap transaction is an important step in achieving this broader regulatory objective.[117]

At the same time, however, the Commission notes that the requirement in Rule 15Fi–5(b)(3) is intended to be complementary to, and not conflict with, our existing margin requirements, particularly Rule 18a–3. That rule, which the Commission adopted in June 2019, prescribes margin requirements for non-bank SBS Entities with respect to uncleared security-based swaps. Although Rule 18a–3 does not contain specific margin documentation requirements, paragraphs (c)(4) and (5) contain requirements related to the use of collateral and netting agreements.[118] Rule 18a–3 also contains an exception to the requirement to collect initial margin when the initial margin amount plus all other credit exposures resulting from uncleared swaps and security-based swaps of the SBS Entity and its affiliates with the counterparty and its affiliates does not exceed $50 million. Recognizing that counterparties may need time after breaching that $50 million threshold to execute agreements to address the posting of initial margin, the rule also permits an SBS Entity to defer collecting initial margin from a counterparty for two months after the month in which the counterparty does not qualify for the $50 million threshold exception for the first time.[119] Accordingly, the Commission is confirming that an SBS Entity that is not collecting initial margin from a counterparty pursuant to the exception in Rule 18a–3(c)(1)(iii)(H) (including the one-time two-month deferral period after breaching the $50 million threshold) would not be required to have a collateral agreement or a netting agreement in place, solely with respect to the collection of initial margin, for purposes of both Rule 18a–3 and Rule 15Fi–5(b)(3).[120]

2. Rule 15Fi–5(b)(4): Documenting Valuation Methodologies

As discussed in Section I, ensuring that security-based swaps are accurately valued throughout the duration of a contract should play an important role in protecting the integrity of the OTC derivatives market, both at the level of an individual participant and systemically across the broader financial market.[121] Accordingly, Rule 15Fi–5(b)(4) requires that the applicable policies and procedures provide that the relevant swap trading relationship documentation between certain types of counterparties include written documentation in which the parties agree on the process, which may include any agreed upon methods, procedures, rules, and inputs, for determining the value of each security-based swap at any time from execution to the termination, maturity, or expiration of such security-based swap for the purposes of complying with the margin requirements under Section 15F(e) of the Exchange Act (and applicable regulations),[122] and the risk management requirements under Section 15F(j) of the Exchange Act (and applicable regulations).[123] To the maximum extent practicable, such valuations need to be based on recently executed transactions, valuations

[114] *See supra* note 73.

[115] *See* 15 U.S.C. 78c–5(f). Consistent with the Commission's goal of ensuring that these final rules are harmonized with the corresponding CFTC requirements wherever possible, the requirements in Rule 15Fi–5(b)(3) are identical to CFTC Rule § 23.504(b)(3), other than a cross-reference in the latter to CFTC Rule part 701 which, among other things, requires that a Swap Entity notify its counterparty to an uncleared swap transaction that the counterparty has the right to require that any initial margin the counterparty provides in connection with such transaction be segregated in accordance with the CFTC's segregation requirements. On March 28, 2019, the CFTC amended certain parts of Rule part 701, including by modifying the timing requirements applicable to the required notices. *See* Segregation of Assets Held as Collateral in Uncleared Swap Transactions, 84 FR 12894 (Apr. 3, 2019). In addition, the Commission has made technical edits to Rule 15Fi–5(b)(3) to incorporate the applicable pinpoint citation in Section 3E(f)(1)(a) of the Exchange Act and to reference the specific rules the Commission recently adopted pursuant to that statutory authority.

[116] *See supra* Section I.

[117] Also in furtherance of harmonizing these final rules with the corresponding CFTC requirements, we note that in adopting Title VII capital, margin, and segregation requirements in June 2019, the Commission crafted certain margin requirements, including rules regarding third-party custodian and netting or collateral agreements, such that existing agreements with counterparties entered into for purposes of the corresponding CFTC documentation rules will be sufficient for purposes of the Commission's margin rules, if the agreements meet the requirements of the applicable Commission rules. *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43894, 43909, and 43928, n. 570. Nevertheless, the Commission encourages registrants or potential registrants who have concerns regarding the need to revise their existing documentation solely due to the operation of Rule 15Fi–5 to consult with the staff of the Commission.

[118] *See* 17 CFR 240.18a–3(c)(4) and (5). *See also* Capital, Margin, and Segregation Adopting Release, 84 FR at 43909, n. 334.

[119] *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43926.

[120] By contrast, the uncleared swap margin rules adopted by the CFTC and the prudential regulators do contain specific margin documentation requirements. *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43909, n. 335. However, CFTC staff issued an advisory on July 9, 2019 clarifying that the CFTC's margin rules do not require documentation governing the posting, collection and custody of initial margin until the initial margin threshold amount exceeds $50 million. *See* CFTC Letter No. 19–16 (Jul. 9, 2019), *available at: https://www.cftc.gov/PressRoom/PressReleases/7960-19.* Similarly, the prudential regulators recently proposed amendments to their margin rules for uncleared swaps and security-based swaps that, among other things, would clarify that covered entities subject to those rules are not required to execute initial margin trading documentation with a counterparty prior to the time they are required to collect or post initial margin pursuant to the rule. *See* Margin and Capital Requirements for Covered Swap Entities, 84 FR 59970, 59977 (Nov. 7, 2019). Finally, BCBS and IOSCO issued a statement on March 5, 2019, also clarifying their recommended view that documentation should not be required if the bilateral initial margin amount does not exceed €50 million, and further noting that ''[i]t is expected, however, that covered entities will act diligently when their exposures approach the threshold to ensure that the relevant arrangements needed are in place if the threshold is exceeded.'' *See* BCBS/IOSCO statement on the final implementation phases of the Margin requirements for non-centrally cleared derivatives (Mar. 5, 2019), *available at: https://www.bis.org/press/p190305a.htm.*

[121] *See id.*

[122] *See* 15 U.S.C. 78o–10(e). For the avoidance of doubt, the requirements in Rule 15Fi–5(b)(4) are intended to facilitate agreement between an SBS Entity and its counterparty as to how they will determine the value of a security-based swap in order to, among other things, comply with the margin requirements promulgated by either the Commission or, with respect to an SBS Entity that is a bank, the applicable prudential regulator. These requirements are not intended in any way to supersede those underlying margin requirements.

[123] *See* 15 U.S.C. 78o–10(j).

provided by independent third parties, or other objective criteria.

The requirements in Rule 15Fi–5(b)(4) regarding valuation methodology apply to security-based swap trading relationship documentation entered into between: (1) Two SBS Entities; (2) an SBS Entity and a ''financial counterparty;'' and (3) an SBS Entity and any other counterparty, if requested by such counterparty. Accordingly, we are also revising proposed Rule 15Fi–1 to add, as paragraph (g), a definition of ''financial counterparty,'' which includes any counterparty that is not an SBS Entity *and* that is one of the following:

- A swap dealer;
- a major swap participant;
- a commodity pool as defined in Section 1a(10) of the Commodity Exchange Act (7 U.S.C. 1a(10));
- a private fund as defined in Section 202(a)(29) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a));
- an employee benefit plan as defined in paragraphs (3) and (32) of Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); and
- a person predominantly engaged in activities that are in the business of banking or, in activities that are financial in nature, as defined in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843k).[124]

Further, Rule 15Fi–5(b)(4)(ii) is intended to help ensure that the required valuation documentation between SBS Entities and their counterparties contains sufficient guidance and information in the event of a problem with determining the value of a security-based swap. Specifically, the documentation required by the applicable policies and procedures must include *either:* (1) Alternative methods for determining the value of the security-based swap for the purposes of complying with Rule 15Fi–5(b)(4) in the event of the unavailability or other failure of any input required to value the security-based swap for such purposes; or (2) a valuation dispute resolution process by which the value of the security-based swap shall be determined for the purposes of complying with the rule.

To the extent that the prescribed valuation documentation needs to be updated, revised, or otherwise modified, Rule 15Fi–5(b)(4)(iv) provides that the parties may agree on changes or procedures for modifying or amending such documentation at any time.[125] Finally, because valuation data and methodologies often include, or may be based on, private information, Rule 15Fi–5(b)(4)(iii) makes clear that an SBS Entity is not required to disclose to the counterparty confidential, proprietary information about any model it may use to value a security-based swap.

3. Rule 15Fi–5(b)(5) and (6): Other Disclosure Requirements

Rule 15Fi–5 also requires that the policies and procedures governing the applicable trading relationship documentation require an SBS Entity and its counterparty to disclose to each other certain information regarding their legal and bankruptcy status, and to include a statement regarding the status of a security-based swap if accepted for clearing by a central counterparty (''CCP''). The first requirement relates to whether the SBS Entity or its counterparty is subject to a particular legal regime in the event of its failure, such as FDIC receivership for banks or orderly liquidation for certain financial companies that meet the requirements set forth in Title II of the Dodd-Frank Act.[126] As background, Title II of the Dodd-Frank Act provides for an alternative insolvency regime for the ''orderly liquidation'' of large financial companies,[127] including broker-dealers, that meet specified criteria (each a ''covered financial company'') as set forth in Title II of the Dodd-Frank Act.[128] If the covered financial company is (1) a broker or dealer and (2) a member of the Securities Investor Protection Corporation (''SIPC''), such ''covered broker or dealer'' would be placed into an orderly liquidation proceeding with the FDIC appointed as receiver.[129] Because this orderly liquidation process, which was modeled on the receivership process used for failed banks, is different from the liquidation regimes established under the Securities Investor Protection Act of 1970 [130] or by the U.S. Bankruptcy Code,[131] the Commission believes it to be appropriate to require counterparties to a security-based swap transaction to disclose to each other whether this alternative regime may potentially apply in the event of an insolvency.

Accordingly, Rule 15Fi–5(b)(5) sets out that each SBS Entity's policies and procedures must require that security-based swap trading relationship documentation contain a statement as to whether it or its counterparty is an

[124] The corresponding definition in CFTC Rule § 23.500(e) is referred to as a ''financial entity.'' We replaced the word ''entity'' with ''counterparty'' to avoid any confusion due to the fact that there are other definitions of ''financial entity'' within the Exchange Act and its implementing regulations. For example, term ''financial entity'' is used in Section 3C(g) of the Exchange Act for purposes of the statutory exception to the mandatory clearing requirement in Title VII. *See* 15 U.S.C. 78c–3(g)(3). Similarly, there is a definition of ''financial entity'' in Rule 3a67–6 under the Exchange Act, which is used for one of the tests for determining a person's status under the definition of ''major security-based swap participant'' in Section 3(a)(67) of the Exchange Act. *See* 15 U.S.C. 78. Other than the different titles, we do not believe that there are any substantive differences between the CFTC's definition of ''financial entity'' and the definition of ''financial counterparty'' in Rule 15Fi–1(g).

[125] The text of CFTC Rule § 23.504(b)(4)(iv), which is the corresponding subsection under CFTC rules, provides that ''[t]he parties may agree on changes or procedures for modifying or amending the documentation required by this paragraph at any time.'' Rule 15Fi–5(b)(4)(iv) does not contain the phrase ''required by this paragraph.'' We view this to be solely a technical change and do not intend for it to represent a substantive deviation from the corresponding CFTC rule. Rather, the difference is intended to avoid any suggestion that the parties could amend the underlying requirements contained in Rule 15Fi–5(b)(4).

[126] *See* 12 U.S.C. 5382; 12 U.S.C. 5383.

[127] The term ''financial company'' is defined in 12 U.S.C. 5381(a)(11) to include any company (as defined in 12 U.S.C. 5381(a)(5)) that—

(A) is incorporated or organized under any provision of Federal law or the laws of any State;

(B) is—

(i) a bank holding company (as defined in 12 U.S.C. 1841(a));

(ii) a nonbank financial company supervised by the Federal Reserve Board;

(iii) any company that is predominantly engaged in activities that the Federal Reserve Board has determined are financial in nature or incidental thereto for purposes of 12 U.S.C. 1843(k) (other than a company described in clause (i) or (ii)); or

(iv) any subsidiary of any company described in any of clauses (i) through (iii) that is predominantly engaged in activities that the Federal Reserve Board has determined are financial in nature or incidental thereto for purposes of 12 U.S.C. 1843(k) (other than a subsidiary that is an insured depository institution or an insurance company); and

(C) is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 *et seq.*), a governmental entity, or a regulated entity, as defined under 12 U.S.C. 4502(20).

[128] Section 203 of the Dodd-Frank Act sets forth the process for designating a financial company as a ''covered financial company.'' In the case of a broker-dealer, or when a financial company's largest U.S. subsidiary is a broker-dealer, Section 203(a)(1)(B) provides that the Federal Reserve Board and the Commission (in each case subject to the approval of a two-thirds majority of each agency's members), in consultation with the FDIC, may, either on their own initiative or at the request of the Secretary of the U.S. Treasury (''Secretary''), issue a written orderly liquidation recommendation to the Secretary. *See* 12 U.S.C. 5383(a). Section 203(b) requires the Secretary (after consultation with the President) to take action on the recommendation upon an affirmative determination that, among other things, the failure of a financial company would have serious adverse effects on financial stability in the United States and that taking action under the orderly liquidation authority with respect to that company would avoid or mitigate such adverse effects. *See* 12 U.S.C. 5383(b).

[129] *See* 12 U.S.C. 5384. Section 205(a) of the Dodd-Frank Act requires the FDIC, as the appointed receiver for any covered broker or dealer, to appoint SIPC as trustee for the liquidation. *See* 12 U.S.C. 5385(a).

[130] 15 U.S.C. 78aaa *et seq.*

[131] 11 U.S.C. 101 *et seq.*

insured depository institution or financial company. Further, the documentation also must contain a statement that the orderly liquidation provisions of the Dodd-Frank Act and the Federal Deposit Insurance Act [132] may limit the rights of the parties under their trading relationship documentation should either party be deemed a ''covered financial company'' or is otherwise subject to having the FDIC appointed as a receiver. The documentation further needs to state that such limitations relate to the right of the non-covered party to terminate, liquidate, or net any security-based swap by reason of the appointment of the FDIC as receiver, notwithstanding the agreement of the parties in the security-based swap trading relationship documentation, and that the FDIC may have certain rights to transfer security-based swaps of the covered party. Finally, the policies and procedures must require that the trading relationship documentation contain an agreement between the SBS Entity and its counterparty to provide notice if either it or its counterparty becomes or ceases to be an insured depository institution or a financial company.[133]

Second, pursuant to Rule 15Fi–5(b)(6), the security-based swap trading relationship documentation subject to the policies and procedures requirement in Rule 15Fi–5(a)(2) must include certain information regarding the status of a security-based swap accepted for clearing by a clearing agency. Specifically, such documentation must contain a notice that, upon acceptance of a security-based swap by a clearing agency:

- The original security-based swap is extinguished;
- The original security-based swap is replaced by equal and opposite security-based swaps with the clearing agency; and
- All terms of the security-based swap shall conform to the product specifications of the cleared security-based swap established under the clearing agency's rules.

The Commission believes that such disclosure provides important information to counterparties regarding the effects of clearing a trade at a clearing agency and clarifies the status of the contract following its acceptance and novation at the clearing agency.

4. Rule 15Fi–5(c): Audit of Security-Based Swap Trading Relationship Documentation

Rule 15Fi–5(c) requires each SBS Entity to have an independent auditor conduct periodic audits sufficient to identify any material weakness in its documentation policies and procedures required by the rule. In addition, a record of the results of each audit must be retained for a period of three years after the conclusion of the audit.[134] The Commission believes that requiring periodic audits of a firm's security-based swap trading relationship documentation is consistent with sound risk mitigation practices and is designed to reduce the prevalence of discrepancies during the course of these transactions. This requirement differs slightly from CFTC Rule § 23.504(c), which references an independent ''internal or external'' auditor.[135]

In their comment letter, ISDA and SIFMA asked the Commission to clarify that the required auditor can be ''internal or external'' as is the case in the CFTC rule.[136] As we stated in the Proposing Release, the Commission has experience overseeing accounting and auditing standards in other contexts, particularly as related to certain disclosure requirements under the federal securities laws.[137] We also explained in the Proposing Release that, in those contexts, an internal auditor typically reports to the management of the applicable entity, which would be inconsistent with the Commission's auditor independence rules.[138] Accordingly, we have determined not to modify Rule 15Fi–5(c) in the manner requested by the commenters because it appears that an internal auditor would not typically be independent as contemplated in the Commission's auditor independence rules. However, and as noted in the Proposing Release, we also are not necessarily foreclosing the possibility that there could be alternative structures to the typical ''internal'' auditor employment relationship that, if structured properly, could be consistent with the Commission's auditor independence rules.[139]

5. Exceptions to the Trading Relationship Documentation Requirements

Rule 15Fi–5(a)(1) contains three different exceptions from the basic requirement that each SBS Entity establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes written security-based swap trading relationship documentation with each of its counterparties prior to, or contemporaneously with, executing a security-based swap with any counterparty. First, Rule 15Fi–5(a)(1)(i) provides an exception for security-based swaps executed prior to the date on which an SBS Entity is required to be in compliance with the documentation rule. Although the Commission recognizes the significant risk mitigation benefits associated with ensuring that all transactions are supported by comprehensive and accurate documentation, we also understand that it may be impractical to require SBS Entities to have policies and procedures to bring existing transactions into compliance with these rules, particularly when weighing any potential benefits of doing so against the potential costs.[140] Accordingly, we believe that those transactions should be

[132] 12 U.S.C. 1811 *et seq.*

[133] Specifically, Rule 15Fi–5(b)(5) requires that an SBS Entity's policies and procedures require that the applicable security-based swap trading relationship documentation contain:

- A statement of whether the SBS Entity is an insured depository institution (as defined in 12 U.S.C. 1813) or a financial company (as defined in Section 201(a)(11) of the Dodd-Frank Act, 12 U.S.C. 5381(a)(11));
- A statement of whether the counterparty is an insured depository institution or financial company;
- A statement that in the event either the SBS Entity or its counterparty becomes a covered financial company (as defined in 12 U.S.C. 5381(a)(8)) or is an insured depository institution for which the FDIC has been appointed as a receiver (the ''covered party''), certain limitations under Title II of the Dodd-Frank Act or the Federal Deposit Insurance Act may apply to the right of the non-covered party to terminate, liquidate, or net any security-based swap by reason of the appointment of the FDIC as receiver, notwithstanding the agreement of the parties in the security-based swap trading relationship documentation, and that the FDIC may have certain rights to transfer security-based swaps of the covered party under Section 210(c)(9)(A) of the Dodd-Frank Act, 12 U.S.C. 5390(c)(9)(A), or 12 U.S.C. 1821(e)(9)(A); and
- An agreement between the SBS Entity and its counterparty to provide notice if either it or its counterparty becomes or ceases to be an insured depository institution or a financial company.

[134] The three year holding period for these records is contained in the applicable recordkeeping, reporting, and notification requirements for SBS Entities, as opposed to in Rule 15Fi–5(c) itself.

[135] *See* 17 CFR 23.504(c).

[136] *See* ISDA/SIFMA Letter.

[137] *See* Proposing Release, 84 at 4630 (referencing *See* 17 CFR 210.2–01(c)(2) (Rule 2–01(c)(2) of Regulation S–X) (Employment Relationships)).

[138] *See id.*

[139] *See* Proposing Release, 84 at 4630 n. 105. In the request for comment on this issue, we also asked commenters to identify and describe such potential structures. We did not receive any information responsive to that request.

[140] When the CFTC adopted a similar exception in 2012, it acknowledged the views of commenters that applying CFTC Rule § 23.504 retroactively to existing swaps would be time consuming and costly for Swap Entities due to them needing to make amendments to existing documentation. *See* CFTC Risk Mitigation Adopting Release, 77 FR at 55950.

excepted from the documentation requirements.[141]

To the extent that an SBS Entity maintains an existing security-based swap portfolio with a counterparty that pre-dates the compliance date, Rule 15Fi–5(a)(1)(i) provides an exception from the documentation requirements only with respect to those *existing* transactions. This means that the SBS Entity would not be in violation of Rule 15Fi–5 solely as a result of having policies and procedures that do not require such SBS Entity to have executed written security-based swap trading relationship documentation with any counterparty with respect to those existing transactions, or if the existing documentation that it maintains with the counterparty does not otherwise comply with the requirements of the rule. However, if the SBS Entity enters into *new* security-based swap transactions with that same counterparty, the exception would not apply to those new transactions, even if noncompliant trading relationship documentation already existed. Under those circumstances, the SBS Entity's policies and procedures will need to be reasonably designed to ensure that the existing documentation complies with the rule before using it as the basis to enter into any new security-based swaps with that counterparty.

Second, Rule 15Fi–5(a)(1)(ii) provides an exception for any security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to Section 17A of the Exchange Act or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to Section 17A of the Exchange Act.[142] We included this exception in recognition of the fact that, once a security-based swap is cleared, the transaction is governed primarily by the terms of the agreements in effect between the clearing member and the clearing agency (as well as between the clearing member and its customer, if applicable). This exception has been modified from the proposal, as described in detail in Section II.A.6.

Finally, Rule 15Fi–5(a)(1)(iii) provides an exception for security-based swaps executed anonymously on a national securities exchange or a security-based swap execution facility (''SB SEF''), provided that:

- Such security-based swaps are intended to be cleared and are actually submitted for clearing to a clearing agency;
- All terms of such security-based swaps conform to the rules of the clearing agency; and
- Upon acceptance of such security-based swap by the clearing agency: (1) The original security-based swap is extinguished; (2) the original security-based swap is replaced by equal and opposite security-based swaps with the clearing agency; and (3) all terms of the security-based swap shall conform to the product specifications of the cleared security-based swap established under the clearing agency's rules.

The exception in Rule 15Fi–5(a)(1)(iii) is intended to recognize the fact that the documentation requirements may be largely impossible to comply with in the context of cleared anonymous transactions because, by definition, the parties to these transactions would not know the identity their counterparties. Therefore, trading relationship documentation with any such counterparty would be unnecessary and impractical.

The exception provided for in Rule 15Fi–5(a)(1)(iii) is limited—and therefore distinguishable from the exception for cleared security-based swap transactions—in one important respect to account for instances where a transaction is not accepted for clearing following its submission. For example, an SBS Entity may enter into a security-based swap transaction on an anonymous basis on a national securities exchange or an SB SEF, fully intending for the transaction to be submitted to, and cleared by, a clearing agency. In some cases, the transaction may be rejected by the clearing agency for reasons which the SBS Entity did not know prior to its submission, such as possible operational or clerical errors or if one of the clearing members unintentionally exceeded its clearing limits. If a bilateral transaction continues to exist between the two counterparties (who would no longer be unknown to each other), written trading relationship documentation governing that transaction might not exist between them.

The Commission believes that under those circumstances the objectives of Rule 15Fi–5 would not be satisfied if the SBS Entity and its counterparty did not ultimately have written agreement on the terms of the remaining security-based swap transaction. At the same time, however, because the transaction was initially entered into on an anonymous basis, the two sides might need additional time to agree to the terms of the trading relationship documentation, particularly if they previously had not engaged in any other transactions. Accordingly, if an SBS Entity that is relying on the exception in Rule 15Fi–5(a)(1)(iii) subsequently receives notice that the relevant security-based swap transaction has not been accepted for clearing by a clearing agency, the rule requires that the SBS Entity be in compliance with the requirements of Rule 15Fi–5 in all respects promptly after receipt of such notice (if a security-based swap continues to exist between the two counterparties after it has been rejected by the clearing agency).[143]

Whether a contract that has not been accepted for clearing by a clearing agency continues to exist may depend on the rules of the particular SB SEF, national securities exchange, or clearing agency, or the agreement of the counterparties. If the end result is that a security-based swap continues to exist despite being rejected by the clearing agency, then the policies and procedures would need to require that the SBS Entity be in compliance with the requirements of Rule 15Fi–5 with respect to that transaction. If the rejection from clearing results in a termination or voiding of the original security-based swap, then there is no security-based swap for which it is necessary to comply with Rule 15Fi–5.

Similarly, ISDA and SIFMA requested that the exception in Rule 15Fi–5(a)(1)(iii) be expanded to include all ''intended to be cleared'' (''ITBC'') security-based swaps, consistent with CFTC Staff Letter 13–70, issued in 2013.[144] That no-action letter addresses the treatment of trading relationship documentation requirements in CFTC Rule § 23.504 and a number of specified provisions of the CFTC's business conduct standards in the context of ITBC swaps, which CFTC staff defined as swaps that (i) are of a type accepted for clearing by a derivatives clearing organizations (''DCO''), and (ii) are

[141] As discussed in detail in Section II.F.1 of this release, the Commission also is amending Rules 17a–4 and 18a–6 under the Exchange Act to, among other things, require SBS Entities to retain all security-based swap trading relationship documentation with counterparties required to be created under Rule 15Fi–5. Because security-based swaps executed prior to the compliance date for Rule 15Fi–5 would be exempt from the underlying documentation requirement, any trading relationship documentation voluntarily entered into in respect of those transactions would not be deemed to have been created pursuant to Rule 15Fi–5.

[142] *See supra* note 85 and accompanying text.

[143] The provisions in Rule 15Fi–5(a)(iii) to account for cleared anonymous transactions that are submitted for clearing, but ultimately not accepted, are not included in CFTC Rule § 23.504. We have included this provision to account for situations when an SBS Entity could be otherwise deemed to be not in compliance with Rule 15Fi–5 due to a transaction being rejected for clearing for reasons which the SBS Entity did not know prior to when the transaction was submitted to the clearing agency.

[144] *See* ISDA/SIFMA Letter.

intended to be submitted for clearing contemporaneously with execution.[145]

After careful review and consideration of these comments, the Commission has determined not to modify Rule 15Fi–5(a)(1)(iii) to take into account CFTC Staff Letter 13–70. Because a number of variables included in CFTC Staff Letter 13–70 relate to aspects of Title VII that the Commission has not yet addressed, we believe that it would be premature to incorporate the exceptions contained in that letter into Rule 15Fi–5 at this time. For example, and as described above, certain of the fact patterns identified in the CFTC letter depend on whether the relevant swap is subject to a CFTC mandatory clearing determination. As the Commission has not yet made any such mandatory clearing determinations, we do not yet have a factual basis for assessing whether and to what extent a comparable condition should be reflected in Rule 15Fi–5.

Finally, the Commission recognizes that because the definition of ''security-based swap execution facility'' in Rule 15Fi–1(n) only includes an SB SEF that is registered with the Commission pursuant to section 3D of the Exchange Act, the exemption provided in Rule 15Fi–5(a)(1)(iii) will not be available to SBS Entities until such time as the Commission has finalized its SB SEF registration rules.[146] The Commission also has granted temporary exemptions from the registration requirements for SB SEFs and from certain disclosure requirements in Section 3D(c) of the Exchange Act (''SB SEF Exemptions'').[147] The SB SEF Exemptions will expire on the earliest compliance date set forth in any of the final rules regarding registration of SB SEFs.[148] Accordingly, the Commission is taking the position that until such time as an SB SEF is required to register with the Commission, an SBS Entity may comply with the exemption from the trading relationship documentation requirements, as provided for in Rule 15Fi–5(a)(1)(iii), by executing a security-based swap on a trading platform that would be required to be registered with the Commission as an SB SEF, but for the relief provided by the SBS Exemptions.[149]

D. Amendments to Recordkeeping Rules

The Commission also is amending the recordkeeping, reporting, and notification requirements applicable to SBS Entities. With these amendments, SBS Entities will be required to make and keep current information relevant to each portfolio reconciliation and portfolio compression exercise in which it participates, and to retain a record of each valuation dispute notification required pursuant to Rule 15Fi–3(c), all security-based swap trading relationship documentation required to be created under Rule 15Fi–5, a record of the results of each audit of the SBS Entity's security-based swap trading relationship documentation policies and procedures, as required pursuant to Rule 15Fi–5(c), and each policy and procedure created pursuant to Rules 15Fi–3 through 15Fi–5.

Specifically, the Commission is amending: (1) Existing Rule 17a–3 under the Exchange Act, which applies to SBS Entities that are also registered with the Commission as broker-dealers under Section 15(b) of the Exchange Act (''broker-dealer SBS Entities''), and (2) Rule 18a–5 under the Exchange Act, which applies to SBS Entities that are *not* also registered with the Commission as broker-dealers under Section 15(b) of the Exchange Act (''stand-alone and bank SBS Entities''). As amended, these rules require each SBS Entity to make and keep current records of each security-based swap portfolio reconciliation, whether conducted pursuant to Rule 15Fi–3 or otherwise,[150] a copy of each valuation dispute notification required to be provided to the Commission pursuant to Rule 15Fi–3(c),[151] and a record of each bilateral offset and each bilateral portfolio compression exercise or multilateral portfolio compression exercise in which it participates, whether conducted pursuant to Rule 15Fi–4 or otherwise.[152]

With respect to the reconciliation requirement, the amendments require that these records include the dates of the security-based swap portfolio reconciliation, the number of portfolio reconciliation discrepancies, the number of security-based swap valuation disputes (including the time-to-resolution of each valuation dispute and the age of outstanding valuation disputes, categorized by transaction and counterparty), and the name of the third-party entity performing the security-based swap portfolio reconciliation, if any.[153] With respect to the valuation notification requirement, the amended rules require the retention of each notification required to be provided to the Commission pursuant to Rule 15Fi–3(c).[154] With respect to compression, the rules will now require that these records include the dates of the offset or compression, the security-based swaps included in the offset or compression, the identity of the counterparties participating in the offset or compression, the results of the compression, and the name of the third-party entity performing the offset or compression, if any.[155] The Commission believes that requiring SBS Entities to make and retain such records will, among other things, promote compliance with Rules 15Fi–3 and 15Fi–4, assist SBS Entities in the event that they need to resolve problems that relate to a previous reconciliation or compression, and assist Commission examiners in reviewing compliance with those rules.

[145] *See* Swaps Intended to be Cleared CFTC Letter No. 13–70, No-Action Relief: Swaps Intended to be Cleared (Nov. 15, 2013), *available at: https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/13-70.pdf.* The position in CFTC Staff Letter 13–70 applies to four specific fact patterns set forth in the letter. Those fact patterns differ based on certain variables, including, among other things, (1) whether the Swap Entity knows the identity of its counterparty prior to execution of the swap, (2) whether the ITBC swap is executed on or subject to the rules of a swap execution facility or a designated contract market, (3) whether the ITBC swap is of a type that was not being accepted for clearing by a DCO as of the date of the letter, (4) whether the ITBC swap is subject to a mandatory trading determination, and (5) whether the Swap Entity ensures that both parties submit the ITBC swap for clearing as quickly after execution as would be technologically practicable if fully automated systems were used. CFTC Staff Letter 13–70 also requires as conditions to all four scenarios that (i) the Swap Entity is either a clearing member of the DCO to which the ITBC swap will be submitted, or has entered into an agreement with a clearing member of such DCO for clearing of swaps of the same type as the ITBC swap; and (ii) the Swap Entity does not require the counterparty or its clearing FCM to enter into a breakage agreement or similar agreement as a condition to executing the ITBC swap.

[146] In February 2011, the Commission proposed rules providing for the registration and other requirements applicable to SB SEFs. *See* Registration and Regulation of Security-Based Swap Execution Facilities, Exchange Act Release No. 63825 (Feb. 2, 2011), 76 FR 10948 (Feb. 28, 2011). The Commission has not yet adopted these rules.

[147] *See* Temporary Exemptions and Other Temporary Relief, Together with Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps, Exchange Act Release No. 64678 (June 15, 2011), 76 FR 36287, 36292–93, 36306 (June 22, 2011).

[148] *See id.*

[149] Of course, to rely on this Commission position, the SBS Entity also would need to ensure that it remains in compliance with the other requirements of Rule 15Fi–5(a)(1)(iii), such as the requirement that the transaction be executed anonymously and that it be intended to be cleared and actually submitted for clearing.

[150] *See* Rules 17a–3(a)(31)(i), 18a–5(a)(18)(i), and 18a–5(b)(14)(i).

[151] *See* Rules 17a–3(a)(31)(ii), 18a–5(a)(18)(ii), and 18a–5(b)(14)(ii).

[152] *See* Rules 17a–3(a)(31)(iii), 18a–5(a)(18)(iii), and 18a–5(b)(14)(iii).

[153] *See* Rules 17a–3(a)(31)(i) and 18a–5(a)(18)(i) and (b)(14)(i).

[154] *See* Rules 17a–3(a)(31)(ii) and 18a–5(a)(18)(ii) and (b)(14)(ii).

[155] *See* Rules 17a–3(a)(31)(iii) and 18a–5(a)(18)(iii) and (b)(14)(iii).

In addition, the Commission is amending (1) Rule 17a–4 under the Exchange Act, which requires each applicable broker-dealer, including broker-dealer SBS Entities, to preserve certain records if the broker-dealer makes or receives the type of record and (2) Rule 18a–6 under the Exchange Act, which imposes parallel preservation requirements on stand-alone and bank SBS Entities. In particular, the amendments to Rules 17a–4 and 18a–6 require SBS Entities to retain certain of the records required to be made and kept under Rules 17a–3 and 18a–5, as amended, for at least three years, the first two years in an easily accessible place.[156] Those amended rules also require each SBS Entity to retain the following:

- The written policies and procedures required pursuant to Rules 15Fi–3, 15Fi–4, and 15Fi–5 until three years after termination of the use of the policies and procedures; [157]
- each written agreement with counterparties on the terms of portfolio reconciliation with those counterparties, as required to be created under Rules 15Fi–3(a)(1) and (b)(1) until three years after the termination of the agreement and all transactions governed thereby; [158]
- security-based swap trading relationship documentation with counterparties required to be created under Rule 15Fi–5, until three years after the termination of such documentation and all transactions governed thereby; [159] and
- a record of the results of each audit required to be performed pursuant to Rule 15Fi–5(c) until three years after the completion of the audit.[160]

The Commission believes that requiring the retention of the above records in accordance with the applicable rules will help ensure that those records are retained in a manner that would allow them to be readily accessible for Commission examiners.

Finally, in June 2019, the Commission adopted 17 CFR 240.18a–10 (Rule 18a–10), which established an alternative compliance mechanism for certain SBS dealers.[161] As originally adopted, Rule 18a–10 permits SBS dealers to elect to comply with the CFTC's capital, margin, and segregation requirements in lieu of complying with the Commission's capital, margin, and segregation requirements of 17 CFR 240.18a–1 (Rule 18a–1) and Rules 18a–3 and 18a–4, subject to certain conditions. The Commission recently amended Rule 18a–10 to permit firms that will operate under Rule 18a–10 to elect to also comply with the CFTC's recordkeeping and reporting requirements in lieu of complying with Rules 18a–5 and 18a–6 and 17 CFR 240.18a–7, 240.18a–8, and 240.18a–9 (Rules 18a–7, 18a–8, and 18a–9).[162] Accordingly, SBS dealers that satisfy the conditions of Rule 18a–10 and that elect to comply with the CFTC's recordkeeping and reporting requirements will be able to comply with Rules 18a–5 and 18a–6, as amended by the final rules to incorporate records related to Rules 15Fi–3, 15Fi–4, and 15Fi–5.

III. Cross-Border Application of Rules 15Fi–3, 15Fi–4, and 15Fi–5

A. Background on the Cross-Border Application of Title VII Requirements

In 2013, the Commission proposed rules and interpretive guidance to address the cross-border application of Title VII, including requirements applicable to SBS Entities.[163] In that proposal, the Commission preliminarily interpreted the Title VII requirements associated with registration to apply generally to the activities of registered entities.[164] In reaching that preliminary conclusion, the Commission did not concur with the views of certain commenters that the Title VII requirements should not apply to the foreign security-based swap activities of registered entities, stating that such a view could be difficult to reconcile with, among other things, the statutory language describing the requirements applicable to SBSDs.[165]

Although the Cross-Border Proposing Release preliminarily identified the trade acknowledgment and verification rules as entity-level requirements, it did not propose a cross-border interpretation with respect to the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements.[166] Consequently, and consistent with the approach in both the Cross-Border Proposing Release and the Trade Acknowledgement and Verification Adopting Release, the Commission proposed that the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements in Rules 15Fi–3 through 15Fi–5 should be treated as entity-level requirements.[167]

B. Final Cross-Border Interpretation

The Commission received no comments on its proposed cross-border interpretation in the Proposing Release. Accordingly, the Commission concludes that it is treating the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements in Rules 15Fi–3 through 15Fi–5 as entity-level requirements that apply to an SBS Entity's entire security-based swap business without exception, including in connection with any security-based swap business it conducts with foreign counterparties.

As we explained in the Proposing Release, the requirements referenced above play an important role in addressing risks to the SBS Entity as a whole, including risks related to the entity's safety and soundness. As we have noted throughout this release in connection with describing each of the new rules, requiring SBS Entities and their counterparties to identify and resolve discrepancies involving key terms of their security-based swap transactions is a key consideration

[156] *See* Rules 17a–4(b)(1) and 18a–6(b)(1)(i) and (b)(2)(i).

[157] *See* Rules 17a–4(e)(11) and 18a–6(d)(4).

[158] *See* Rules 17a–4(e)(12)(i) and 18a–6(d)(5)(i).

[159] *See* Rules 17a–4(e)(12)(ii) and 18a–6(d)(5)(ii).

[160] *See* Rules 17a–4(e)(12)(iii) and 18a–6(d)(5)(iii).

[161] *See* 17 CFR 240.18a–10. Among other things, the SBS dealer must (1) be registered with the Commission as a stand-alone SBS dealer (*i.e.,* not also registered with the Commission as a broker-dealer or an OTC derivatives dealer), (2) be registered with the CFTC as a swap dealer, and (3) not exceed certain thresholds with respect to its outstanding security-based swap positions. Those thresholds are designed to limit the availability of the alternative compliance mechanism to firms whose security-based swaps business is not a significant part of the security-based swap market and that are predominately engaged in a swaps business as compared to a security-based swaps business. *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43943–46.

[162] *See* Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers, Exchange Act Release No. 87005 (Sept. 19, 2019), 84 FR 68550 (Dec. 16, 2019) (''Recordkeeping and Reporting Adopting Release'').

[163] *See* Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30968 (May 23, 2013) (''Cross-Border Proposing Release'') (discussing joint rulemaking to further define various Title VII terms).

[164] *See* Trade Acknowledgment and Verification Adopting Release, 81 FR at 39825, n.191 (citing Cross-Border Proposing Release, 78 FR at 30986).

[165] *See* Cross-Border Proposing Release, 78 FR at 30986. The Proposing Release also contains a more detailed background discussion of the Commission's taxonomy for classifying requirements under Section 15F of the Exchange Act as applying at either the transaction-level or at the entity-level. *See* Proposing Release, 84 FR at 4636–4637 (citing Cross-Border Proposing Release, 78 FR at 31009–10).

[166] *See* Cross-Border Proposing Release, 78 FR at 31013. The Commission subsequently adopted its proposed cross-border interpretation of the trade acknowledgment and verification rules as entity-level requirements in connection with adopting those underlying rules in 2016. *See* Trade Acknowledgment and Verification Adopting Release, 81 FR at 39826.

[167] *See* Proposing Release, 84 FR at 4637.

underpinning both the portfolio reconciliation and trading relationship documentation requirements, and serves as an important mechanism for encouraging SBS Entities and their counterparties to better manage their internal risks.[168] Similarly, portfolio compression is intended to help SBS Entities and their counterparties and their counterparties manage their post-trade risks associated with security-based swap transactions in a number of important ways, including by eliminating redundant uncleared transactions (as measured both by the number of contracts and total notional value) and potentially reducing a market participant's credit risk to its direct counterparties, including by eliminating all outstanding transactions with some counterparties, without affecting the market participant's overall economic position.[169]

In the alternative, not requiring an SBS Entity to take steps to manage its internal risk using portfolio reconciliation, compression, or standards governing trading relationship documentation could be expected to contribute to operational risk and legal uncertainty throughout the firm's entire security-based swap business, affecting the entity's business as a whole, and not merely specific security-based swap transactions. For example, as we have previously noted, inaccurate or incomplete trading relationship documentation could lead to, among other things, a collateral dispute between the counterparties to a security-based swap transaction. The larger the dispute, even if confined to a single counterparty, the greater the risk that an SBS Entity could experience liquidity problems on a firmwide basis.

Moreover, to the extent that these risks affect the safety and soundness of the SBS Entity, they also may affect the firm's counterparties and the functioning of the broader security-based swap market. Continuing with the previous example, if a collateral dispute with a foreign counterparty creates liquidity issues throughout an SBS Entity, the firm could experience difficulty making payments or posting collateral to its other counterparties, which may include U.S. persons. Accordingly, the Commission concludes that it is appropriate to apply the requirements in Rules 15Fi–3, 15Fi–4, and 15Fi–5 to the entirety of an SBS Entity's security-based swap business.[170]

[168] *See supra* note 11 and accompanying text.

[169] *See supra* notes 16–18 and accompanying text.

[170] We recognize that the CFTC has taken a different position with regard to corresponding requirements pursuant to the CEA, classifying them as what the CFTC has termed ''Category A'' transaction-level requirements. *See* CFTC Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292, 45334 (Jul. 26, 2013).

IV. Availability of Substituted Compliance for Rules 15Fi–3 Through 15Fi–5

A. Existing Substituted Compliance Rule

In 2013, the Commission proposed to make substituted compliance potentially available in connection with the requirements applicable to foreign SBS dealers pursuant to Section 15F of the Exchange Act, other than the registration requirements applicable to dealers.[171] Because the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements being adopted are grounded in Section 15F, substituted compliance generally would have been available for those requirements pursuant to the 2013 proposal.

The Commission subsequently adopted Rule 3a71–6, which provides that substituted compliance is available with respect to the Commission's business conduct requirements, and (rather than addressing all requirements under Section 15F of the Exchange Act) reserved the issue as to whether substituted compliance also would be available in connection with other requirements under that section.[172] Rule 3a71–6 was subsequently amended to provide SBS Entities with the potential to avail themselves of substituted compliance with respect to the following Title VII requirements: (1) Trade acknowledgment and verification,[173] (2) capital and margin,[174] and (3) recordkeeping and reporting.[175]

B. Amendments to Rule 3a71–6

In the Proposing Release, the Commission proposed to further amend Rule 3a71–6 to provide SBS Entities that are not U.S. persons (as defined in 17 CFR 240.3a71–3(a)(4) (Rule 3a71–3(a)(4) of the Exchange Act)) with the potential to avail themselves of substituted compliance to satisfy the Title VII portfolio reconciliation, portfolio compression, and trading relationship documentation requirements.[176] In their comment letter, ISDA and SIFMA agreed with the proposed outcomes-based approach to substituted compliance, as opposed to issuing comparability determinations based on a line-by-line review of the foreign requirements.[177] ISDA and SIFMA also suggested that the Commission should, in essence, not diverge from any comparability determination previously made by the CFTC with respect to the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements.[178] As noted previously, the Commission has endeavored to harmonize these rules with the corresponding CFTC rules wherever possible, which should make divergence with respect to an outcomes-based comparability analysis of the rules highly unlikely. Substituted compliance, however, involves additional considerations and arrangements, particularly with respect to supervisory and enforcement cooperation.[179] We are therefore adopting the amendments to Rule 3a71–6, as proposed. Accordingly, Rule 3a71–6(d)(7) provides foreign SBS Entities [180]

[171] *See* Cross-Border Proposing Release, 78 FR at 30968, 31085.

[172] *See* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Release No. 77617 (Apr. 14, 2016), 81 FR 29960 (''Business Conduct Standards Adopting Release''). *See also* Cross-Border Proposing Release, 78 FR at 31088, 31207–08 (Rule 3a71–6 was proposed as Rule 3a71–5).

[173] *See* Trade Acknowledgment and Verification Adopting Release, 81 FR at 39827–28.

[174] *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43948–57.

[175] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68597–99.

[176] *See* Proposing Release, 84 FR at 4638. We did not propose rules making substituted compliance available specifically with respect to the amendments to Rules 18a–5 and 18a–6, which specify the recordkeeping and reporting requirements applicable to SBS Entities. This is because the Commission has also adopted amendments to Rule 3a71–6 with respect to Title VII recordkeeping and reporting requirements in connection with adopting those underlying provisions. *See* Recordkeeping and Reporting Adopting Release, 84 FR 68597–99. Accordingly, to the extent that substituted compliance is made available with respect to those rules, we would anticipate that any determination made with respect to the comparability of the foreign financial regulatory system would address all aspects of the Commission recordkeeping and reporting requirements for SBS Entities including the amendments we are adopting with respect to the portfolio reconciliation, portfolio compression, and trading relationship document requirements.

[177] *See* ISDA/SIFMA Letter.

[178] *See id.*

[179] *See* 17 CFR 240.3a71–6(a)(2)(i) and (ii).

[180] In the Business Conduct Standards Adopting Release, the Commission stated that Rule 3a71–6 provides that substituted compliance is potentially available in connection with the business conduct requirements for registered major SBS participants as well as for registered SBS dealers. The Commission further explained that such decision reflects the fact that the business conduct standards apply to registered major SBS participants as well as to registered SBS dealers, and recognizes that the market efficiency goals that underpin substituted compliance also can apply when substituted compliance is granted to registered major SBS participants. *See* Business Conduct Standards Adopting Release, 81 FR at 30076. This same reasoning applies with respect to the Commission's portfolio reconciliation, portfolio compression, and

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with the potential to utilize substituted compliance with comparable foreign requirements to satisfy Section 15F(i) of the Exchange Act and Rules 15Fi–3, 15Fi–4, and 15Fi–5 thereunder.[181]

In amending Rule 3a71–6, the Commission concludes that the principles associated with substituted compliance for the business conduct, trade acknowledgment and verification, capital and margin, and recordkeeping and reporting requirements in large part similarly apply to the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements.[182] Accordingly, except as discussed below, the revised substituted compliance rule applies to Section 15F(i) of the Exchange Act and Rules 15Fi–3, 15Fi–4, and 15Fi–5 thereunder in the same manner as it applies to the business conduct, trade acknowledgment and verification, capital and margin, and recordkeeping and reporting requirements.

1. Basis for Substituted Compliance in Connection With the Portfolio Reconciliation, Portfolio Compression, and Trading Relationship Documentation Requirements

In light of the global nature of the security-based swap market and the prevalence of cross-border transactions within that market, there is the potential that the application of the Title VII portfolio reconciliation, portfolio compression, and trading relationship documentation requirements may lead to requirements that are duplicative of, or in conflict with, applicable foreign requirements, even when the two sets of requirements implement similar goals and lead to similar results. Those results have the potential to disrupt existing business relationships and, more generally, to reduce competition and market efficiency.[183]

To address those effects, the Commission concludes that under certain circumstances it is appropriate to allow the possibility of substituted compliance, whereby foreign SBS Entities may satisfy Section 15F of the Exchange Act and the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements in Rules 15Fi–3, 15Fi–4, and 15Fi–5, respectively, by complying with the comparable foreign requirements. Allowing for the possibility of substituted compliance in this manner may be expected to help achieve the benefits of those particular risk mitigation requirements—helping to curb legal uncertainty and reduce credit and operational risk for participants in security-based swap transactions and in the broader market—in a way that helps avoid regulatory conflict and minimizes duplication, thereby promoting market efficiency, enhancing competition, and contributing to the overall functioning of the global security-based swap market. Accordingly, Rule 3a71–6 is amended to identify the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements of Section 15F(i) of the Exchange Act and Rules 15Fi–3, 15Fi–4, and 15Fi–5 thereunder as being eligible for substituted compliance.[184]

2. Comparability Criteria, and Consideration of Related Requirements

The Commission will endeavor to take a holistic approach in determining the comparability of foreign requirements for substituted compliance purposes, focusing on regulatory outcomes as a whole, rather than on requirement-by-requirement similarity.[185] The Commission's comparability assessments associated with Section 15F(i) and Rules 15Fi–3, 15Fi–4, and 15Fi–5 thereunder accordingly will consider whether, in the Commission's view, the foreign regulatory system achieves regulatory outcomes that are comparable to the regulatory outcomes associated with those Exchange Act requirements. However, paragraph (a)(2)(i) of Rule 3a71–6 provides that the Commission's substituted compliance determination will take into account factors that the Commission determines appropriate, such as, for example, the scope and objectives of the relevant foreign regulatory requirements (taking into account the applicable criteria set forth in paragraph (d) of the rule, which sets forth the list of requirements eligible for substituted compliance), as well as the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised, by a foreign financial regulatory authority or authorities in such system to support its oversight of such foreign security-based swap entity (or class thereof) or of the activities of such security-based swap entity (or class thereof).

In light of these considerations, paragraph (d)(7) of Rule 3a71–6 states that prior to making a substituted compliance determination in connection with the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements, the Commission intends to consider whether the requirements of the foreign financial regulatory system, the duties imposed by the foreign financial regulatory system, and the information that is required to be provided to counterparties pursuant to the requirements of the foreign financial regulatory system, are comparable to those required pursuant to the applicable provisions under the Exchange Act.

In reviewing applications, the Commission may determine to conduct its comparability analyses regarding the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements in conjunction with comparability analyses regarding other Exchange Act requirements that, like the requirements in these final rules, promote risk mitigation in connection with SBS Entities. Accordingly, depending on the applicable facts and circumstances, the comparability assessment associated with the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements may constitute part of a broader assessment of Exchange Act risk mitigation requirements, and the applicable comparability decisions may be made at the level of those risk mitigation requirements as a whole.

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trading relationship documentation requirements and Rule 3a71–6, as amended, provides that substituted compliance is also potentially available to foreign major SBS participants (in addition to foreign SBS dealers) with respect to Section 15F(i) of the Exchange Act and Rules 15Fi–3, 15Fi–4, and 15Fi–5, as applicable.

[181] In the Proposing Release, these requirements would have been designated as paragraph (d)(3) of Rule 3a71–6. Because of subsequent amendments to that rule, however, the provision applicable to the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements is now being adopted as paragraph (d)(7).

[182] The discussions in the Business Conduct Standards Adopting Release, including those regarding consideration of supervisory and enforcement practices (*see* Business Conduct Standards Adopting Release, 81 FR at 30079), regarding certain multi-jurisdictional issues (*see id.* at 30079–80), and regarding application procedures (*see id.* at 30080–81) are applicable to the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements.

[183] *See generally* Business Conduct Standards Adopting Release, 81 FR at 30073–74 (addressing the basis for making substituted compliance available in the context of the business conduct requirements).

[184] *See* paragraph (d) of Rule 3a71–6, as adopted. Paragraph (a)(1) of the rule provides that the Commission may, conditionally or unconditionally, by order, make a determination with respect to a foreign financial regulatory system that compliance with specified requirements under the foreign financial system by an SBS dealer and/or by a registered major SBS swap participant, or class thereof, may satisfy the corresponding requirements identified in paragraph (d) of the rule that would otherwise apply.

[185] *See* Business Conduct Standards Adopting Release, 81 FR at 30078–79. *See also* Trade Acknowledgment and Verification Adopting Release, 81 FR at 39828.

V. Explanation of Dates

A. Effective Date

These final rules will be effective 60 days after the date of this release's publication in the **Federal Register**.

B. Compliance Date

The compliance date for the final rules, other than the amendments to Rule 3a71–6 (as discussed below), will be the same as the compliance date for the registration of SBS Entities (the ''Registration Compliance Date'').[186] Specifically, the Registration Compliance Date will be 18 months after the effective date of the final rules set forth in the Cross-Border Amendments Adopting Release.[187] The Commission believes that this compliance date should allow sufficient time for SBS Entities to prepare for and come into compliance with the new portfolio reconciliation, portfolio compression, and trading relationship documentation requirements.

In addition, these final rules are in many respects intended to complement and work in coordination with other Title VII requirements for which compliance will also be required as of the Registration Compliance Date. For example, Rules 15Fi–3 (portfolio reconciliation) and 15Fi–5 (written trading relationship documentation) both contain requirements that are intended to help ensure that the counterparties to a security-based swap agree on the methodology for determining the valuation of the security-based swap and for detecting and resolving any discrepancies with respect to that valuation, if necessary. As we noted in Section I, the valuation of an uncleared security-based swap is critical for determining, among other things, the amount of margin that would be required to be collected from the security-based swap counterparty and for calculating potential capital charges applicable to the SBS Entity. We also discussed in Section I the relationship between the Title VII trade acknowledgment and verification process and the portfolio reconciliation process. Further, these final rules supplement the recordkeeping and reporting requirements for security-based swaps that the Commission adopted in September 2019, which also use the Registration Compliance Date. Accordingly, the Commission believes it to be both practical and efficient to require SBS Entities to begin complying with the rules we are adopting in this release on the same date on which compliance with those other rules will be required.

C. Application to Substituted Compliance

For the amendments to Rule 3a71–6, the Commission is adopting an effective date of 60 days following publication in the **Federal Register**.[188] There will be no separate compliance date in connection with that rule amendment, as the rule does not impose obligations upon Swap Entities. Rather, those amendments provide foreign SBS Entities with the potential to utilize substituted compliance with comparable foreign requirements to satisfy Section 15F(i) of the Exchange Act and new Rules 15Fi–3, 15Fi–4, and 15Fi–5 thereunder.

SBS Entities will not be required to comply with the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements until they are registered, and the registration requirement for those entities will not be triggered until a number of regulatory benchmarks have been met. In practice, the Commission recognizes that if the requirements of a foreign regime are comparable to the corresponding Title VII requirements, and the other prerequisites to substituted compliance also have been satisfied, then it may be appropriate to permit an SBS Entity to rely on substituted compliance commencing at the time that entity is registered with the Commission. Accordingly, and to alleviate any concerns that the compliance date could be before substituted compliance determinations are made, the Commission would consider substituted compliance requests that are submitted prior to the compliance date for the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements.

VI. Paperwork Reduction Act

Certain provisions of the final rules and rule amendments being adopted in this release contain new or modified ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[189] The Commission submitted these collections of information to OMB for review in accordance with the PRA.[190] The Commission did not receive any comments on the PRA estimates included in the Proposing Release. However, the Commission's earlier PRA assessments have been revised solely with respect to the number of respondents that we expect to be registered with both the Commission and the CFTC, as discussed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Specifically, Rules 15Fi–3, 15Fi–4, and 15Fi–5 impose new collection of information requirements. The title of these new collections of information is, collectively, ''Rules 15Fi–3—15Fi–5—Risk Mitigation Techniques for Uncleared Security-Based Swaps.'' OMB has not yet assigned a control number to these new collections of information. In addition, the amendments to Rules 3a71–6, 17a–3, 17a–4, 18a–5, and 18a–6 modify already-existing collection of information requirements. The titles and control numbers for these collections of information are as follows:

(1) Rule 17a–3—Records to be made by certain brokers and dealers (OMB control number 3235–0033);

(2) Rule 17a–4—Records to be preserved by certain brokers and dealers (OMB control number 3235–0279);

(3) Rule 18a–5—Records to be made by certain security-based swap dealers and major security-based swap participants (OMB control number 3235–0745);

(4) Rule 18a–6—Records to be preserved by certain security-based swap dealers and major security-based swap participants (OMB control number 3235–0751); and

(5) Rule 3a71–6—Substituted Compliance for Foreign Security-Based Swap Dealers (OMB control number 3235–0715).

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[186] *See* Cross-Border Amendments Adopting Release, *supra* note 51 Moreover, the Registration Compliance Date also will be the compliance date for: (1) Nonbank SBS Entity capital and margin requirements; (2) SBS Entity participant segregation requirements; (3) SBS Entity participant business conduct and chief compliance officer requirements; (4) SBS Entity trade acknowledgement and verification requirements; and SBS Entity recordkeeping and reporting requirements. *See* Capital, Margin, and Segregation Adopting Release, 84 FR at 43954; Business Conduct Standards Adopting Release, 81 FR at 30081–82; Trade Acknowledgment and Verification Adopting Release, 81 FR at 39828–29; and Recordkeeping and Reporting Adopting Release, 84 FR at 68600–01.

[187] As explained in the Cross-Border Amendments Adopting Release, the effective date of those final rules will be the later of March 1, 2020, or 60 days following publication of the Cross-Border Amendments Adopting Release in the **Federal Register**. *See* Cross-Border Amendments Adopting Release, *supra* note 51.

[188] The Commission has taken a similar approach in connection with other recent amendments to Rule 3a71–6. *See, e.g.,* Recordkeeping and Reporting Adopting Release, 84 FR at 68602.

[189] 44 U.S.C. 3501 *et seq.*

[190] *See* 44 U.S.C. 3507(d); *see also* 5 CFR 1320.11.

A. Summary of Collections of Information

1. Rule 15Fi–3: Portfolio Reconciliation

Rule 15Fi–3 generally requires SBS Entities to (1) engage in periodic portfolio reconciliation activities with counterparties who are also SBS Entities, and (2) establish, maintain, and follow written policies and procedures reasonably designed to ensure that they engage in periodic portfolio reconciliation with counterparties who are not SBS Entities.[191] Among other things, Rule 15Fi–3 specifies the requirements applicable to an SBS Entity for purposes of engaging in portfolio reconciliation with either type of counterparty (as well as the applicable definitions), with regard to (1) the information that the two sides are required to exchange as part of the reconciliation process,[192] (2) the frequency by which an SBS Entity is required to reconcile its security-based swap portfolios with its counterparties,[193] (3) the required policies and procedures specifying the means and timeframes by which an SBS Entity is required to resolve discrepancies with respect to either the valuation or a material term of a security-based swap,[194] and (4) the requirement that an SBS Entity agree in writing with each of its counterparties on the terms of the portfolio reconciliation, including agreement of the selection of any third-party service provider.[195] Finally, Rule 15Fi–3(c) requires an SBS Entity to promptly notify the Commission of any security-based swap valuation dispute in excess of $20,000,000 (or its equivalent in any other currency) if not resolved within: (1) Three business days, if the dispute is with a counterparty that is an SBS Entity; or (2) five business days, if the dispute is with a counterparty that is not an SBS Entity.[196]

2. Rule 15Fi–4: Portfolio Compression

Rule 15Fi–4 requires SBS Entities to establish, maintain, and follow written policies and procedures related to bilateral offsetting of security-based swaps, and periodic bilateral and multilateral compression exercises. Specifically, Rules 15Fi–4(a)(2) and (3) requires each SBS Entity to establish, maintain, and follow written policies and procedures for periodically engaging in both bilateral portfolio compression exercises and multilateral portfolio compression exercises, in each case when appropriate, with each counterparty that is an SBS Entity.[197] Similarly, Rule 15Fi–4(a)(1) requires each SBS Entity to establish, maintain, and follow written policies and procedures for terminating each ''fully offsetting security-based swap'' that it maintains with another SBS Entity in a timely fashion, when appropriate.[198] To the extent that an SBS Entity transacts with a counterparty that is *not* an SBS Entity, Rule 15Fi–4(b) provides that such policies and procedures will only need to address terminating each ''fully offsetting security-based swap'' or engaging in a bilateral or multilateral portfolio compression exercise, when appropriate and to the extent requested by any such counterparty.[199]

3. Rule 15Fi–5: Written Trading Relationship Documentation

Rule 15Fi–5 requires that each SBS Entity to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes written trading relationship documentation with each of its counterparties, subject to certain exceptions, prior to, or contemporaneously with, executing a security-based swap transaction, in each case in the manner as provided for in the rule.[200] The rule also requires that the trading relationship documentation include (1) credit support arrangements addressing certain specified items related to, among other things, margin haircuts, and custody of margin assets [201] and (2) agreements regarding the means by which the counterparties would determine the value of each security-based swap.[202] Rule 15Fi–5 also contains requirements for SBS Entities and their counterparties to disclose to each other certain information regarding their legal and bankruptcy status, and to include a statement regarding the status of a security-based swap if accepted for clearing by a CCP.[203] Finally, the rule requires each SBS Entity to have an independent auditor conduct periodic audits sufficient to identify any material weakness in its documentation policies and procedures required by the rule.[204]

4. Amendments to Rules 17a–3, 17a–4, 18a–5, and 18a–6: Books and Records Requirements

Rule 17a–3 requires a broker-dealer to make and keep current certain records and Rule 17a–4 requires a broker-dealer to preserve certain records if it makes or receives them.[205] The Commission is amending these existing rules to account for the security-based swap risk mitigation activities of broker-dealers, including broker-dealer SBS Entities, by requiring the making and preserving of any required records regarding portfolio reconciliation, bilateral offsets, bilateral or multilateral portfolio compression, valuation disputes, and written trading relationship documentation. With respect to stand-alone SBS Entities, the Commission is amending Rules 18a–5 and 18a–6—which the Commission adopted in September of this year and are themselves modeled on Rules 17a–3 and 17a–4—to account for these same risk mitigation requirements.[206]

5. Amendment to Rule 3a71–6: Substituted Compliance

The amendment to Rule 3a71–6 permits non-U.S. SBS Entities to comply with the portfolio reconciliation, portfolio compression, and written trading relationship documentation requirements by following the comparable regulatory requirements of a foreign financial regulatory system. Specifically, the amendment adds Rules 15Fi–3, 15Fi–4, and 15Fi–5 to the list of Commission requirements eligible for a substituted compliance determination and sets forth the standard by which the Commission would make such a determination.[207]

[191] Rule 15Fi–3 does not apply to any security-based swap that has a clearing agency as a direct counterparty.

[192] *See supra* Section II.B.1.

[193] *See supra* Sections II.B.2 and II.B.4.

[194] *See supra* Sections II.B.3 and II.B.4.

[195] *See supra* Sections II.B.2 and II.B.4.

[196] *See supra* Section II.B.5. Rule 15Fi–3(c) also requires SBS Entities to notify the Commission, in a form and manner acceptable to the Commission, and any applicable prudential regulator, if the amount of any security-based swap valuation dispute that was the subject of a previous notice increases or decreases by more than $20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level. Each amended notice is required to be provided to the Commission and any applicable prudential regulator no later than the last business day of the calendar month in which the applicable security-based swap valuation dispute increases or decreases by the applicable dispute amount.

[197] *See supra* Section II.C.1.

[198] *See supra* Section II.C.2.

[199] *See supra* Section II.C.1 and II.C.2.

[200] *See supra* Section II.C.1. Rule 15Fi–5 also requires that the security-based swap trading relationship documentation address, among other things, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, governing law, valuation and dispute resolution.

[201] *See id.*

[202] *See supra* Section II.C.2.

[203] *See supra* Section II.C.3.

[204] *See supra* Section I.D.5.

[205] 17 CFR 240.17a–3; 17 CFR 240.17a–4.

[206] *See supra* Section I.F.1.

[207] *See supra* Sections IV.B.1 and IV.B.2.

B. Use of Information

1. Rule 15Fi–3: Portfolio Reconciliation

As previously noted, the Commission believes that the information shared by counterparties to a security-based swap transaction periodically during the portfolio reconciliation process, as contemplated by Rule 15Fi–3, will play an important role in assisting those counterparties in identifying and resolving discrepancies involving key terms of their transactions on an ongoing basis. This information also should allow those counterparties to improve their management of internal risks related to the enforcement of their rights and the performance of their obligations under a security-based swap. For example, the information obtained and provided in the course of portfolio reconciliation should help ensure that the counterparties to a security-based swap are and remain in agreement with respect to all material terms throughout the life of the transaction, thereby mitigating the possibility that a discrepancy could unexpectedly affect either side's ability to perform any or all of its obligations under the contract, including those obligations related to the posting of collateral. Moreover, requiring SBS Entities to agree in writing with each of their counterparties on the terms of the portfolio reconciliation (including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation) should help to minimize any discrepancies regarding the portfolio reconciliation process itself, thereby ensuring that it operates in as efficient and cost-effective means possible. Finally, the requirement to report certain unresolved valuation disputes to the Commission should assist the Commission in identifying potential issues with respect to an SBS Entity's internal valuation methodology and also could serve as an indication of a widespread market disruption in cases where the Commission receives a large number of such notices from multiple firms.

2. Rule 15Fi–4: Portfolio Compression

As previously discussed, the Commission believes that Rule 15Fi–4 will help market participants by eliminating redundant uncleared derivatives contracts, thereby potentially reducing a market participant's credit risk to its direct counterparties, including by eliminating all outstanding contracts with some counterparties, without affecting the market participant's overall economic position. In addition, we believe that the collection of information should lead to processing improvements for market participants, as envisioned by Section 15F(i) of the Exchange Act, by virtue of the fact that both SBS Entities and their counterparties should ultimately have fewer trades to manage, maintain, and settle, resulting in fewer opportunities for processing errors, failures, or other problems that could develop throughout the lifecycle of a transaction.

3. Rule 15Fi–5: Written Trading Relationship Documentation

The Commission believes that the information required to be contained in the written trading relationship documentation pursuant to Rule 15Fi–5 should help ensure that each SBS Entity mitigates risk with respect to its security-based swap portfolio by, among other things, enhancing clarity and legal certainty from the outset of a transaction regarding each party's rights and obligations. This outcome should help to reduce exposure to, among other things, counterparty credit risk and promote agreement regarding the proper valuation and other material terms of a security-based swap.

4. Amendments to Rules 17a–3, 17a–4, 18a–5, and 18a–6: Books and Records Requirements

The Commission expects that the information contained in the records required to be made and kept pursuant to the amendments to Rules 17a–3, 17a–4, 18a–5, and 18a–6 would be used to assist the Commission in its oversight of SBS Entities. In addition, records regarding portfolio reconciliation, bilateral offsets, bilateral or multilateral portfolio compression, valuation disputes, and written trading relationship documentation should help to provide SBS Entities and their counterparties to security-based swaps with an ability to identify and resolve discrepancies involving key terms of their transactions on an ongoing basis, allowing for better management of internal risks related to performance of obligations, valuation, margin obligations, internal valuation systems and models, or internal controls.

5. Amendment to Rule 3a71–6: Substituted Compliance

Under the amendment to Rule 3a71–6 under the Exchange Act, the Commission would use the information collected to evaluate requests for substituted compliance with respect to the portfolio reconciliation, portfolio compression, and written trading relationship documentation requirements applicable to SBS Entities.

C. Respondents

The Commission estimated the number of respondents in the Proposing Release. The Commission received no comment on these estimates. However, the Commission is updating the number of SBS Entities that we estimate to be dually-registered with the CFTC as Swap Entities in order to be consistent with the most recent estimates used in other Commission rulemakings.[208] Rules 15Fi–3, 15Fi–4, and 15Fi–5, and the amendments to Rules 17a–3, 17a–4, 18a–5, and 18a–6 apply only to SBS Entities, each of which will be registered with the Commission. Consistent with prior releases, the Commission estimates that 50 or fewer entities ultimately may be required to register with the Commission as SBS dealers.[209] We also previously estimated that the number of major SBS participants likely will be five or fewer and, in actuality, may be zero.[210] The Commission continues to believe that these estimates are appropriate. Thus, the Commission believes that approximately 55 entities will be required to register with the Commission under either category, and will therefore be subject to Rules 15Fi–3 through 15Fi–5.

In the Proposing Release, the Commission estimated that of the 55 entities that may register with the Commission as SBS Entities, approximately 35 will be dually-registered with the CFTC as Swap Entities.[211] In a more recent release, however, the Commission updated that estimate, such that we now believe that approximately 20 SBS Entities will also be registered with the CFTC as Swap Entities.[212] Accordingly, we are using the updated number for calculating the burdens pursuant to Rule 15Fi–3, 15Fi–4, and 15Fi–5.

With regard to the requirements under Rule 3a71–6, as amended, requests for a substituted compliance determination with respect to the portfolio reconciliation, portfolio compression, and written trading relationship documentation requirements may be filed by foreign financial regulatory authorities, or by non-U.S. SBS Entities. Consistent with prior estimates, the

[208] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68607–09.

[209] *See id. See also* Capital, Margin, and Segregation Adopting Release, 84 FR at 43960; Trade Acknowledgement and Verification Adopting Release, 81 FR at 39830; and SBS Entity Registration Adopting Release, 80 FR at 48990.

[210] *See id.*

[211] *See* Proposing Release, 84 FR at 4643.

[212] *See* Recordkeeping and Reporting Adopting Release, 84 FR at 68607–09. This figure includes 19 SBS dealers and one major SBS participant.

Commission expects that there are approximately 22 non-U.S. entities that may register with the Commission as SBS dealers, out of approximately 50 total entities that may register as SBS dealers.[213]

Potentially, all such non-U.S. SBS dealers, or some subset thereof, may seek to rely on a substituted compliance determination in connection with these portfolio reconciliation, portfolio compression, and written trading relationship documentation requirements.[214] In practice, however, the Commission expects that the greater portion of any such requests will be submitted by foreign financial regulatory authorities, given their expertise in connection with the relevant substantive requirements, especially in connection with their supervisory and enforcement oversight with regard to SBS dealers and their activities.

D. Total Annual Recordkeeping Burden

1. Portfolio Reconciliation Activities Generally

Pursuant to Rule 15Fi–3(a), the approximately 55 respondent SBS Entities will be required to reconcile security-based swap portfolios with other SBS Entities on a daily, weekly, or quarterly basis, depending upon the size of the portfolio. For purposes of this requirement, the Commission estimates that each SBS Entity will engage in security-based swap transactions with approximately one-third of the other 54 SBS Entities, meaning that an SBS Entity will maintain security-based swap portfolios with approximately 18 SBS Entities. Of this total, we believe that, on average, two SBS Entity counterparty portfolios will require daily reconciliation (*i.e.,* a portfolio consisting of 500 or more uncleared security-based swaps), four SBS Entity counterparty portfolios will require weekly reconciliation (*i.e.,* a portfolio of more than 50 but fewer than 500 uncleared security-based swaps), and the remaining 12 SBS Entity counterparty portfolios will require quarterly reconciliation (*i.e.,* a portfolio of no more than 50 uncleared security-based swaps).[215] The Commission therefore estimates that each SBS Entity will engage in an average of 760 portfolio reconciliations with other SBS Entities per year.[216]

The Commission believes that each portfolio reconciliation is likely to be conducted through an automated process.[217] As a result, we believe that each reconciliation will require an average of 30 minutes to complete in total (which is the combined estimate for both counterparties), regardless of the size of the security-based swap portfolio with the applicable counterparty.[218] Using these figures, the Commission estimates that compliance with Rule 15Fi–3(a), as it relates to engaging in portfolio reconciliation with other SBS Entities, will impose an average annual burden of approximately 190 hours per year on each of the respondent 55 SBS Entities, for an estimated average annual burden of 10,450 hours in the aggregate. These calculations are summarized in PRA Table 1, below.

PRA TABLE 1—RULE 15i–3(a): PORTFOLIO RECONCILIATIONS WITH OTHER SBS ENTITIES

Number of counterparties per respondent	Number of annual reconciliations	Hourly burden per reconciliation	Total annual burden (hours)
2 (≥500 transactions)	252 (daily)	.25	126
4 (>50<500 transactions)	52 (weekly)	.25	52
12 (≤50 transactions)	4 (quarterly)	.25	12
Total per respondent			190
Total Aggregate Annual Burden for all 55 respondents			10,450

In addition, Rule 15Fi–3(b) requires each SBS Entity to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation for all security-based swaps (other than security-based swaps that will be cleared by a clearing agency) in which its counterparty is not an SBS Entity.[219] In calculating the burden of performing the portfolio reconciliations required by these policies and procedures, the Commission estimates that (1) there are currently 13,082 market participants in security-based swaps who will not be required to register as SBS Entities,[220] and (2) each SBS Entity will have an average of approximately 350 of these non-SBS Entity market participants as

[213] *See* Cross-Border Application Proposing Release, 84 FR at 24253. *See also* Recordkeeping and Reporting Adopting Release, 84 FR at 68607–09; and Capital, Margin, and Segregation Adopting Release, 84 FR at 43960–61.

[214] As previously noted, the Commission further believes that there may up to five major SBS participants. *See supra* note 210 and accompanying text. It is possible that some subset of those entities will be non-U.S. major SBS participants that will seek to rely on substituted compliance in connection with the applicable portfolio reconciliation, portfolio compression, and written trading relationship documentation requirements.

[215] These estimates are consistent with those used by the CFTC in connection with its portfolio reconciliation rule. *See* Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 FR 81519, 81528 (Dec. 28, 2010).

[216] This estimate uses 252 business days for purposes of the daily portfolio reconciliation requirement, which is consistent with the definition of ''business day'' in Rule 15Fi–1(b).

[217] The Commission recognizes that some respondents may choose to engage a third-party vendor to conduct portfolio reconciliations. For simplicity, however, the Commission's burden estimate is based upon SBS Entities conducting these activities internally, without the use of third-party vendors. The Commission requested, but did not receive, comment on this approach, including regarding the likelihood and cost of using third-party providers. Accordingly, we are using the same estimates as included in the proposal. *See* Proposing Release, 84 FR at 4642, n. 176.

[218] Because the 30 minute estimate is for the entire reconciliation process, without respect to how that time is allocated between the two parties, to avoid double-counting we have divided it by one-half in the context of security-based swap portfolios between two SBS Entities, resulting in an estimate of 15 minutes per reconciliation per counterparty for those portfolios.

[219] The Commission's estimate for the hourly burden for preparing these policies and procedures is discussed below.

[220] In the Economic Analysis, the Commission estimates that there are approximately 13,137 market participants in the security-based swap market. *See infra* Section VI.B.1.c (Table 2). Subtracting the estimated 55 SBS Entities from this figure results in an estimated 13,082 non-SBS Entities.

counterparties.[221] Further, the Commission believes that reconciliations with these parties will be conducted on a quarterly basis for 10% of these portfolios (*i.e.,* portfolios with more than 100 uncleared security-based swaps), and on an annual basis for the remaining 90% of these portfolios (*i.e.,* portfolios that do not involve 100 or more uncleared security-based swaps).[222]

The Commission further estimates that each portfolio reconciliation between an SBS Entity and a non-SBS Entity will require an average of 30 minutes to complete (which is the combined estimate for both counterparties).[223] Using these figures, the Commission estimates that compliance with Rule 15Fi–3(b), as it relates to conducting portfolio reconciliations with non-SBS Entities, will impose an annual hourly burden of approximately 227.5 hours per SBS Entity, for an estimated average annual burden of approximately 12,512.5 hours in the aggregate for all 55 SBS Entity respondents. These calculations are summarized in PRA Table 2, below.

TABLE 2 –RULE 15i–3(b): PORTFOLIO RECONCILIATIONS WITH NON-SBS ENTITIES

Number of counterparties per respondent	Number of annual reconciliations	Hourly burden per reconciliation	Total annual burden (hours)
35 (≤100 transactions)	4 (quarterly)	.5	70
315 (≤100 transactions)	1 (annual)	.5	157.5
Total per respondent			227.5
Total Aggregate Annual Burden for all 55 respondents			12,512.5

2. Establishing, Maintaining, and Enforcing Written Policies and Procedures

Rule 15Fi–3 also contains policies and procedures requirements applicable to SBS Entities in connection with engaging in portfolio reconciliation with both SBS Entities and other counterparties. As previously noted, the Commission estimates that of the estimated 55 persons that may register with the Commission as SBS Entities, approximately 20 will be dually-registered with the CFTC as Swap Entities.[224] In addition, the CFTC's adopted final rules on portfolio reconciliation written policies and procedures are substantively identical to those in Rule 15Fi–3. Accordingly, these 20 dually-registered entities are already required to establish, maintain, and follow written policies and procedures as they relate to the reconciliation of their swap portfolios, and these policies and procedures would be expected to be largely consistent with those that would be required with respect to their security-based swap portfolios. Assuming that these existing policies and procedures would simply need to be amended to apply to security-based swap transactions pursuant to Rule 15Fi–3, we estimate that the initial burden of revising these policies and procedures would be one hour per respondent, for an estimated one-time initial burden of 20 hours in the aggregate. With respect to the remaining 35 SBS Entities that will not be dually-registered with the CFTC, the Commission estimates, based on prior estimates in earlier Dodd-Frank rulemakings, that these policies and procedures would require an average of 80 hours per non-dually-registered respondent to initially prepare and implement, for an estimated one-time initial burden of 2,800 hours in the aggregate.[225] Once these policies and procedures are established, the Commission estimates that it will take an average of 40 hours annually to revise and maintain these policies and procedures per respondent (including both dually-registered and non-dually-registered SBS Entities),[226] for an estimated average annual burden of 2,200 hours in the aggregate for all 55 respondents.[227]

3. Reporting of Certain Valuation Disputes

Rule 15Fi–3(c) requires each SBS Entity to promptly notify the Commission (and any applicable prudential regulator for an SBS Entity that is also a bank), in a form and manner acceptable to the Commission, of any security-based swap valuation dispute in excess of $20,000,000 (or its equivalent in any other currency) if not resolved within a prescribed time period. As previously noted, we crafted the rule in this way to provide SBS Entities with flexibility to determine the most efficient and cost-effective form and manner of making such submissions, so long as it is deemed to be acceptable by the Commission.[228] Accordingly, we would expect there to be only a minimal, if any, initial burden of designing a system for submitting these notices. We also believe that the associated ongoing hourly burden of preparing and submitting such notices would be minimal. In addition, until

[221] This estimate is based upon the assumption that each non-SBS Entity market participant will do business with, on average, between one or two SBS Entities and is calculated as follows: ((13,082 non-SBS Entity market participants/55 SBS Entities) × 1.5 SBS Entities per non-SBS market participants) = approximately 350 non-SBS Entity counterparties per SBS Entity.

[222] Accordingly, of the estimated 350 security-based swap portfolios that an SBS Entity maintains with non-SBS Entities, 90% (or 315) will require only one portfolio reconciliation each year, and 10% (or 35) will require quarterly portfolio reconciliations, resulting in a total of 455 portfolio reconciliations per SBS Entity per year.

[223] This figure is identical to the estimate used for reconciliations between two SBS Entities (before dividing by one-half to avoid double-counting) and is consistent with the estimate used by the CFTC, which used an estimate of six minutes (or .10 hours) in connection with its portfolio reconciliation requirements. *See supra* notes 215 and 218 and accompanying text.

[224] *See supra* note 212 and accompanying text.

[225] This estimate is based on Commission staff discussions with market participants and is calculated as follows: [((Compliance Attorney at 40 hours) + (Director of Compliance at 20 hours) + (Deputy General Counsel at 20 hours))] = 80 hours per SBS Entity. *See* Trade Acknowledgment and Verification Adopting Release, 81 FR at 39831, n. 242.

[226] Although dually-registered SBS Entities would technically need to revise and maintain their policies and procedures to ensure compliance with both the Commission's and CFTC's rules, we have decided to conservatively assume that all of the estimated hours would be incurred in connection with compliance with the collection of information associated with Rule 15Fi–3.

[227] This estimate is based on Commission staff discussions with market participants and is calculated as follows: [((Compliance Attorney at 20 hours) + (Director of Compliance at 10 hours) + (General Counsel at 10 hours))] = 40 hours per SBS Entity. *See* Trade Acknowledgment and Verification Adopting Release, 81 FR at 39831, n. 243.

[228] *See supra* note 72.

SBS Entities are registered with the Commission, it is difficult for us to determine the typical number of valuation disputes meeting the applicable thresholds that SBS Entities would be required to submit on an annual basis.

Rule 15Fi–3(c) also requires SBS Entities to notify the Commission, in a form and manner acceptable to the Commission, and any applicable prudential regulator, if the amount of any security-based swap valuation dispute that was the subject of a previous notice increases or decreases by more than $20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level. Such amended notice shall be provided to the Commission, and any applicable prudential regulator, no later than the last business day of the calendar month in which the applicable security-based swap valuation dispute increases or decreases by the applicable dispute amount. Although the Commission believes that the time required to submit amendments to existing notices will be minimal, and likely included in the 24 hour estimate that we used in the Proposing Release (which was used by the CFTC when it first proposed a similar requirement),[229] we are conservatively increasing that estimate by 25% to account for the submission of amended notices. As such, we estimate that each SBS Entities will spend on average of 30 hours each year complying with this requirement, for an estimated average annual burden of 1,650 hours in the aggregate for all 55 respondents.

Combining all of the estimated burdens described above, the Commission estimates that Rule 15Fi–3 will impose an estimated one-time initial burden of 2,899 hours in the aggregate for all SBS Entities to prepare new written policies and procedures or to bring existing ones into compliance. The Commission also estimates that Rule 15Fi–3 will impose an estimated ongoing burden of 26,812.5 hours each year in the aggregate for all SBS Entities, which is composed of (1) an estimated annual burden of 10,450 hours in the aggregate for all SBS Entities to engage in portfolio reconciliation with SBS Entities; (2) an estimated annual burden of 12,512.5 hours in the aggregate for all SBS Entities to engage in portfolio reconciliation with non-SBS Entities; (3) an estimated annual burden of 2,200 hours in the aggregate for all SBS Entities to revise and maintain the written policies and procedures required pursuant to the rule; and (4) an estimated annual burden of 1,650 hours for all SBS Entities to report certain large valuation disputes to the Commission and any applicable prudential regulator.[230] These calculations are summarized in PRA Tables 3 and 4, below.

PRA Table 3—Rule 15Fi–3: Total Estimated Initial Burdens

Requirement	Hourly burden	Total one-time burden (hours)
Preparation of New Written Policies and Procedures (20 dual SEC–CFTC registrants)	1	20
Preparation of New Written Policies and Procedures (35 SEC-only registrants)	80	2,800
Total Aggregate One-Time Burden for all 55 respondents		2,820 hours

PRA Table 4—Rule 15Fi–3: Summary of Annual Burdens

Requirement	Aggregate hourly burden (all 55 respondents)
Portfolio Reconciliations with Other SBS Entities	10,450
Portfolio Reconciliations with Non-SBS Entities	12,512.5
Revise and Maintain Written Policies and Procedures	2,200
Prepare and Submit Notices of Valuation Disputes >$20 million	1,650
Total Aggregate Annual Burden for all 55 respondents	26,812.5

4. Rule 15Fi–4: Portfolio Compression

As noted above, the Commission continues to believe that of the estimated 55 persons that may register with the Commission as SBS Entities, approximately 20 will be dually-registered with the CFTC as Swap Entities. In addition, and as we previously noted, the requirements in CFTC Rule § 23.503 are, other than as expressly described above in Section II.B, substantively identical to Rule 15Fi–4. Accordingly, these 20 entities are already required to establish, maintain, and follow relevant written policies and procedures related to bilateral offsets and portfolio compression exercises involving their swap portfolios, and these policies and procedures would be expected to be largely consistent with those that would be required with respect to their security-based swap portfolios. Assuming that these existing policies and procedures would need to be amended to apply to security-based swap transactions, we estimate that the initial burden of revising these policies and procedures would be one hour per respondent, for an estimated one-time initial burden of 20 hours in the aggregate.

With respect to the remaining 35 SBS Entities that are not dually-registered with the CFTC, the Commission estimates, based on prior estimates in earlier Dodd-Frank rulemakings, that these policies and procedures would require an average of 80 hours per non-dually-registered respondent to initially prepare and implement, for an estimated average annual burden of 2,800 hours in the aggregate.[231] Once these policies and procedures are established, the Commission estimates that it will take an average of 40 hours annually to revise and maintain these policies and procedures per respondent (including both dually-registered and non-dually-registered SBS Entities), for an estimated average annual burden of 2,200 hours in the aggregate for all 55 respondents.

In addition, the respondents will incur additional hourly burdens as they undertake bilateral offsets and portfolio compression exercises consistent with these written policies and procedures.

[229] *See* Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715, 6723 (Feb. 8, 2011).

[230] Rule 15Fi–3(a)(1) and (b)(1) also require an SBS Entity to agree in writing with each of its counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation. The Commission expects SBS Entities to undertake this agreement as part of the written trading relationship documentation each is required to enter into with its counterparties as a result of Rule 15Fi–5. Thus, the estimate here does not account for this burden, which is instead assumed to form part of the burden of complying with Rule 15Fi–5.

[231] *See supra* note 225.

As noted above the Commission estimates that each of the 55 estimated SBS Entities will be counterparty to an average of 18 other SBS Entities and 350 non-SBS Entities, for a total of 368 counterparties. For purposes of conducting bilateral offsets and portfolio compression exercises, the Commission estimates that (1) each SBS Entity will have an average of one set of security-based swaps that are eligible for annual bilateral offset with each of these 368 counterparties, (2) each SBS Entity will conduct an annual bilateral compression exercise with one-third, or six of its 18 SBS Entity counterparties, (3) each SBS Entity will conduct an annual bilateral compression exercise with each of its 350 non-SBS Entity counterparties, and (4) each SBS Entity will engage in multilateral compression exercises at an average rate of 12 exercises per year.

The Commission believes that each bilateral offset and portfolio compression exercise is likely to be conducted through an automated process. As a result, we believe that (1) each bilateral offset will require on average five minutes of respondent time to complete with each of the 350 non-SBS Entity counterparties, (2) each bilateral offset will require on average 2.5 minutes of respondent time to complete with each of the 18 SBS Entity counterparties,[232] (3) each bilateral compression will require an average of 15 minutes of respondent time to complete with each of the 350 non-SBS Entity counterparties, (4) each bilateral compression will require an average of 7.5 minutes with each of the six SBS Entity counterparties,[233] and (5) each multilateral compression exercise will require an average of 30 minutes of respondent time to complete 12 times annually. In each of those hourly burdens, the figure used is the combined estimate for both counterparties. Based on these estimates, the Commission estimates the average annual hourly burden for these activities at 124.16 hours per respondent, an estimated average annual burden of 6,828.8 hours in the aggregate. These calculations are summarized in PRA Table 5, below.

PRA Table 5—Portfolio Compression With All Entities

Type of exercise	Number of counterparties	Number of annual exercises	Hourly burden per exercise	Total annual burden
Bilateral Offset (w/non-SBS Entities)	350	1	.0833	29.16
Bilateral Offset (w/SBS Entities)	18	1	.0417	.75
Bilateral Compression (w/non SBS-Entities)	350	1	.25	87.5
Bilateral Compression (w/SBS Entities)	6	1	.125	.75
Multilateral Compression	N/A	12	.5	6
Total per respondent				124.16
Total Aggregate Annual Burden for all 55 respondents				6,828.8

Combining all of the estimated burdens described above, the Commission estimates that Rule 15Fi–4 will impose an estimated one-time initial burden of 2,899 hours in the aggregate for all SBS Entities to prepare new written policies and procedures or to bring existing ones into compliance. The Commission also estimates that Rule 15Fi–4 will impose an estimated ongoing burden of 9,028.8 hours each year in the aggregate for all SBS Entities, which is composed of (1) an estimated annual burden of 1,603.8 hours in the aggregate to conduct bilateral offsets with non-SBS Entities; (2) an estimated annual burden of 41.25 hours in the aggregate to conduct bilateral offsets with SBS Entities; (3) an estimated annual burden of 4,812.5 hours in the aggregate to participate in bilateral compression exercises with non-SBS Entities; (4) an estimated annual burden of 41.25 hours in the aggregate to participate in bilateral compression exercises with SBS Entities; (5) an estimated annual burden of 330 hours in the aggregate to participate in multilateral compression exercises; and (6) an estimated annual burden of 2,200 hours in the aggregate for all SBS Entities to revise and maintain written policies and procedures. These calculations are summarized in PRA Tables 6 and 7, below.

PRA Table 6—Rule 15Fi–4: Total Estimated Initial Burden

Activity	Hourly burden	Total one-time burden (hours)
Preparation of New Written Policies and Procedures (20 dual SEC–CFTC registrants)	1	20
Preparation of New Written Policies and Procedures (35 SEC-only registrants)	80	2,800
Total Aggregate One-Time Burden for all 55 respondents		2,820

[232] Similar to our estimates in the context of the portfolio reconciliation requirements, because the five minute estimate is for the entire bilateral offset process, without respect to how that time is allocated between the two parties, to avoid double-counting we have divided it by one-half in the context of security-based swap portfolios between two SBS Entities, resulting in an estimate of 2.5 minutes per bilateral offset for those portfolios.

[233] Again, we have divided the 15 minute estimate to complete the bilateral compression exercise by one-half in the context of security-based swap portfolios between two SBS Entities, resulting in an estimate of 7.5 minutes per bilateral compression for those portfolios.

PRA TABLE 7—RULE 15FI–3: SUMMARY OF ANNUAL BURDENS

Requirement	Aggregate hourly burden (all 55 respondents)
Bilateral Offsets with non-SBS Entities	1603.8
Bilateral Offsets with SBS Entities	41.25
Bilateral Compression with non-SBS Entities	4,812.5
Bilateral Compression with SBS Entities	41.25
Multilateral Compression	330
Revise and Maintain Written Policies and Procedures	2,200
Total Aggregate Annual Burden for all 55 respondents	9028.8

5. Rule 15Fi–5: Written Trading Relationship Documentation

As previously noted, the Commission estimates that each SBS Entity will have 18 SBS Entity counterparties and 350 non-SBS Entity counterparties, for a total of 368 counterparties per SBS Entity. For the purposes of the underlying documentation requirements, and based on staff discussions with market participants, the Commission understands that many SBS Entities already have in place industry-standard written trading relationship documentation that is likely to contain many of the elements required by Rule 15Fi–5. With this in mind, the Commission estimates that (1) the initial burden per respondent to negotiate and draft written trading relationship documentation with non-SBS Entities that is compliant with Rule 15Fi–5 will be approximately 30 hours (which is the combined estimate for both counterparties), and (2) the initial burden per respondent to negotiate and draft written trading relationship documentation with SBS Entities that is compliant with Rule 15Fi–5 will be approximately 15 hours.[234] These estimates are averages, and both account for the fact that some SBS Entities may lack appropriate documentation in certain respects and will need to enter into new documentation with counterparties, while in other cases existing documentation will need only to be modified to be brought into compliance. The Commission's estimates are further based on an assumption that, in each case, the written documentation will always include the valuation agreements set forth in Rule 15Fi–5(b)(4), notwithstanding the fact that the rule only requires this information in certain circumstances.

Based on these estimates and assumptions, the Commission believes that the requirement to prepare written relationship documentation in accordance with Rule 15Fi–5 will result in an estimated one-time initial burden of 9,540 hours for each of the 55 SBS Entity respondents, for an estimated average one-time burden of 524,700 hours in the aggregate. The Commission also believes that there will be little need to modify the written trading relationship documentation on an ongoing basis once it is in place, and therefore is not estimating any additional annual hourly burden for ongoing modifications.

As noted above, the Commission continues to believe that of the estimated 55 persons that may register with the Commission as SBS Entities, approximately 20 will be dually-registered with the CFTC as Swap Entities. In addition, and as we previously noted, the requirements in CFTC Rule § 23.504 are, other than as expressly described above in Section I.C, substantively identical to those contained in Rule 15Fi–5. Accordingly, these 20 entities are already required to establish, maintain, and follow relevant written policies as they relate to the execution of written trading relationship documentation involving their swap portfolios, and these policies and procedures would be expected to be largely consistent with those that would be required with respect to their security-based swap portfolios. Assuming that these existing policies and procedures would simply need to be amended to apply to security-based swap transactions, we estimate that the average initial burden of revising these policies and procedures would be one hour per respondent, for an estimated one-time burden of 20 hours in the aggregate.

With respect to the remaining 35 SBS Entities that are not dually-registered with the CFTC, the Commission estimates, based on prior estimates in earlier Dodd-Frank rulemakings, that these policies and procedures would require an average of 80 hours per non-dually-registered respondent to initially prepare and implement, for an estimated average annual burden of 2,800 hours in the aggregate.[235] Once these policies and procedures are established, the Commission estimates that it will take an average of 40 hours annually to revise and maintain these policies and procedures per respondent (including both dually-registered and non-dually-registered SBS Entities), for an estimated average annual burden of 2,200 hours in the aggregate for all 55 respondents.

With regard to having an independent auditor conduct the required periodic audit of written trading relationship documentation and the requirement to retain a record of each such audit, the Commission estimates that it will take an average of 10 hours to audit an SBS Entity's documentation with each of its 368 counterparties, for a total of 3,680 hours per SBS Entity, or 202,400 hours for all 55 SBS Entity respondents.

Combining all of the estimated burdens described above, the Commission estimates that Rule 15Fi–5 will impose an estimated one-time initial burden of 595,170 hours in the aggregate for all SBS Entities, which consists of (1) 2,820 hours in the aggregate for all SBS Entities to prepare new written policies and procedures or to bring existing ones into compliance, (2) 577,500 hours in the aggregate for SBS Entities to negotiate and execute trading relationship documentation with 350 non-SBS Entity counterparties, and (3) 14,850 hours in the aggregate for SBS Entities to negotiate and execute trading relationship documentation with 18 SBS Entity counterparties. The Commission also estimates that Rule 15Fi–5 will impose an estimated ongoing burden of 204,600 hours each year in the aggregate for all SBS Entities, which is composed of: (1) An estimated annual burden of 2,200 hours in the aggregate for all SBS Entities to revise and maintain written policies and procedures and (2) an estimated annual burden of 202,400 hours in the aggregate for all SBS Entities to conduct the required periodic audits. These calculations are summarized in PRA Tables 8 and 9, below.

[234] As was the case in calculating the PRA estimates for the portfolio reconciliation and portfolio compression requirements, because the 30 hours estimate is for the entire process of negotiating and executing written trading relationship documentation, without respect to how that time is allocated between the two parties, to avoid double-counting we have divided it by one-half in the context of counterparties that are also SBS Entities, resulting in an estimate of 15 hours to negotiate and execute such documentation.

[235] *See supra* note 225.

PRA TABLE 8—RULE 15FI–5: TOTAL ESTIMATED INITIAL BURDENS

Activity	Hourly burden	Total one-time burden (hours)
Preparation of New Written Policies and Procedures (20 dual SEC–CFTC registrants)	1	20
Preparation of New Written Policies and Procedures (35 SEC-only registrants)	80	2,800
Negotiate and Execute Trading Relationship Documentation with 350 non-SBS Entities (all 55 respondents)	30	577,500
Negotiate and Execute Trading Relationship Documentation with 18 SBS Entities (all 55 respondents)	15	14,850
Total Aggregate One-Time Burden for all 55 respondents		595,170

PRA TABLE 9—RULE 15FI–3: SUMMARY OF ANNUAL BURDENS

Requirement	Aggregate hourly burden (all 55 respondents)
Audit of Written Trading Relationship Documentation	202,400
Revise and Maintain Written Policies and Procedures	2,200
Total Aggregate Annual Burden for all 55 respondents	204,600

6. Amendments to Rules 17a–3, 17a–4, 18a–5, and 18a–6: Books and Records Requirements

The amendments to Rules 17a–3, 17a–4, 18a–5, and 18a–6 will impose collection of information requirements that result in initial and annual time burdens for SBS Entities. The amendments to Rules 17a–3 and 18a–5 require three additional types of records to be made and kept current by SBS Entities—records regarding portfolio reconciliations, valuation disputes, and portfolio compressions. Because the burden to make these records is accounted for in the PRA estimates for Rules 15Fi–3 and 15Fi–4, the burden imposed by these new requirements relates only to the requirement in Rules 17a–4 and 18a–6 to maintain and preserve a written record of these tasks, as well as the additional requirements in those provisions to maintain and preserve records of policies and procedures required by Rules 15Fi–3, 15Fi–4, and 15Fi–5, and written agreements with counterparties regarding the terms of portfolio reconciliation. The Commission estimates that these recordkeeping requirements will impose an initial burden of 60 hours per firm for updating the applicable policies and systems required to account for capturing the additional records made pursuant to Rule 15Fi–3 through 15Fi–5, and an ongoing annual burden of 75 hours per firm for maintaining such records as well as to make additional updates to the applicable recordkeeping policies and systems to account for the new rules. As noted previously, the Commission estimates that there are 55 SBS Entity respondents, for a total average initial annual burden for all respondents of 3,300 hours and a total ongoing average annual burden of 4,125 hours.

7. Amendment to Rule 3a71–6: Substituted Compliance

The amendment to Rule 3a71–6 requires the submission of certain information to the Commission to the extent SBS Entities elect to request a substituted compliance determination with respect to the proposed portfolio reconciliation, portfolio compression, and written trading relationship documentation requirements. The Commission expects that registered SBS Entities will seek to rely on substituted compliance upon registration, and that it is likely that the majority of such requests will be made during the first year following the effective date. Requests will not be necessary with regard to applicable rules and regulations of a foreign financial regulatory system that have previously been the subject of a substituted compliance determination in connection with the applicable rules.

The Commission expects that the great majority of substituted compliance applications will be submitted by foreign authorities, and that very few substituted compliance requests will come from SBS Entities. For purposes of this assessment, the Commission estimates that three such SBS Entities will submit such an application.[236]

The Commission has previously estimated that the paperwork burden associated with making each such substituted compliance request would be approximately 80 hours of in-house counsel time, plus $80,000 for the services of outside professionals (based on 200 hours of outside time × $400 per hour).[237] The Commission is currently of the belief that this prior estimate is sufficient to cover a combined substituted compliance request that also seeks a determination for the portfolio reconciliation, portfolio compression, and written trading relationship documentation requirements. This estimate results in an aggregate total of 240 internal hours, plus $240,000 for outside services. Therefore, the Commission estimates that the total paperwork burden incurred by such entities associated with preparing and submitting a request for a substituted compliance determination in connection with the portfolio reconciliation, portfolio compression, and written trading relationship documentation requirements will be approximately 240 hours per applicant, plus $240,000 for the services of outside professionals for all three requests.

E. Collection of Information Is Mandatory

Each collection of information for Rules 15Fi–3, 15Fi–4, and 15Fi–5, and for the amendments to Rules 17a–3, 17a–4, 18a–5, and 18a–6 is a mandatory collection of information. With respect to the amendment to Rule 3a71–6, the application for substituted compliance is mandatory for all foreign financial regulatory authorities or SBS Entities that seek a substituted compliance determination.

F. Confidentiality

Rule 15Fi–3(c) requires an SBS Entity to promptly notify the Commission of any security-based swap valuation dispute in excess of $20,000,000 (or its equivalent in any other currency) if not resolved within: (1) Three business days, if the dispute is with a counterparty that is an SBS Entity; or (2) five business days, if the dispute is with a counterparty that is not an SBS Entity. The rule also requires SBS Entities to notify the Commission, in a form and manner acceptable to the Commission, and any applicable prudential regulator, if the amount of any security-based swap valuation dispute that was the subject of a previous notice increases or decreases by more than $20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level.

[236] *See* Business Conduct Standards Adopting Release, 81 FR at 30097, n. 1582.

[237] *See* Business Conduct Standards Adopting Release, 81 FR at 30097, n. 1583.

These amendments are required to be provided to the Commission, and any applicable prudential regulator, no later than the last business day of the calendar month in which the applicable security-based swap valuation dispute increases or decreases by the applicable dispute amount. We requested comment as to whether the initial notices should be submitted to the Commission on a confidential basis, but did not receive any comments in response to this request. Accordingly, the Commission has not modified Rule 15Fi–3(c) to provide for these notices (either the initial notice or any amendments) to be submitted on a confidential basis. No other information is required to be submitted directly to the Commission under Rules 15Fi–3, 15Fi–4, and 15Fi–5, or under the amendments to Rules 17a–3, 17a–4, 18a–5, and 18a–6. To the extent that the Commission receives confidential information pursuant to this collection of information that is otherwise not publicly available, including in connection with examinations or investigations, the SBS Entity can request the confidential treatment of the information.[238] If such a confidential treatment request is made, the Commission anticipates that it will keep the information confidential, subject to the provisions of applicable law.[239]

With regard to the amendments to Rule 3a71–6, the Commission generally will make requests for a substituted compliance determination public, subject to requests for confidential treatment being submitted pursuant to any applicable provisions governing confidentiality under the Exchange Act.[240]

VII. Economic Analysis

The Commission is sensitive to the economic effects of its rules, including the costs and benefits and the effects of its rules on efficiency, competition, and capital formation. Section 3(f)[241] of the Exchange Act requires the Commission, whenever it engages in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, also to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2)[242] of the Exchange Act requires the Commission, when promulgating rules under the Exchange Act, to consider the impact such rules would have on competition. Section 23(a)(2) also provides that the Commission shall not adopt any rule which would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.[243]

A. Broad Economic Considerations

Unlike some other types of securities transactions, a security-based swap typically gives rise to ongoing obligations between transaction counterparties during the life of the transaction, including payments contingent on specific events, such as a corporate default or a change in the price of an underlying reference asset (*e.g.,* changes in price to the floating leg of a total return swap). Consequently, certain risk mitigation techniques, such as engaging in portfolio reconciliation at periodic intervals, exercising opportunities for portfolio compression, and ensuring that the terms of a transaction are fully documented, are important practices for assisting SBS Entities in effectively measuring and managing market and credit risk.

Credit risk refers to the probability of a financial loss due to a counterparty to a transaction failing to fulfill its financial obligations. In order to manage credit risk in the security-based swap context properly, a market participant should know the identity of each of its counterparties, the details of the obligations of each counterparty in each transaction into which the two have entered, and the value of those obligations (including for purposes of calculating margin or measuring outstanding exposure for risk management). The greater the number of counterparties and transactions, the complexity of those transactions, and the value of the outstanding obligations, the more important it becomes for each counterparty to have well-documented credit risk management policies.

The risks of the counterparties' failure to manage credit risk adequately may not become apparent until the onset of a financial crisis. Such a crisis occurred in the fall of 2008, when certain events threatened to freeze U.S. and global credit markets. The severity of that crisis has been partially attributed to poor risk management practices of financial firms and flawed supervisory oversight for certain financial institutions.[244]

Shortcomings in credit risk management and documentation may be unobservable to counterparties and other market participants until a crisis occurs as it did in 2008; thus some benefits of compliance will accrue to the financial system as a whole while the ongoing direct costs are borne by the institution. If firms do not fully internalize the benefits of risk management, then they may underinvest. For example, shortcomings in documentation were reported to have created significant problems during the financial crisis that immediately preceded passage of the Dodd-Frank Act in connection with efforts by Barclays PLC to take over a portion of Lehman Brothers Holdings Inc.'s derivatives trades.[245] Shortcomings in the documentation of portfolio valuation methods and reconciliation of portfolio values were also exposed when, during bankruptcy proceedings, counterparties' valuations differed by hundreds of millions of dollars from the value of those same positions on the bankrupt entity's books.[246]

Among other things, effective risk management requires the existence of sound documentation, periodic reconciliation of portfolios, rigorously tested valuation methodologies, and sound collateralization practices.[247] More broadly, the President's Working Group on Financial Policy (''PWG'') noted shortcomings in the OTC derivatives market as a whole during the financial crisis that immediately preceded passage of the Dodd-Frank Act. The PWG identified the need for an improved integrated operational structure supporting OTC derivatives, specifically highlighting the need for an

[238] *See* 17 CFR 200.83.

[239] *See, e.g.,* 5 U.S.C. 552 *et seq.;* 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

[240] *See* 17 CFR 200.83; 17 CFR 240.24b–2; *see also* Application of ''Security-Based Swap Dealer'' and ''Major Security-Based Swap Participant'' Definitions to Cross-Border Security-Based Swap Activities, Exchange Act Release No. 72472 (June 25, 2014), 79 FR 47278, 47359 (Aug. 12, 2014) (''Cross-Border Adopting Release'').

[241] 15 U.S.C. 78c(f).

[242] 15 U.S.C. 78w(a)(2).

[243] *See id.*

[244] *See* Lessons of the Financial Crisis for Future Regulation of Financial Institutions, at 3–4, IMF Policy Paper (Feb. 4, 2009), *available at: http://www.imf.org/external/np/pp/eng/2009/020409.pdf; see also* Sewall Chan, Financial Crisis Was Avoidable, Inquiry Finds, N.Y. Times (Jan. 25, 2011), *available at: http://www.nytimes.com/2011/01/26/business/economy/26inquiry.html?_r=1.*

[245] *See* Linda Sandler, Lehman Derivatives Records a 'Mess,' Barclays Executive Says, Bloomberg (Aug. 30, 2010), *available at: http://www.bloomberg.com/news/articles/2010-08-30/lehman-derivatives-records-a-mess-barclays-executive-says.*

[246] *See* Satyajit Das, In the Matter of Lehman Brothers, 59 Wilmott 20–29 (May 2012). Disagreement over CDO valuation between AIG and its counterparties was also an issue around the same time. *See supra* note 14 and accompanying text.

[247] *See* PriceWaterhouseCoopers, Lehman Brothers' Bankruptcy: Lessons learned for the survivors, Informational presentation for clients, (Aug. 2009), at 12–24, *available at: https://www.pwc.com/jg/en/events/lessons-learned-for-the-survivors.pdf.*

enhanced ability to manage counterparty risk through ''netting and collateral agreements by promoting portfolio reconciliation and accurate valuation of trades.'' [248]

The final rules are designed to ensure that SBS Entities implement certain risk mitigation techniques by engaging in periodic portfolio reconciliation, maintaining policies and procedures for engaging in certain forms of portfolio compression exercises with each of their counterparties, and maintaining policies and procedures reasonably designed to ensure that they execute written trading relationship documentation with each of their counterparties prior to executing a security-based swap transaction. These rules also will set minimum standards with respect to identifying the matters that must be addressed in the security-based swap trading documentation, and outline certain requirements related to the resolution of discrepancies, particularly those involving differences in the valuation of security-based swaps.[249] In adopting these rules, the Commission believes that they will promote effective risk management practices by security-based swap market participants in a number of important ways, which are discussed in greater detail below.

The Commission notes that, where possible, it has attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from adopting these rules. In certain cases, however, the Commission is unable to quantify the economic effects. Crucially, many of the relevant economic effects, such as improved risk management and the value of Commission enforcement and oversight, are inherently difficult to quantify. In other cases, we lack the information necessary to provide reasonable estimates. For example, we lack data on prices charged by certain third-party service providers, current trading relationship documentation practices for entities and transactions not already subject to similar rules from other regulators, the fraction of outstanding positions that when reconciled will result in a dispute and the costs incurred by the participants in resolving the dispute. To the best of our knowledge, no such data is publicly available. Where the Commission is unable to quantify the economic effects, the discussion is qualitative in nature and includes, where possible, descriptions of the direction of these effects.

B. Economic Baseline

To assess the economic impact of the risk mitigation rules described in this release, the Commission is using as a baseline the security-based swap market as it exists at the time of this release, including applicable rules that have already been adopted, and excluding rules that have been proposed but not yet finalized. The analysis includes the statutory and regulatory provisions that currently govern the security-based swap market pursuant to the Dodd-Frank Act, as well as rules adopted in, among others, the Business Conduct Standards Adopting Release,[250] the Trade Acknowledgment and Verification Adopting Release,[251] the Capital, Margin, and Segregation Adopting Release,[252] and the Recordkeeping and Reporting Adopting Release.[253] Moreover, because participants in the security-based swap market may also operate in other markets, particularly the swaps market, we have considered both the direct and indirect impact of rules that have been adopted by other regulators (*e.g.,* the CFTC as well as foreign regulatory bodies) in formulating the baseline.

Furthermore, the overall Title VII regulatory framework will have consequences for the ways in which security-based swaps are transacted which, in turn, will affect the activities addressed by these rules. For example, the rules being adopted generally do not apply to security-based swaps cleared through a registered clearing agency. Therefore, the scope of future mandatory clearing requirements may affect the overall level of security-based swap activity subject to the final rules being adopted, as well as the overall costs borne by SBS Entities.

1. Security-Based Swap Market Activity and Participants

a. Available Data From the Security-Based Swap Market

The Commission's understanding of the market is informed, in part, by available data on security-based swap transactions, though the Commission acknowledges that limitations in the data limit the extent to which it is possible to quantitatively characterize the market. Since this data does not cover the entire market, the Commission has analyzed market activity using a sample of transactions that includes only certain segments of the market. The Commission believes, however, that the data underlying this analysis provides reasonably comprehensive information regarding single-name credit default swap (''CDS'') transactions and the composition of the participants in the single-name CDS market.

Specifically, the analysis of the state of the current security-based swap market is based on data obtained from the DTCC Derivatives Repository Limited Trade Information Warehouse (''DTCC–TIW''), especially data regarding the activity of market participants in the single-name CDS market during the period from 2006 to 2017.[254] Although the definition of ''security-based swap'' is not limited to single-name CDS,[255] single-name CDS contracts make up a majority of security-based swaps, and we believe that the single-name CDS data is sufficiently representative of the market to inform our analysis of the current security-based swap market. According to data published by the Bank for International Settlements (''BIS''), the global notional amount outstanding in single-name CDS was approximately $4.6 trillion,[256] in multi-name index CDS was approximately $4.4 trillion, and in multi-name, non-index CDS was approximately $343 billion.[257] The total

[248] *See* The President's Working Group on Financial Markets, Policy Statements on Financial Market Developments, (Mar. 2008) (''PWG Report''), *available at: https://www.treasury.gov/resource-center/fin-mkts/Documents/pwgpolicystatemktturmoil_03122008.pdf.*

[249] The rules also (1) address the potential availability of substituted compliance in connection with those portfolio reconciliation, portfolio compression, and trading relationship documentation requirements and (2) require SBS Entities to make and keep records demonstrating compliance with the new risk mitigation requirements (which are reflected as amendments to the Commission's recently adopted security-based swap recordkeeping rules).

[250] *See supra* note 172.

[251] *See supra* note 5.

[252] *See supra* note 89. *See also supra* note 161 and associated text.

[253] *See supra* note 162 and Section II.D.

[254] In prior releases, the Commission has examined data for other time periods. For example, in the Business Conduct Standards Adopting Release, the Commission presented an analysis of TIW data for November 2006 through December 2014. While the exact numbers of various groups of transacting agents and account holders in that analysis differ from the figures reported in this section (for a longer time period), we do not observe significant structural differences in market participation. *Compare* 81 FR at 30102 (Tables 1 and 2) *with* Tables 1 and 2 below.

[255] While other repositories may collect data on transactions in total return swaps on equity and debt, we do not currently have access to such data for these products (or other products that are security-based swaps). Additionally, the Commission explains below that data related to single-name CDS provides reasonably comprehensive information for the purpose of this analysis.

[256] The global notional amount outstanding represents the total face amount used to calculate payments under outstanding contracts. The gross market value is the cost of replacing all open contracts at current market prices.

[257] *See* BIS, Semi-annual OTC derivatives statistics at December 2017, Table 10.1, *available at: https://www.bis.org/statistics/d10_1.pdf* (last accessed September 24, 2019).

gross market value outstanding in single-name CDS was approximately $130 billion, and in multi-name CDS instruments was approximately $174 billion.[258] The global notional amount outstanding in equity forwards and swaps as of December 2017 was $3.21 trillion, with total gross market value of $197 billion.[259]

The Commission further notes that the data available from TIW does not encompass those CDS transactions that both: (i) Do not involve U.S. counterparties; [260] and (ii) are based on non-U.S. reference entities. Notwithstanding this limitation, the TIW single-name CDS data should provide sufficient information to permit the Commission to identify the types of market participants active in the security-based swap market and the general pattern of dealing within that market.[261]

b. Affected SBS Entities

Final SBS Entity registration rules have been adopted, but compliance is not yet required. Therefore, we do not have data on the actual number of SBS Entities that will register with the Commission, or the number of persons associated with registered SBS Entities. The Commission has elsewhere estimated that up to 50 entities may register with the Commission as security-based swap dealers, and up to five additional entities may register as major security-based swap participants.[262] These estimates remain unchanged.

Firms that act as dealers play a central role in the security-based swap market. Based on an analysis of 2017 single-name CDS data in TIW, accounts of those firms that are likely to exceed the security-based swap dealer *de minimis* thresholds, and thereby trigger the requirement to register as SBS dealers intermediated transactions with a gross notional amount of approximately $2.9 trillion. Approximately 55% of that figure is intermediated by the top five dealer accounts.[263]

Dealers transact with hundreds or thousands of counterparties. Approximately 21% of accounts of firms expected to register as SBS dealers and observable in TIW have entered into security-based swaps with over 1,000 unique counterparty accounts as of year-end 2017.[264] Another 25% of these accounts transacted with 500 to 1,000 unique counterparty accounts; 29% transacted with 100 to 500 unique accounts; and 25% of these accounts intermediated security-based swaps with fewer than 100 unique counterparties in 2017. The median dealer account transacted with 495 unique accounts (with an average of approximately 570 unique accounts). Non-dealer counterparties transacted almost exclusively with these dealers. The median non-dealer counterparty transacted with two dealer accounts (with an average of approximately three dealer accounts) in 2017.

c. Other Market Participants

In addition to dealers, thousands of other participants appear as counterparties to security-based swap contracts in our sample, and include, but are not limited to, investment companies, pension funds, private funds, sovereign entities, and industrial companies. We observe that most non-dealer users of security-based swaps do not engage directly in the trading of swaps, but trade through banks, investment advisers, or other types of firms acting as dealers or agents. Based on an analysis of the counterparties to trades reported to the TIW, there are 2,110 entities engaged directly in trading between November 2006 and December 2017.[265]

[258] *See id.*

[259] These totals include swaps and security-based swaps, as well as products that are excluded from the definition of ''swap,'' such as certain equity forwards. *See* OTC, Equity-Linked Derivatives Statistics, Table D8, *available at: https://www.bis.org/statistics/d8.pdf* (last accessed September 24, 2019). For the purposes of this analysis, the Commission assumes that multi-name index CDS are not narrow-based index CDS and therefore, do not fall within the security-based swap definition. *See* 15 U.S.C. 78c(a)(68)(A). *See also* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208. The Commission also assumes that all instruments reported as equity forwards and swaps are security-based swaps, potentially resulting in underestimation of the proportion of the security-based swap market represented by single-name CDS. Therefore, when measured on the basis of gross notional outstanding single-name CDS contracts appear to constitute roughly 59% of the security-based swap market. Although the BIS data reflects the global OTC derivatives market, and not just the U.S. market, the Commission has no reason to believe that these ratios differ significantly in the U.S. market.

[260] Following publication of the Warehouse Trust Guidance on CDS data access, TIW surveyed market participants, asking for the physical address associated with each of their accounts (*i.e.,* where the account is organized as a legal entity). This physical address is designated the registered office location by TIW. When an account reports a registered office location, we have assumed that the registered office location reflects the place of domicile for the fund or account. When an account does not report a registered office location, we have assumed that the settlement country reported by the investment adviser or parent entity to the fund or account is the place of domicile. Thus, for purposes of this analysis, the Commission has classified accounts as ''U.S. counterparties'' when they have reported a registered office location in the United States. The Commission notes, however, that this classification is not necessarily identical in all cases to the definition of U.S. person under Rule 3a71–3(a)(4).

[261] The challenges the Commission faces in estimating measures of current market activity stem, in part, from the absence of comprehensive reporting requirements for security-based swap market participants. The Commission has adopted rules regarding trade reporting, data elements, and public reporting for security-based swaps that are designed to, when fully implemented, provide the Commission with additional measures of market activity that will allow us to better understand and monitor activity in the security-based swap market. *See* Regulation SBSR Adopting Release, 81 FR at 53545.

[262] *See, e.g.,* Registration Adopting Release, 80 FR at 49000.

[263] The Commission staff analysis of DTCC Derivatives Repository Limited Trade Information Warehouse transaction records indicates that approximately 99% of single-name CDS price-forming transactions in 2017 involved an ISDA-recognized dealer.

[264] Many dealer entities and financial groups transact through numerous accounts. Given that individual accounts may transact with hundreds of counterparties, the Commission may infer that entities and financial groups may transact with at least as many counterparties as the largest of their accounts.

[265] These 2,110 entities, which are presented in more detail in Table 1, *infra,* include all DTCC-defined ''firms'' shown in TIW as transaction counterparties that report at least one transaction to TIW as of December 2017. The staff in the Division of Economic and Risk Analysis classified these firms, which are shown as transaction counterparties, by machine matching names to known third-party databases and by manual classification. *See, e.g.,* Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception, Exchange Act Release No. 77104 (Feb. 10, 2016) 81 FR 8598, 8602 n.43 (Feb. 19, 2016). Manual classification was based in part on searches of the EDGAR and Bloomberg databases, the SEC's Investment Adviser Public Disclosure database, and a firm's public website or the public website of the account represented by a firm. The staff also referred to ISDA protocol adherence letters available on the ISDA website.

As shown in Table 1 below, close to three-quarters of these entities (DTCC-defined ''firms'' shown in TIW, which we refer to here as ''transacting agents'') were identified as investment advisers, of which approximately 40% (about 30% of all transacting agents) were registered as investment advisers under the Advisers Act.[266] Although investment advisers are the vast majority of transacting agents, the transactions they executed account for only 12.8% of all single-name CDS trading activity reported to the TIW, measured by the number of transaction-sides (each transaction has two transaction sides, *i.e.,* two transaction counterparties). The vast majority of transactions (83.3%) measured by the number of transaction-sides were executed by ISDA-recognized dealers.

TABLE 1—THE NUMBER OF TRANSACTING AGENTS BY COUNTERPARTY TYPE AND THE FRACTION OF TOTAL TRADING ACTIVITY, FROM NOVEMBER 2006 THROUGH DECEMBER 2017, REPRESENTED BY EACH COUNTERPARTY TYPE

Transacting agents	Number	Percent	Transaction share (%)
Investment Advisers	1,635	77.5	12.8
—SEC registered	*658*	*31.2*	*8.6*
Banks	262	12.4	3.4
Pension Funds	29	1.4	0.1
Insurance Companies	42	2.0	0.2
ISDA-Recognized Dealers[267]	17	0.8	83.3
Other	125	5.9	0.2
Total	2,110	100.0	100

Principal holders of CDS risk exposure are represented by ''accounts'' in the TIW.[268] The staff's analysis of these accounts in TIW shows that the 2,110 transacting agents classified in Table 1 represent 13,137 principal risk holders. Table 2, below, classifies these principal risk holders by their counterparty type and whether they are represented by a registered or unregistered investment adviser.[269] For instance, banks in Table 1 allocated transactions across 349 accounts, of which 20 were represented by investment advisers. In the remaining instances, banks traded for their own accounts. Meanwhile, ISDA-recognized dealers in Table 1 allocated transactions across 91 accounts. Private funds are the largest type of account holders that we were able to classify, and although not verified through a recognized database, most of the funds we were not able to classify appear to be private funds.[270]

TABLE 2—THE NUMBER AND PERCENTAGE OF ACCOUNT HOLDERS—BY TYPE—WHO PARTICIPATE IN THE SECURITY-BASED SWAP MARKET THROUGH A REGISTERED INVESTMENT ADVISER, AN UNREGISTERED INVESTMENT ADVISER, OR DIRECTLY AS A TRANSACTING AGENT, FROM NOVEMBER 2006 THROUGH DECEMBER 2017

Account holders by type	Number	Represented by a registered investment adviser		Represented by an unregistered investment adviser		Participant is transacting agent[271]	
Private Funds	3,857	1,973	51%	1,859	48%	25	1%
DFA Special Entities	1,319	1,262	96%	37	3%	20	2%
Registered Investment Companies	1,159	1,082	93%	73	6%	4	0%
Banks (non-ISDA-recognized dealers)	349	20	6%	8	2%	321	92%
Insurance Companies	301	196	65%	34	11%	71	24%
ISDA-Recognized Dealers	91	0	0%	0	0%	91	100%
Foreign Sovereigns	83	63	76%	3	4%	17	20%
Non-Financial Corporations	75	52	69%	4	5%	19	25%
Finance Companies	20	11	55%	0	0%	9	45%
Other/Unclassified	5,883	3,745	64%	1,887	32%	251	4%
All	13,137	8,404	64%	3,905	30%	828	6%

[266] *See* 15 U.S.C. 80b1–80b21. Transacting agents participate directly in the security-based swap market, without relying on an intermediary, on behalf of principals. For example, a university endowment may hold a position in a security-based swap that is established by an investment adviser that transacts on the endowment's behalf. In this case, the university endowment is a principal that uses the investment adviser as its transacting agent.

[267] For the purpose of this analysis, the ISDA-recognized dealers are those identified by ISDA as belonging to the G14 or G16 dealer group during the period: JP Morgan Chase NA (and Bear Stearns), Morgan Stanley, Bank of America NA (and Merrill Lynch), Goldman Sachs, Deutsche Bank AG, Barclays Capital, Citigroup, UBS, Credit Suisse AG, RBS Group, BNP Paribas, HSBC Bank, Lehman Brothers, Société Générale, Credit Agricole, Wells Fargo and Nomura. *See, e.g., https://www.isda.org/a/5eiDE/isda-operations-survey-2010.pdf.*

[268] ''Accounts'' as defined in the TIW context are not equivalent to ''accounts'' in the definition of ''U.S. person'' provided by Rule 3a71–3(a)(4)(i)(C) under the Exchange Act. They also do not necessarily represent separate legal persons. One entity or legal person may have multiple accounts. For example, a bank may have one DTCC account for its U.S. headquarters and one DTCC account for one of its foreign branches.

[269] Unregistered investment advisers include all investment advisers not registered under the Investment Advisers Act and may include investment advisers registered with a state or a foreign authority as well as investment advisers that are exempt reporting advisers under Section 203(l) or 203(m) of the Investment Advisers Act.

[270] For the purposes of this discussion, ''private fund'' encompasses various unregistered pooled investment vehicles, including hedge funds, private equity funds, and venture capital funds. There remain over 5,800 DTCC accounts unclassified by type. Although unclassified, each account was manually reviewed to verify that it was not likely to be a special entity within the meaning of the Dodd-Frank Act and instead was likely to be an entity such as a corporation, an insurance company, or a bank.

d. Outstanding Positions

Our analysis here focuses on outstanding positions in single-name CDS. As we have previously noted, although the definition of a security-based swap is not limited to single-name CDS, we believe that the single-name CDS data is sufficiently representative of the market and therefore can directly inform the analysis of the state of the current security-based swap market.[272] In 2017, there were 1,534,753 single-name CDS transactions reported to DTCC–TIW, of which 1,036,155 were transactions with a clearing agency as a counterparty.[273] Currently, security-based swap transactions are generally negotiated and executed bilaterally, typically with a dealer as one of the counterparties. Indeed, based on our analysis of DTCC–TIW data for 2017, more than 99% of single-name CDS transactions have an ISDA-recognized dealer as a counterparty, and 31% of transactions are between two ISDA-recognized dealers.[274]

As of December 30, 2017 there were 360,473 outstanding positions (with a gross notional value of $4.196 trillion) in single-name corporate CDS of which 252,108 positions ($2.095 trillion) did not include a CCP as one of the counterparties. Of the 252,108 positions, 158,674 positions ($1.383 trillion) were between two market participants the Commission expects will register as SBS Entities, based on an analysis of DTCC–TIW data.[275] In addition, 90,559 positions ($0.684 trillion) were between an expected SBS Entity and a market participant not expected to register as an SBS Entity and 2,875 ($0.028 trillion) were between two participants not expected to register as SBS Entities.

If transactions are examined instead, there were 383,212 price-forming transactions in calendar-year 2017 (with an aggregate gross trade size of $5.304 trillion) in single-name corporate CDS of which 175,600 transactions ($4.321 trillion) did not include a CCP as one of the counterparties. Of those 175,660 transactions, 75,119 transactions ($1.695 trillion) were between two expected SBS Entities, 99,370 transactions ($2.245 trillion) were between an expected SBS Entity and a participant not expected to register, and 1,171 transactions ($0.382 trillion) were between two participants not expected to register as SBS Entities.

Further analysis of the data reveals that of the 24 expected SBS Entities with outstanding positions as of December 30, 2017, 10 are not U.S. persons and may be subject to similar requirements as those being adopted here by foreign regulators. We note that the data available to us from DTCC–TIW does not encompass those CDS positions that both: (i) Do not involve U.S. counterparties; [276] and (ii) are based on non-U.S. reference entities. Notwithstanding this limitation, we believe that the DTCC–TIW data provides sufficient information to identify the types of market participants active in the security-based swap market and the general pattern of transactions within that market.[277] We find that of the outstanding positions on December 30, 2017, 317,854 positions ($1.661 trillion) include at least one expected SBS Entity, 3,037 ($0.018 trillion) are between non-U.S. domiciled expected SBS Entities and 60,948 ($0.489 trillion) are between a non-U.S., domiciled expected SBS Entity and a participant not expected to register as an SBS Entity.

2. Current Portfolio Reconciliation Practices

While the Commission does not have data on current portfolio reconciliation practices of security-based swap market participants,[278] certain market participants we expect will register as SBS Entities are already subject to similar requirements from other regulators. In particular, those entities that are registered with the CFTC as

[271] This column reflects the number of participants who are also trading for their own accounts.

[272] While other repositories may collect data on transactions in total return swaps on equity and debt, we do not currently have access to such data for these products (or other products that are security-based swaps). In the Cross-Border Proposing Release, we explained that we believed that data related to single-name CDS was reasonable for purposes of this analysis; such transactions appear to constitute roughly 82% of the security-based swap market as measured on a notional basis. *See* Cross-Border Proposing Release, 78 FR at 31120, n. 1301. None of the commenters to that release disputed these assumptions, and we therefore continue to believe that, although the BIS data reflect the global OTC derivatives market, and not just the U.S. market, these ratios are an adequate representation of the U.S. market.

Also consistent with our approach in that release, with the exception of the analysis regarding the degree of overlap between participation in the single-name CDS market and the index CDS market (cross-market activity), our analysis below does not include data regarding index CDS (including CDS based on narrow-based security indices) as we do not currently have sufficient information to identify the relative volumes of index CDS that are either swaps or security-based swaps.

[273] For the purposes of this analysis, we estimate there were approximately 1.53 million single-name CDS transactions in 2017, of which approximately 1.04 million were transactions with a clearing agency as a counterparty. In addition to CDS, security-based swap products include equity swaps, such as total return swaps on single names and swaps based on narrow-based security indices. The Commission currently lacks comprehensive data on equity swaps, including data on transaction volumes and notional amounts. While there were more than 1.53 million security-based swap transactions in 2017, we do not currently have sufficient information to precisely identify the number of transactions beyond those that were single-name CDS. However, while recognizing that average notional transaction amounts for equity and multi-name CDS may differ from average notional transaction amounts for CDS, our estimate (using data from 2015) that single-name CDS constitute roughly 82% of the security-based swap market implies that there were approximately 337,000 security-based swap transactions in 2017 in addition to the approximately 1.53 million single-name CDS transactions we identify in the DTCC–TIW data, or 1.87 million total security-based swap transactions. Note that our estimate that single-name CDS constitutes roughly 82% of the security-based swap market is based on notional transaction amounts rather than transaction counts; in using this figure to estimate the total number of security-based swap transactions, we have assumed that the average notional amount is the same across single-name CDS, multi-name CDS, and equity swaps.

[274] For the purpose of this analysis, the reference to ''ISDA-recognized dealers'' means those dealers identified by ISDA as belonging to the G14 or G16 dealer group during the period. This group includes: JP Morgan Chase NA (and Bear Stearns), Morgan Stanley, Bank of America NA (and Merrill Lynch), Goldman Sachs, Deutsche Bank AG, Barclays Capital, Citigroup, UBS, Credit Suisse AG, RBS Group, BNP Paribas, HSBC Bank, Lehman Brothers, Société Générale, Credit Agricole, Wells Fargo and Nomura. *See, e.g., https://www.isda.org/a/5eiDE/isda-operations-survey-2010.pdf. See also* Aldasoro, Inaki, and Torsten Ehlers, 2018, The Credit Default Swap Market: What a Difference a Decade Makes, BIS Quarterly Review June 2018, Graph 2, *available* at: *https://www.bis.org/publ/qtrpdf/r_qt1806b.pdf.*

[275] *See supra* Section VI.C for current estimates of the number of SBS Entities.

[276] We note that DTCC–TIW's determinations as to the domicile of a counterparty or reference entity may not reflect our definition of ''U.S. person'' in all cases. Our definition of ''U.S. person'' follows the definition used in the Commission's June 2014 release where it, among other things, adopted rules and guidance regarding the application of the certain Title VII definitions in the cross-border context. *See* Cross-Border Adopting Release, 79 FR at 47303.

[277] The challenges we face in estimating measures of current market activity stems, in part, from the absence of comprehensive reporting requirements for security-based swap market participants. The Commission has adopted rules regarding trade reporting, data elements, and public reporting for security-based swaps that are designed to, when fully implemented, provide us with appropriate measures of market activity . *See* Regulation SBSR Adopting Release, 80 FR at 14699–700.

[278] Although the Commission does not have information on the number of valuation discrepancies between counterparties in SBS markets, a June 2017 survey on dealer financing noted that two-fifths of survey respondents reported that the volume of valuation disputes increased somewhat over the September 2016 to June 2017 period. Small net fractions of dealers responded that the volume, duration, and persistence of mark and collateral disputes had increased in OTC derivatives, especially in foreign exchange and interest rate contracts. Three-fifths of dealers responded that, on average, it takes more than two days but less than a week to resolve a mark and collateral dispute on VM. One-third indicated two days or fewer. *See* Yesol Huh, Division of Research and Statistics, Federal Reserve Board, The June 2017 Senior Credit Officer Opinion Survey on Dealer Financing Terms, *available at: https://www.federalreserve.gov/data/scoos/files/scoos_201706.pdf.*

Swap Entities are also subject to CFTC rules on portfolio reconciliation. These rules require Swap Entities to reconcile their swap portfolios with one another and to provide counterparties who are not registered as Swap Entities with regular opportunities for portfolio reconciliation.[279] The Commission has reviewed these rules and believes that, other than as expressly noted above in Section II.A, they are substantively identical to these final rules.[280]

Further, SBS Entities that are domiciled outside of the U.S. may be subject to similar requirements of regulators from their home jurisdiction. For example, entities subject to Chapter VII, Article 13 of EU Regulation No 149/2013 already must comply with portfolio reconciliation requirements similar to those in the adopted rules. The EU regulations require all counterparties to agree on arrangements under which portfolios shall be reconciled before entering into an OTC derivative contract. Furthermore, the frequency of portfolio reconciliation under those regulations depends on both whether either counterparty is a ''financial counterparty'' or a ''non-financial counterparty'' (each as defined in European regulations), and the number of outstanding contracts between the two counterparties.

In addition to regulations that may apply to certain SBS Entities that are either dually registered with the CFTC as Swap Entities or subject to similar portfolio reconciliation rules in other jurisdictions, portfolio reconciliation forms a part of current market practices. In particular, ISDA publishes a set of ''best practices'' for its members for the OTC derivatives collateral process that addresses, among other things, portfolio reconciliation of non-cleared OTC derivatives.[281] These ''best practices'' include written agreement between counterparties as to the terms of the reconciliation and reconciliation tolerances, and also while acknowledging both the CFTC and EU rules pertaining to portfolio reconciliation, provide best practices that augment existing rules.[282]

3. Current Portfolio Compression Practices

While the Commission does not have data on current portfolio compression practices of security-based swap market participants, certain SBS Entities are already subject to similar compression requirements in other contexts similar to the situation involving portfolio reconciliation. Specifically, SBS Entities that are also registered with the CFTC as Swap Entities are subject to CFTC rules on portfolio compression. As discussed above, the Commission has reviewed those rules and believes that they are, other than as expressly noted above in Section II.B, substantively identical to these final rules.

Further, SBS Entities that are domiciled outside of the U.S. may be subject to similar requirements from regulators in their home jurisdiction. For example, entities subject to Chapter VII, Article 14 of EU Regulation No 149/2013 already must comply with portfolio compression requirements. Under these requirements any entity that has 500 or more non-cleared OTC derivative contracts with any one counterparty must have procedures in place to regularly (at least twice a year) analyze the possibility of conducting a portfolio compression exercise in order to reduce their counterparty credit risk and engage in such a portfolio compression exercise. The EU regulations differ from the rules being adopted in a few important ways, including their application to all OTC derivative positions, not just security-based swaps, as well as the minimum frequency of compression exercises. Moreover, both financial and non-financial counterparties are required under the EU regulations to ensure that they are able to provide ''a reasonable and valid explanation to the relevant competent authority for concluding that a portfolio compression exercise is not appropriate.''

In addition to regulations that may apply to certain SBS Entities that are either dually registered with the CFTC as Swap Entities or subject to similar portfolio compression rules in other jurisdictions, portfolio compression forms a part of current market practices. The ISDA Collateral Best Practices also includes a best practice that addresses portfolio compression, explaining that trades that are subject to industry-wide trade-reducing events should be removed from the portfolio on the day the trade-reducing event occurs and that this should be in agreement with governing documentation for the applicable risk reducing process. [283]

Although we lack data on current portfolio compression practices of individual SBS market participants, the importance of portfolio compression is illustrated by the scope of its use among security-based swap market participants.[284] In March 2010, DTCC explicitly attributed the reduction in the gross notional value of the credit derivatives in its warehouse to industry supported portfolio compression.[285] Using data from TriOptima, the BIS reports CDS portfolio compression rates as high as 25% of notional outstanding in the first half of 2008.[286] Compression volumes fell steadily over the following years due, in part, to falling transaction volumes and the rise of central clearing.[287] TriOptima, as well as other firms, continue to offer compression services, and the Commission believes that the fact that market participants continue to find it worthwhile to pay for such services lends support to the argument that market participants view portfolio compression as a valuable tool.

The chart below illustrates the opportunities for portfolio compression between 2010 and 2017 for single-name security-based swaps.[288] As the gap between gross and net notional values widens, the opportunities for portfolio compression increase. Over our reference period, however, the difference between gross and net notional values has declined. For

[279] *See* 17 CFR 23.502 (Portfolio reconciliation).

[280] *See, e.g., supra* Section II.A for a discussion of similarities and differences in approach to the definition of material terms that must be reconciled.

[281] *See* ISDA, 2013 Interim Updated Best Practices for the OTC Derivatives Collateral Process, Best Practices 10.1–10.6 (Oct. 23, 2013), *available at: https://www2.isda.org/attachment/NjA3NQ==/2013%20ISDA%20Best%20Practices%20for%20the%20OTC%20Derivatives%20Collateral%20Process%20-%20FINAL.pdf* (''ISDA Collateral Best Practices'').

[282] The ISDA Collateral Best Practices include citations to both the CFTC and EU portfolio reconciliation rules and notes that while broadly similar do include some differences. ISDA states that the ''best practices'' are intended to augment those rules by addressing points of practical significance that are not directly regulated. *See* ISDA Collateral Best Practices, pages 19–20.

[283] *See* ISDA Collateral Best Practices, *supra* note 281, Best Practice 8.4.

[284] The data available to the Commission with respect to portfolio compression does not allow for enumeration of the actual participants which participate in such practices; however, inferences regarding the scope can be drawn from the magnitude of the reduction in the gross notional value of the credit derivatives.

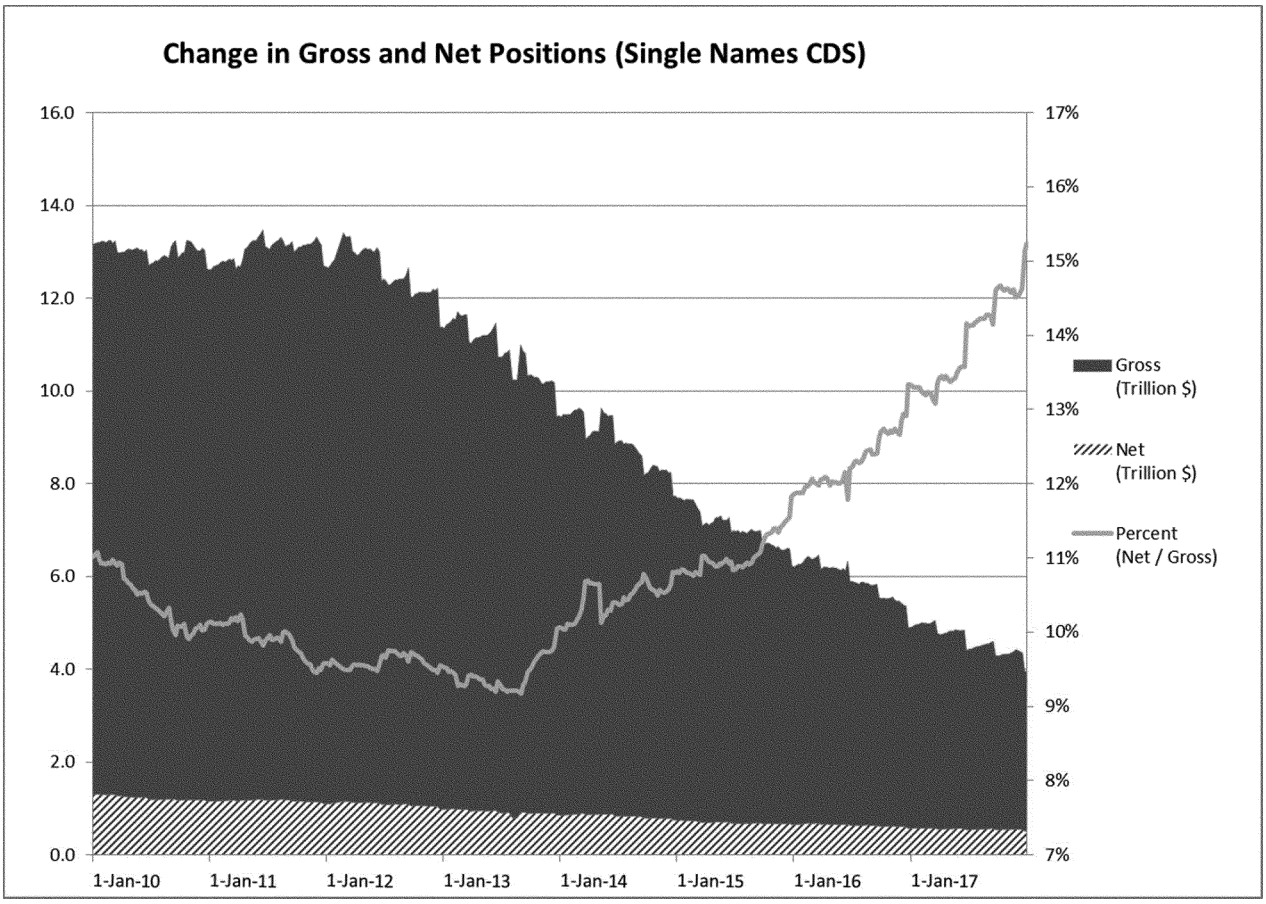
[285] *See* DTCC Press Release, *DTCC Trade Information Warehouse Completes Record Year Processing OTC Credit Derivatives,* (Mar. 11, 2010). Notably, beginning in August 2008, ISDA encouraged compression exercises for CDS by selecting the service provider and defining the terms of service.

[286] *See* Aldasoro, Inaki, and Torsten Ehlers, 2018, The Credit Default Swap Market: What a Difference a Decade Makes, BIS Quarterly Review June 2018, Graph 1 panel 2 and accompanying text, *available at: https://www.bis.org/publ/qtrpdf/r_qt1806b.pdf.* In March of 2010, the staff of the FRBNY estimated that since 2008 nearly $50 trillion gross notional of CDS positions has been eliminated through portfolio compression. *See* FRBNY OTC Derivatives Report, *supra* note 18.

[287] *Id.*

[288] The chart below includes only gross and net notional of single-name security-based swaps. The inclusion of index security-based swaps could expand potential compression opportunities available to SBS Entities.

instance, in 2010, the percentage, which captures the ratio of net to gross notional value, was 11.0%, but this number has been gradually increasing through December 30, 2018 when it was 15.2%. Smaller ratios indicate greater opportunities for portfolio compression; however, as shown in the chart below, based on changes in gross and net notional value over time, unexploited opportunities for compression are diminishing.[289]



It is possible that market participants may already be taking advantage of portfolio compression opportunities. However, the Commission does not infer that the entirety of the reduction in the gap between gross and net notional values is due to portfolio compression exercises. Other plausible explanations for the reduction in the gross notional value of security-based swaps include both fewer and/or smaller new transactions, expiration of existing positions without rollover into new positions, and loss or consolidation of market participants throughout time. Due to limitations of the data available to the Commission, it is infeasible to distinguish the overall effect of portfolio compression exercises on the reduction in the gross notional value of the security-based swap market from the alternative explanations presented above.

4. Current Trading Relationship Documentation Practices

Memorializing the specific terms of the security-based swap trading relationship and security-based swap transactions between counterparties is prudent business practice and, in fact, many market participants already use standardized documentation. Examination of the use of ISDA Master Agreements (the measure of trading relationship documentation available to the Commission in the data provided by DTCC–TIW) shows that the percentage of transactions with these agreements declines from 78.2% in 2008 to 34.1% in 2017, with the peak occurring in 2010 (96.1%). However, as trading relationship documentation may be different when the counterparty is a CCP, an analysis of documentation on aggregate security-based swap transactions (both cleared and uncleared) may be misleading. With the introduction of ICE Clear Credit in 2009, the percentage of cleared transactions has increased over time, thus a seemingly more relevant measure to look at is the frequency of use of ISDA Master Agreements for uncleared transactions. Approximately 99% of all uncleared transactions are reported (by DTCC–TIW) as using trading relationship documentation (in the form of ISDA Master Agreements) in 2017 compared to 78.2% in 2008. Accordingly, the Commission generally believes that many, if not most, market participants currently execute and maintain trading relationship documentation of the type required by the adopted rules in the ordinary course of their businesses, including documentation that contains several of the terms that will be required by the adopted rules.

[289] The result is likely driven by banks and securities firms. *See* Aldasoro, Inaki, and Torsten Ehlers, 2018, *supra* note 286, Graph 5.

Finally, and similar to the discussion regarding the reconciliation and compression, SBS Entities that are also registered with the CFTC as Swap Entities are subject to CFTC rules requiring the use of trading relationship documentation. As discussed above, the Commission has reviewed those rules and believes that they are, other than as expressly noted above in Section II.C, substantively identical to these final rules.

C. Economic Costs and Benefits, Including Impact on Efficiency, Competition, and Capital Formation

In this section we first discuss the expected effects of the rules being adopted on efficiency, competition, and capital formation, focusing particularly on the risk mitigation benefits that stem from the use of portfolio reconciliation, expanding opportunities for portfolio compression, and improvements in documentation. We then turn our discussion to additional costs and benefits, including compliance costs and alternatives considered of these rules.

1. Effects on Efficiency, Competition, and Capital Formation

Risk mitigation rules have the potential to affect efficiency, competition, and capital formation in the security-based swap market, primarily through a reduction in operational, market, and credit risks that accompany outstanding security-based swap positions. In addition, the substituted compliance framework may provide additional effects that are distinct from the broader market impacts that are described below. As with the benefits and costs, we believe that several of the effects described below only occur to the extent that current market practices do not already conform to the rules being adopted.

a. Broad Market Effects

In the adopting release for final rules requiring SBS Entities to provide trade acknowledgments and to verify those trade acknowledgments with their counterparties to security-based swap transactions, the Commission explained the importance of confirming trades in a timely manner, noting that confirmation of the terms of a transaction is essential for SBS Entities ''to effectively measure and manage market and credit risk.'' [290] In this regard, portfolio reconciliation addresses many of these same issues, but unlike the confirmation process, which occurs at the outset of a transaction, reconciliation operates throughout the life of the transaction.[291]

Failure to periodically conduct portfolio reconciliation may cause errors and disputes over the terms of a transaction that may exist to go undetected, leading to errors in measurement and management of market and credit risks associated with particular transactions. More generally, timely portfolio reconciliation will provide counterparties with accurate information that will enable them to evaluate their own risk exposure in a timely manner. Efficient and cost-effective risk management may conserve resources and free up capital that can be deployed in other asset classes, promoting risk-sharing and efficient capital allocation. In addition, cost-effective risk management may reduce the overall costs of financial intermediation, allowing market participants to increase lending and other capital formation activities.

Similarly, periodic portfolio reconciliation and improved standards for transaction documentation may contribute to broader market stability, particularly during periods of distress. Disagreement as to one or more material terms of a transaction or inadequate documentation could hinder timely and efficient settlement of security-based swap transactions, particularly in the case of a credit event on a reference entity on which many different counterparties have, in the aggregate, a large notional outstanding exposure. During periods of financial distress, uncertainty about terms, value, and documentation of outstanding transactions could contribute to liquidity and cash shortfalls that threaten the stability of the financial system. Thus, to the extent that the final rules being adopted reduce uncertainty about outstanding transactions, we expect reduced risk of uncertainty about the credit risk of potential counterparties, particularly during a financial crisis.

Finally, to the extent that portfolio reconciliation requirements differ from current market practices, these rules have the potential to affect competition across multiple dimensions. If the costs of portfolio reconciliation, portfolio compression, and complying with transaction documentation rules for security-based swap transactions are largely fixed (*i.e.,* the costs come from establishing infrastructure and systems necessary to perform portfolio reconciliation and portfolio compression and comply with documentation requirements) rather than varying with the number of transactions or positions outstanding, smaller dealers intermediating a smaller number of trades may have a larger burden placed on them; larger dealers, on the other hand, may be able to spread the costs over a greater number of trades or positions, with a lower average cost per trade or position of complying with these rules. Similarly, the costs of establishing an infrastructure to comply with these requirements may create a barrier to entry for market participants wishing to establish a SBS dealer business.[292]

b. Substituted Compliance

As discussed above, if the Commission has made a positive substituted compliance determination with respect to a particular foreign regulatory regime, SBS Entities operating in that jurisdiction may be able to satisfy their Title VII risk mitigation requirements by complying with similar requirements of the foreign financial regulatory system. Substituted compliance would be available only for SBS Entities who are not U.S. persons.

The Commission is amending its rules to make substituted compliance potentially available to the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements in order to minimize the likelihood that SBS dealers are subjected to potentially duplicative or conflicting regulation. The Commission believes that duplicative regulations that achieve comparable regulatory outcomes increase the compliance burdens on market participants without corresponding increases in benefits. By decreasing the compliance burden for foreign SBS dealers active in the U.S. market, the availability of substituted compliance could encourage foreign firms' participation in the U.S. market, increasing the ability of U.S. firms to access global liquidity, and reducing the likelihood that liquidity would fragment along jurisdictional lines. Such participation and access to liquidity might result in increased competition between both U.S. and foreign

[290] *See* Trade Acknowledgment and Verification Adopting Release, 81 FR at 39833.

[291] *See supra* Section II.A.

[292] The Commission does not expect that this effect will extend to major SBS participants, which are by definition the largest non-dealer participants in the security-based swap market. As described in the economic baseline, out of more than 4,000 security-based swap market participants, we expect at most five to register as major SBS participants. These entities maintain substantial positions in security-based swaps, as defined in the Intermediary Definitions Adopting Release, and the Commission expects these entities have sufficient resources and infrastructure to comply with portfolio reconciliation and documentation requirements.

intermediaries without compromising the regulatory benefits intended by the applicable risk mitigation rules.

2. Portfolio Reconciliation

Disputes related to confirming the terms of a swap, as well as swap valuation disputes, have long been recognized as a significant problem in the OTC derivatives market. The Commission believes that the ability to determine definitively the value of a security-based swap at any given time is an important component of many of the OTC derivatives market reforms contained in the Dodd-Frank Act and is a component of sound risk management practices.[293] Security-based swap valuation is also crucial for determining capital and margin requirements applicable to SBS Entities and therefore plays a primary role in risk mitigation for uncleared security-based swaps. Portfolio reconciliation is considered an effective means of identifying and resolving these disputes at a time and in a manner that will be least disruptive to the counterparties and the broader financial system.

Parties may dispute valuations of thinly traded security-based swaps where there is not agreement on valuation methodologies or the source for formula inputs. Many of these security-based swaps are thinly traded either because of their limited liquidity or because they are simply too customized to have comparable counterparts in the market. As many of these security-based swaps are valued by dealers internally by ''marking-to-model,'' their counterparties may dispute the inputs and methodologies used in the model. As uncleared security-based swaps are bilateral, privately negotiated contracts, on-going security-based swap valuation for purposes of initial and variation margin calculation and security-based swap terminations or novations, also has been largely a process of on-going negotiation between the parties. The effects of an inability to agree on the value of a security-based swap became especially acute during the financial crisis that immediately preceded passage of the Dodd-Frank Act when there was widespread failure of the market inputs needed to value many security-based swaps.[294]

a. Requirements

The Commission is adopting rules that generally will require each SBS Entity (1) to engage in portfolio reconciliation with counterparties who are also SBS Entities at periodic intervals, the length of which is based on the number of outstanding transactions with the counterparty and (2) to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation with counterparties who are not SBS Entities, also at periodic intervals, the length of which is based on the number of outstanding transactions with the counterparty.[295]

The Commission is adopting rules that vary the portfolio reconciliation requirement based on the particular type of counterparty with which the SBS Entity transacts. For transactions between two SBS Entities, the rules require the two sides to engage in portfolio reconciliation at frequencies that are based on the size of the security-based swap portfolio between the two parties.[296] In addition to the requirements regarding the frequency of the reconciliation, Rule 15Fi–3(a)(1) requires SBS Entities to agree in writing with each of their SBS Entity counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation.

To the extent that the two SBS Entities identify a discrepancy, the rule requires the parties to take certain steps. First, Rule 15Fi–3(a)(4) requires the two sides to resolve immediately any discrepancy in a material term, whether identified directly as part of the portfolio reconciliation or otherwise. Second, Rule 15Fi–3(a)(5) requires each SBS Entity to establish, maintain, and follow written policies and procedures reasonably designed to resolve any discrepancy in a valuation identified as part of a portfolio reconciliation or otherwise as soon as possible, but in any event within five business days after the date on which the discrepancy is first identified. As a condition to this requirement, however, Rule 15Fi–3(a)(5) requires each SBS Entity to establish, maintain, and follow written policies and procedures reasonably designed to identify how the SBS Entity will comply with any variation margin requirements under Section 15F(e) of the Exchange Act[297] and any related regulations pending resolution of the valuation discrepancy. Finally, Rule 15Fi–3(a)(5) clarifies that for purposes of the requirement to resolve valuation discrepancies within five business days of being identified, a difference between the lower valuation and the higher valuation of less than 10% of the higher valuation need not be deemed a discrepancy.[298]

Separately, with respect to transactions between an SBS Entity and a counterparty that is not an SBS Entity, Rule 15Fi–3(b) requires each SBS Entity to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation as set forth in the rule.[299] This policies and procedures requirement is in contrast to Rule 15Fi–3(a), which expressly requires portfolio reconciliation with respect to transactions where both counterparties are SBS Entities.

Rule 15Fi–3(b) contains a number of requirements regarding the contents of the policies and procedures required therein, as they relate to reconciliation with non-SBS Entities, which are largely consistent with the requirements imposed directly on the parties under Rule 15Fi–3(a). Specifically, Rule 15Fi–3(b)(3) provides that such policies and procedures must require that the portfolio reconciliation be performed no less frequently than: (1) Once each calendar quarter for each security-based swap portfolio that includes more than 100 security-based swaps at any time during the calendar quarter and (2) once annually for each security-based swap portfolio that includes no more than 100 security-based swaps at any time during the calendar year.

In addition, Rule 15Fi–3(b)(4) requires each SBS Entity to establish, maintain, and follow written procedures reasonably designed to resolve within five business days any discrepancies in the valuation or a material term of each

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[293] *See* ISDA Collateral Best Practices, *supra* note 281, Section 10.

[294] The lack of liquidity in markets for mortgage-backed securities led to wide disparities in the valuation of CDS referencing mortgage-backed securities (especially collateralized debt obligations). Such wide disparities led to large collateral calls from dealers on AIG, hastening its downfall. *See* CBS News, ''Calling AIG? Internal Docs Reveal Company Silent About Dozens of Collateral Calls,'' June 23, 2009, *available at: http://www.cbsnews.com/stories/2009/06/23/cbsnews_investigates/main5106672.shtml. See also* Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, Chapter 8, *available at: https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.*

[295] Pursuant to Rule 15Fi–3(d), the new requirements regarding portfolio reconciliation would not apply to a clearing transaction (*i.e.,* a security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to Section 17A of the Act (15 U.S.C. 78q–1) or by a clearing agency that the Commission has exempted from registration by rule or order). *See supra* Section II.A.6.

[296] *See* Rule 15Fi–3(a).

[297] 15 U.S.C. 78o–10(e).

[298] This 10% threshold would apply on a transaction-by-transaction basis, and not on a portfolio level.

[299] *See* Rule 15Fi–3(b).

security-based swap identified as part of a portfolio reconciliation or otherwise with a counterparty that is not an SBS Entity.[300]

Finally, Rule 15Fi–3(c) requires each SBS Entity to promptly notify the Commission of any security-based swap valuation dispute in excess of $20,000,000 (or its equivalent in any other currency) if not resolved within:

- Three business days, if the dispute is with a counterparty that is an SBS Entity, or
- five business days, if the dispute is with a counterparty that is not an SBS Entity.

Such notification is required to be in a form and manner acceptable to the Commission, and is also required to be sent to any applicable prudential regulator (*i.e.,* for any SBS Entity that is also a bank, to its bank regulator). SBS Entities are also required to notify the Commission, in a form and manner acceptable to the Commission, and any applicable prudential regulator, if the amount of any security-based swap valuation dispute that was the subject of a previous notice increases or decreases by more than $20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level.[301]

For the security-based swap market to operate efficiently and to reduce credit and operational risk between counterparties, the Commission believes that, although the frequency of portfolio reconciliation depends on the number of positions with a counterparty, reconciliation should occur by position because terms may vary across positions with the same counterparty. By identifying and managing mismatches in key economic terms and valuation for individual transactions across an entire portfolio, these rules are intended to require a process in which risk between counterparties can be identified and reduced.

b. Benefits

Reconciliation is beneficial not only to the parties involved but also to the market as a whole. By identifying and managing disputed key economic terms or valuation for each transaction across a portfolio, an entity's counterparty credit risk and operational risk can be diminished. By requiring a systematic reconciliation process, as well as policies and procedures related to portfolio reconciliation between counterparties, SBS Entities will be able to better identify and correct problems in a timely manner in their post-execution processes (including confirmation) in order to reduce the number of disputes and improve the integrity and efficiency of their internal processes. Accordingly, expanding the universe of participants subject to the reconciliation requirements can help to reduce the risk bilateral markets may pose to the broader financial system.

As discussed above, because shortcomings in credit risk management and documentation may only become evident during a crisis, some benefits of portfolio reconciliation will accrue to the financial system as a whole while the ongoing direct costs are borne by the individual market participant. Therefore, in the absence of these rules, the level and frequency of portfolio reconciliation chosen by individual market participants may be less than what would be desired by all market participants in order to properly manage risks to the financial system.

In addition, the Commission believes that the tiering of obligations, whereby the frequency of the portfolio reconciliation is based on the number of outstanding transactions with the applicable counterparty, represents a reasonable attempt to calibrate the costs to the benefits expected from reconciling a person's security-based swap portfolio at regular intervals. In this respect, those benefits are expected to rise for larger—and often more complex—portfolios that may represent a greater potential for loss than a smaller, less complex portfolio.

The Commission believes that, given the expected benefits of making the frequency of portfolio reconciliation a function of the size of a portfolio with a particular counterparty, setting the frequency of reconciliation identical to that adopted by the CFTC will provide additional benefit for SBS Entities that are also registered with the CFTC as Swap Entities. In particular, harmonizing the frequency of reconciliation for swaps and SBS should reduce implementation cost and reduce operational complexity.

Similarly, the Commission notes that the EC has adopted portfolio reconciliation requirements for the EU that are similar to those being adopted by the Commission in this release. The Commission believes that aligning its portfolio reconciliation requirements with those in other major security-based swap markets will benefit SBS Entities by avoiding the imposition of disparate compliance and operational policies and procedures.

Moreover, Rule 15Fi–3(a)(2) provides that portfolio reconciliation may be performed either on a bilateral basis by the counterparties or by a third party selected by the counterparties in accordance with paragraph (a)(1) of the rule. Under this approach, the process for selecting a third-party service provider—or the actual identity of the service provider—should be included in the written agreement between the two sides setting forth the terms of the portfolio reconciliation process.

In the absence of periodic portfolio reconciliation, if the counterparties to a security-based swap transaction are not in agreement with respect to each of the terms of the transaction that may affect each party's rights and obligations, any such difference could lead to complications at various points throughout the trade.[302] These discrepancies could be exacerbated if they remain undetected until such times as the parties become obligated to perform on their requirements under the contract. Such discrepancies could be particularly problematic if they are discovered during a period of financial stress for the market participant.[303] Thus, portfolio reconciliation may help to mitigate the possibility of a discrepancy unexpectedly affecting performance by ensuring that the parties are and remain in agreement with respect to all of the material terms of the security-based swap transaction.

Regular reconciliation of all portfolios is a process to reduce counterparty credit exposure and operational risk and help prevent disputes from arising. The rule should promote market integrity and reduce risk by establishing procedures that will promote legal certainty concerning security-based swap transactions, assist with the early resolution of valuation disputes, reduce operational risk, and increase operational efficiency.

The rules being adopted may have differential benefits for smaller market participants. Smaller market participants may not have the bargaining power necessary to compel larger counterparties to coordinate on portfolio reconciliation. Since SBS Entities, absent a mandate, are likely to focus risk management resources on

[300] Similar to the requirement in paragraph (a) of the rule for portfolio reconciliation with counterparties that are either SBS dealers or major SBS participants, Rule 15Fi–3(b)(4) provides that a difference between the lower valuation and the higher valuation of less than 10% of the higher valuation need not be deemed a discrepancy for purposes of that paragraph. *See supra* note 63 and accompanying text (discussing the 10% threshold in the context of Rule 15Fi–3(a)(5)).

[301] *See supra* Section II.A.5. Each amended notice is required to be provided to the Commission and any applicable prudential regulator no later than the last business day of the calendar month in which the applicable security-based swap valuation dispute increases or decreases by the applicable dispute amount.

[302] *See supra* note 11.

[303] *See supra* note 246.

larger counterparties, the ability of smaller counterparties to require the necessary cooperation from their counterparties who are SBS Entities will be improved. Reduced uncertainty concerning material terms and valuation methodologies could reduce the risks to these smaller participants for using SBS for hedging market risk to which they may be exposed.

Portfolio reconciliation is particularly relevant with respect to terms related to the valuation of the instrument. Unresolved discrepancies regarding the value of a security-based swap can lead to, among other things, active disputes between counterparties with respect to the amount of margin that must be posted or collected, as well as errors and other complications that may result in significant uncollateralized exposure in the uncleared security-based swap markets (or alternately, potentially inefficient overcollateralization). Accordingly, the Commission believes that requiring counterparties to clearly document the applicable processes and requirements for calculating and exchanging margin in connection with a security-based swap transaction is an important step in achieving this broader regulatory objective.

The notification requirement of Rule 15Fi–3(c) will provide the Commission with information about disagreements over position values between counterparties. Valuation is one of the most fundamental elements for determining the economic rights and obligations of each of the counterparties to a security-based swap transaction. For example, market participants manage credit risks to their counterparties by exchanging margin with each other in an amount determined using the value of the underlying security-based swap. If those valuations are not accurate for any reason, such as human or system errors, problems with the valuation methodology, or an issue affecting the timeliness of the calculation, that error could result in one of the counterparties having an uncollateralized credit exposure and a potential for loss in the event of a default. We therefore expect that the notification requirement could assist the Commission in anticipating potential valuation problems that could ultimately lead to market disruption, and in identifying potential issues with respect to an SBS Entity's internal valuation methodology. As noted above, the CFTC has adopted a nearly identical requirement with the same $20,000,000 threshold, and the Commission believes that divergence from that requirement could lead to additional costs for SBS Entities that are also registered with the CFTC as Swap Entities.[304] Finally, as discussed above, the Commission believes reconciliation may provide indirect benefits by improving the accuracy of SDR data.[305] As described above in Section II.A, the information that SBS Entities will initially be required to reconcile with their counterparties will include each term that is required to be reported to a registered SDR under Rule 901 under the Exchange Act.[306]

c. Costs

The portfolio reconciliation rules in Rule 15Fi–3 are similar to the corresponding CFTC rules for Swap Entities. As a result, the one-time costs to develop, test, and implement new procedures and technology that may be required in order to be compliant with the rules being adopted are mitigated by the fact that many SBS Entities also are likely to be Swap Entities. These dually registered entities are likely to be familiar with these general requirements and have the infrastructure in place to comply with similar rules that apply to their swap business.

SBS Entities that are not also CFTC-regulated Swap Entities and that do not currently use an electronic platform or vendor service to conduct portfolio reconciliation will need to expend significant time and resources to modify the necessary systems to comply with Rule 15Fi–3. Even those SBS Entities that do use electronic platforms or vendors services may find it necessary to make significant adjustments to comply with the rules. The Commission estimates a one-time upfront cost of approximately $5–10 million for an SBS Entity that is not also a Swap Entity.[307] Although the Commission does not currently have cost data for either reconciliation performed in-house or by third-party service providers, and therefore cannot quantify these costs, the Commission believes that the ongoing portfolio reconciliation cost would likely be a function of portfolio size and the availability of third party service providers.

In contrast, when commenting on the CFTC's then-proposed portfolio reconciliation rule, a third party provider of multilateral compression services stated that a large number of Swap Entities were already regularly reconciling their portfolios with each other and with other entities and that the increased frequency and inclusion of smaller portfolios as was being proposed by the CFTC should prove no obstacle to such entities.[308] If SBS Entities have similar business practices, then this comment suggests start-up and on-going portfolio reconciliation costs could be small. In addition, and as discussed above, portfolio reconciliation generally forms a part of current market practices and is included in a set of best practices published by ISDA.[309] Taken together, this information suggests that the upfront costs for building new systems to comply with Rule 15Fi–3 are not likely to be as high as indicated above.

The Commission believes that certain costs will arise despite the fact that an SBS Entity also may be registered with the CFTC as a Swap Entity, and therefore subject to similar rules already adopted by the CFTC. Such costs may include (i) increased costs to account for possible differences between the SEC and CFTC related to the terms considered to be material for purposes of the reconciliation requirement; (ii) the additional resources necessary to design, compose, and implement the required policies and procedures; (iii) the additional resources needed to comply with the dispute resolution timeframes; and (iv) the compilation and maintenance of applicable records. These costs, however, are by nature specific to each entity's internal operations; absent specific information from commenters, the Commission cannot provide reasonable estimations regarding the resources needed to comply.

The rule also requires SBS Entities to agree in writing with each of their counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation. Accordingly, each counterparty to a SBS Entity subject to these rules will incur an upfront cost in implementing this requirement, particularly since the Commission will expect that such terms be agreed to in writing prior to, or contemporaneously with, the two parties executing any new security-based swap transaction. These costs would be mitigated if, once the parties

[304] *See supra* Section II.A.

[305] *See* SDR Adopting Release, 80 FR at 14528–48, for a discussion of the expected economic benefits accurate SBS data held at SDRs.

[306] *See* Rule 15Fi–1(i)(1) (referencing 17 CFR 242.901).

[307] This estimate is based on an estimate supplied by ISDA to the CFTC in response to their proposed portfolio reconciliation rule. *See* CFTC Risk Mitigation Adopting Release, 77 FR at 55952–53.

[308] *See* Letter from Per Sjöberg, Executive Vice President, TriOptima AB to the CFTC, dated Feb. 28, 2011 at 2, *available at: http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=30562&SearchText.*

[309] *See supra* notes 281–282 and accompanying text.

have agreed in writing on the terms of the portfolio reconciliation for the first time, the two sides comply with this requirement for subsequent transactions by merely agreeing in writing to abide by the existing agreement regarding the reconciliation process. This practice could help to ensure that portfolio reconciliation begins without delay after execution of the transaction and is designed to minimize the number of disagreements regarding the portfolio reconciliation process itself.

The Commission estimates that of the 55 market participants we expect to register as SBS Entities, approximately 20 will be dually-registered with the CFTC and may already have automated portfolio reconciliation systems in place.[310] Thus, for these entities, the costs associated with modifying these existing systems to account for security-based swap reconciliations is expected to be minimal. For the remaining 35 SBS Entities which are not expected be dually-registered with the CFTC, the anticipated personnel costs [311] associated with setting up an automated portfolio reconciliation system per SBS Entity is $63,150, or $2,210,250 in aggregate.[312] The Commission believes that these costs will be a component of the upfront cost estimate of $5–10 million discussed above.[313] For each SBS Entity, we anticipate that approximately 190 hours per year will be required for reconciliation or a total of 10,450 hours across the 55 SBS Entities.[314] With respect to reconciliations with non-SBS counterparties, the Commission estimates that an additional 227.5 hours per SBS Entity, or 12,512.5 hours in aggregate will be needed for automated portfolio reconciliation with these counterparties.[315]

The Commission further estimates that the development and implementation of written policies and procedures as required under Rule 15Fi–3 will impose an initial cost of $1,302,135.[316] Of the total 55 SBS Entities that would be subject to Rule 15Fi–3, 20 are estimated to be dually-registered with the CFTC, and are anticipated to already have policies and procedures in place with respect to reconciliation. The expected additional time to revise the existing policies and procedures for these SBS Entities is expected to be one hour per SBS Entity, for a cumulative 20 hours, costing $461.75 per SBS Entity or $9,235 in aggregate.[317] For the remaining 35 SBS Entities, the Commission estimates that it will take approximately 80 hours per entity to establish the written policies and procedures. The costs for these SBS Entities will be $1,292,900, or $36,940 per SBS Entity.[318] Once established, the Commission estimates that it will cost SBS Entities approximately $1,015,850 or $18,470 per SBS Entity to revise and maintain these policies and procedures.[319] Resolution of valuation discrepancies can be labor intensive. One objective of the rule being adopted is to reduce the incidence of valuation discrepancies through the periodic reconciliations between security-based swap counterparties. It is unlikely, however, that the rule will completely eliminate disputes related to valuation. The Commission lacks data on the fraction of positions that, when reconciled, will result in a dispute as well as the costs likely to be incurred resolving those disputes, and is therefore unable to quantify these costs. However, the Commission recognizes that the costs associated with resolution of these disputes is likely to be higher than costs for reconciliations in which disputes do not arise.

However, the Commission believes that these costs may be mitigated by only requiring counterparties to address differences in valuation greater than 10%. These costs of reconciliation may be further mitigated by agreement between the counterparties to use a third party service provider to assist in resolving valuation discrepancies. Reconciliation of other terms is likely to be less costly as the terms of the agreement are unlikely to change over the life of the contract.

The 10% threshold was designed to both identify large deviations in valuations between SBS Entities, while not requiring those entities to devote significant effort to resolving minor valuation disputes. Further, this threshold is identical to that already adopted by the CFTC.[320] The Commission notes, however, that this 10% threshold is at the transaction level, rather than the entity level. While discrepancies could be random in nature, the risk exists that one

[310] In the Proposing Release, the Commission estimated that of the 55 entities that may register with the Commission as SBS Entities, approximately 35 will be dually-registered with the CFTC as Swap Entities. In a more recent release, however, the Commission updated that estimate, such that we now believe that approximately 20 SBS Entities will also be registered with the CFTC as Swap Entities. *See supra* Section VI.C and references therein. Accordingly, we are using the updated number for calculating the burdens pursuant to Rule 15Fi–3, 15Fi–4, and 15Fi–5.

[311] The hourly rates for internal professionals used throughout Sections VII.C.2.c, VII.C.3.c, and VII.C.4.c of the release are taken from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. The hourly rates have been modified from the proposal to account for inflation over the period.

[312] This estimate is based on the following: [(Sr. Programmer (80 hours) × $337 per hour) + (Sr. Systems Analyst (80 hours) × $289 per hour) + (Compliance Manager (10 hours) × $315 per hour) + (Director of Compliance (5 hours) × $496 per hour) + (Compliance Attorney (20 hours) × $372 per hour)] = $63,150 per SBS Entity, or ($63,150 × 35 SBS Entities) = $2,210,250 in aggregate.

[313] *See supra* note 307 and associated text.

[314] Each SBS Entity is anticipated to have counterparty relationships with approximately one-third of the other SBS market participants (⅓ × 55 = 18.333), which is rounded to 18 participants. Of those counterparty relationships, two are expected to have portfolios in excess of 500 positions, which would need to be reconciled daily (252 trading days per year), four would have between 50 and 500 positions, which would need to be reconciled weekly (52 weeks per year), and the remaining 12 would have less than 50 positions, which would need to be reconciled quarterly (four times per year). The Commission estimates that each portfolio reconciliation would require 30 minutes, 15 minutes per counterparty, through an automated system, thus the total anticipated reconciliation time would be [(2 counterparties × 252 trading days × 0.25 hours) + (4 counterparties × 52 weeks × 0.25 hours) + (12 counterparties × 4 quarters × 0.25 hours)] = 190 hours per SBS Entity, or (190 × 55 SBS Entities) = 10,450 hours in aggregate. *See* Section VI.D.1.

[315] There are anticipated to be 13,137 total SBS counterparties, of which 55 are registered SBS Entities, leaving 13,082 non-SBS market participants. *See supra* note 220. The Commission estimates that each SBS Entity will transact with approximately 350 of these non-registered participants. Of those 350 counterparties, 35 are expected to have portfolio positions in excess of 100 positions, which would require quarterly reconciliations, while the remaining 315 are expected to have positions of less than 100 security-based swaps, and therefore, would require annual reconciliation. The Commission estimates that each portfolio reconciliation would require 30 minutes through an automated system, thus the total anticipated reconciliation time would be [(35 counterparties × 4 quarters × 0.5 hours) + (315 counterparties × 1 time per year × 0.5 hours)] = 227.5 hours per SBS Entity, or (227.5 × 55 SBS Entities) = 12,512.5 hours in aggregate.

[316] This figure has been updated from that in the proposing release due to the updated estimate of the number of SBS Entities that will be dually registered with the CFTC and updates to hourly rates to account for inflation over the period. *See supra* note 310 and *supra* note 311.

[317] The estimate is based on the following: [((Compliance Attorney (30 minutes) at $372 per hour) + ((Director of Compliance (15 minutes) at $496 per hour) + ((Deputy General Counsel (15 minutes) at $607 per hour)] = $461.75 per hour per SBS Entity or ($461.75 per hour × 20 SBS dually-registered Entities) = $9,235.

[318] The estimate is based on the following: [((Compliance Attorney (40 hours) at $372 per hour) + ((Director of Compliance (20 hours) at $496 per hour) + ((Deputy General Counsel (20 hours) at $607 per hour)] = $36,940 per SBS Entity or ($36,940 × 35 SBS Entities that are not dually-registered) = $1,292,900 in aggregate.

[319] The estimate is based on the following: [((Compliance Attorney (20 hours) at $372 per hour) + ((Director of Compliance (10 hours) at $496 per hour) + ((Deputy General Counsel (10 hours) at $607 per hour)] = $18,470 per SBS Entity or ($18,470 × 55 SBS Entities) = $1,015,850 in aggregate.

[320] *See* 17 CFR 23.502 (portfolio reconciliation).

counterparty could have systemic issues in valuation across its entire portfolio, thereby leading to discrepancies in valuation with one or several counterparties and throughout the portfolio. For example, if an entity's valuation model consistently undervalued each of its security-based swap positions by 9%, in aggregate, the overall level of risk could be substantial, even though it would not trigger a discrepancy event as currently defined by the 10% transaction level threshold. Further, since the Commission estimates that approximately 20 of the expected 55 SBS Entities are likely to be dually-registered with the CFTC and active in swap and security-based swap markets, these participants are likely to face higher costs when regulations differ.

The costs of resolving valuation disputes are expected to be mitigated, because the reconciliation requirements are expected to prevent disputes from arising in the first instance through the regular comparison of material terms and valuations. The Commission believes that by requiring SBS Entities to reach agreement with certain counterparties on the methods and inputs for valuation of each security-based swap, as required in connection with the trading relationship documentation requirements in Rule 15Fi–5, the overall framework of these rules should assist SBS Entities in resolving valuation disputes within five business days. In addition, the Commission estimates that SBS Entities will spend an average of 30 hours per year to comply with the notification requirement of Rule 15Fi–3(c) costing $11,160 per SBS Entity or $613,800 in aggregate.[321]

Lastly, portfolio reconciliation costs are also mitigated by virtue of the fact that cleared security-based swaps are not within the scope of the requirements of these rules. The Commission believes that CCPs establish settlement prices for each cleared security-based swap every business day for margining purposes and this process is more appropriately addressed by rules governing a clearing agency's risk management practices.[322] Because a large part of the security-based swap portfolios of SBS Entities may consist of cleared security-based swaps to which the reconciliation requirements will not apply, the sizes of the bilateral, uncleared portfolios (to which the requirement would apply) may be limited.[323]

d. Alternatives

The rule being adopted creates a specific definition of ''material terms'' for purposes of determining what discrepancies must be resolved in connection with the portfolio reconciliation which includes each term required to be reported to an SDR, or the Commission pursuant to Rule 901 under the Exchange Act [324] provided, however, that such definition does not include any term that is not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap.

The Commission's definition of ''material terms'' in the rule proposal was bifurcated, and depended on whether the relevant security-based swap transaction had already been included in a security-based swap portfolio and reconciled pursuant to proposed Rule 15Fi–3.[325] With respect to any security-based swap that has *not* yet been reconciled as part of a security-based swap portfolio, ''material terms'' would have been defined to mean each term that is required to be reported to a registered SDR pursuant to Rule 901 under the Exchange Act.[326] With respect to all other security-based swaps within a security-based swap portfolio, the definition of ''material terms'' would have continued to be based on the reporting requirements in Rule 901, but would exclude any term that is not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap. As discussed above, both of the comment letters received raised concerns with the proposed definition of ''material terms.'' [327] In particular, commenters expressed the opinion that the proposed bifurcated approach would raise operational and technical issues that would be costly to resolve with no tangible benefit for an SBS Entity's risk mitigation activity.

As discussed above, after careful review and consideration of these comments, the Commission modified its definition of ''material terms'' to more closely align with the CFTC's corresponding definition. Commenters indicated that the costs and burdens imposed on SBS Entities of implementing the proposed bifurcated approach were not justified in light of what commenters viewed as an incomplete and partial solution to the SDR verification issue. In light of these comments, the Commission believes it appropriate and less burdensome for SBS Entities to harmonize the definition of ''material terms'' in Rule 15Fi–1(i) with the corresponding CFTC definition by not adopting the proposed bifurcated approach.[328]

The Commission also considered not providing a specific definition of ''material terms'' and allowing SBS Entities discretion in determining those terms that are relevant to the ongoing rights or obligations of the parties or affect the valuation of the security-based swap. The Commission concluded that the data required to be submitted to an SDR in connection with regulatory reporting requirements is an appropriate measure for determining which terms should be reconciled pursuant to Rule 15Fi–3. The Commission also believes that tying the definition of ''material terms'' to reporting requirements to an SDR could reduce the burdens on some SBS Entities by potentially allowing them to leverage the same electronic systems used for SDR reporting for purposes of the portfolio reconciliation requirements.

The portfolio size breakpoints and frequencies are consistent with those adopted by the CFTC for Swap Entities and are therefore likely to be familiar to those entities that are registered as both an SBS Entity and a Swap Entity. These are also the breakpoints adopted by the EC. Further, the Commission believes that alternative breakpoints based on the number of transactions which deviate from those adopted by the CFTC and the EC would likely impose additional costs on SBS Entities without any corresponding increases in material benefits to those participants.

Although the notion of breakpoints based on number of transactions previously has been accepted by the CFTC and other regulatory agencies, the Commission notes that breakpoints based on alternative measures could be considered. In particular, breakpoints for reconciliation could be categorized

[321] The estimate is based on the following: [Compliance Attorney (30 hours) at $372 per hour] = $11,160 per entity × 55 SBS entities = $613,800. This estimate is larger than that provided in the proposal because of the increase in the estimate of the number of hours to file notices and amendments. *See supra* Section VI.D.3.

[322] *See supra* Section II.A.

[323] Currently, there is no regulatory requirement in the United States to clear security-based swaps. As of December 2015, approximately 56% of the total volume of new trade activity in single-name security-based swap products had been cleared through ICE Clear Credit. Further, approximately 79% of index CDS transactions were centrally cleared as of December 2015 (*see https://www.isda.org/a/kVDDE/swapsinfo-q4-2015-review-final.pdf*); therefore, single-name security-based swaps potentially could be cleared at a similar rate.

[324] *See supra* note 30.

[325] *See* Proposing Release at 4617–4618.

[326] Rule 901 (17 CFR 242.901) is part of Regulation SBSR, which governs the reporting to registered SDRs of security-based swap data and public dissemination by registered SDRs of a subset of that data. *See* 17 CFR 242.900 to 242.909.

[327] *See supra* Section II.A.1.

[328] *See id.*

by either gross (or net) notional amounts of positions or the current market value of positions, and identified as levels or scaled by some measure such as the aggregate notional value of the market (for gross or net notional values) or the assets of the SBS Entity (if market values are used instead). Although the number of security-based swaps between counterparties is easy to capture, it may actually be misleading with respect to the complexity or magnitude of the risk between counterparties.

For instance, say two counterparties have over 500 transactions between them, but the average value of each transaction is only $5 million notional value. The total exposure between the two counterparties would only be $2.5 billion, but this portfolio would need to be reconciled daily due to the number of transactions. If, on the other hand, two counterparties have only 40 transactions, but the average value of each transaction is $1 billion notional value, the overall exposure would be $40 billion (16 times greater exposure than the 500 transaction counterparties), but this portfolio would only be reconciled quarterly. Basing breakpoints on some measure other than the number of transactions may enable SBS Entities to better assess the overall level of counterparty credit risk as well as operational risk associated with their security-based swap portfolios. Setting aside these concerns, the Commission believes that breakpoints based on the number of transactions is likely to capture the complexity of SBS Entities' portfolios, and that reconciliations based on this dimension are likely to identify discrepancies in a timely manner. Further, given that the Commission estimates that approximately 20 of the expected 55 SBS Entities are likely to be dually-registered with the CFTC and active in both swap and security-based swap markets, this alternative could potentially impose additional costs due to differences in regulatory requirements.

The Commission has also considered alternatives to the requirement that valuation discrepancies exceeding 10% must be resolved within five business days. The 10% threshold is consistent with the rule adopted by the CFTC for Swap Entities and, as a result, is likely to be familiar to those entities that are registered as both an SBS Entity and a Swap Entity. The Commission believes that the 10% threshold is high enough to prevent market participants from incurring costs to resolve small valuation differences that would have only a small effect on margin or other risk management practices, yet low enough to prevent difference in valuation from resulting in significant miscalculations in risk management.

As noted above, there are potential economic costs that could accrue to counterparties related to both the 10% threshold and the five business day resolution window. An alternative (albeit supplementary) approach would be an additional requirement of a valuation threshold related to the overall portfolio discrepancies, in aggregate and/or with individual counterparties. For instance, if the aggregate portfolio has valuation discrepancies of 5% or 10%, this could trigger a discrepancy event, even if the individual transaction-level discrepancies fall below the prescribed threshold as documented currently in the rule. Relatedly, while the five business day window is narrow enough to potentially stem valuations from deviating for extended periods of time while still providing a horizon in which parties can work through their valuation disputes, entities can face significant counterparty risk over seemingly short-term horizons. For relatively stable valuation disputes in which the value does not continue to deviate further from the agreed-upon level, then a five business day window is likely to be sufficient; however, a more compressed alternative horizon could be invoked when the discrepancies in value continue to widen between counterparties. The Commission believes that the five business day horizon is sufficient and serves as an upper-bound by which time market participants should have addressed and corrected any material discrepancies that arose during reconciliation. Moreover, this approach is consistent with requirements from other regulators, and given the Commission's estimates on SBS Entities that are likely to be dually-registered with the CFTC, any differences in regulation would likely impose additional costs to those entities.

Finally, Rule 15Fi–3(c) will require each SBS Entity to promptly notify the Commission of any security-based swap valuation dispute in excess of $20,000,000 (or its equivalent in any other currency) if not resolved within:

- Three business days, if the dispute is with a counterparty that is an SBS Entity, or
- five business days, if the dispute is with a counterparty that is not an SBS Entity.

Such notification will be required to be in a form and manner acceptable to the Commission, and will also be required to be sent to any applicable prudential regulator (*i.e.,* for any SBS Entity that is also a bank, to its bank regulator). SBS Entities are also required to promptly notify the Commission, in a form and manner acceptable to the Commission, and any applicable prudential regulator, if the amount of any security-based swap valuation dispute that was the subject of a previous notice increases or decreases by more than $20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level.[329]

The Commission has considered as an alternative, requiring SBS Entities to make and keep records of valuation discrepancies that exceed $20,000,000 rather than requiring that they be reported to the Commission. The Commission concluded that the benefit of receiving an early warning of potential problems before they surfaced though an ordinary course of review of books and records justifies any additional cost imposed on SBS entities.

Pursuant to Rule 15Fi–3(d), the new requirements regarding portfolio reconciliation will not apply to a security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to Section 17A of the Exchange Act or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to Section 17A.[330] The Commission modified the proposed exception for cleared security-based swaps so that it now applies to the initial bilateral transaction between the original counterparties (in addition to the resulting transactions between those counterparties and the clearing agency once the original transaction has been novated) and to permit the exception to be used when the clearing agency has been exempted from registration pursuant to Section 17A of the Exchange Act.[331] The Commission modified the exception in this manner in response to comments received, as well as to be consistent with the Commission's margin requirements for security-based swap transactions and the approach taken by the CFTC,[332]

[329] *See supra* Section II.A.5. Each amended notice is required to be provided to the Commission and any applicable prudential regulator no later than the last business day of the calendar month in which the applicable security-based swap valuation dispute increases or decreases by the applicable dispute amount.

[330] *See supra* Section II.A.6.

[331] *See id.*

[332] Specifically, CFTC Rule § 23.502(c) provides that ''[n]othing in this section shall apply to a swap that is cleared by a derivatives clearing organization.'' 17 CFR 23.502(d).

which should reduce implementation and compliance costs.

The Commission has considered as an alternative, allowing a SBS Entity to be deemed in compliance with certain rules regarding portfolio reconciliation if the SBS Entity is also registered as a swap dealer or major swap participant with the CFTC and is in compliance with the corresponding CFTC portfolio reconciliation rules. The Commission concluded that differences between its rules and rules adopted by the CFTC may provide certain benefits to SBS Entities and other market participants that would not be available under a rule that was identical to the corresponding CFTC rule. For example, the requirement in the rule that each term required to be reported to a registered SDR under Rule 901 must be reconciled may facilitate the verification of transaction data by SDRs, which could address concerns raised by market participants and data repositories. Such benefits could be unavailable under such an approach given that CFTC portfolio reconciliation rules do not require all of this information to be reconciled.[333]

3. Portfolio Compression

Portfolio compression is an important post-trade processing mechanism that can be an effective and efficient tool for the management of risk by security-based swap market participants. Portfolio compression is a mechanism whereby directionally opposite transactions with substantially similar terms among two or more counterparties are terminated and, if any exposure remains, replaced with a smaller number of transactions of decreased notional value in an effort to reduce the risk, cost, and inefficiency of maintaining offsetting transactions on the counterparties' books. Because portfolio compression participants are permitted to establish their own credit, market, and cash payment risk tolerances and to establish their own mark-to-market values for the transactions to be compressed, the process does not alter the risk profiles of the individual participants beyond a level acceptable to the participant. Portfolio compression is commonly acknowledged as a useful risk management tool.[334]

a. Requirements

The Commission is adopting rules and providing interpretations that generally will require each SBS Entity to establish, maintain, and follow written policies and procedures for engaging in certain forms of portfolio compression exercises with each of its counterparties. Depending on the number of counterparties, the portfolio compression exercise would be defined as either a ''bilateral portfolio compression exercise'' or as a ''multilateral portfolio compression exercise.''

Under Rule 15Fi–4(a), SBS Entities are required to establish, maintain, and follow written policies and procedures for periodically engaging in both bilateral portfolio compression exercises and multilateral portfolio compression exercises, when appropriate, with each counterparty that is also an SBS Entity.[335] For transactions with non-SBS Entities, the policies and procedures required under the rule will require only that portfolio compression exercise would have to occur when appropriate and only if requested by any such counterparty.[336]

b. Benefits

As a mechanism for post-trade management of risk in security-based swaps, portfolio compression provides benefits not only to the counterparties in each transaction but also to the markets as a whole. A portfolio compression exercise permits firms to identify instances in which directionally opposite transactions with similar terms can be terminated or replaced, with a smaller number of transactions with decreased notional value, reducing the overall risk, cost, and inefficiencies associated with maintaining offsetting transactions. As such, portfolio compression is recognized as an important risk management tool.[337] By expanding the universe of participants required to maintain portfolio compression policies and procedures, credit risk in the uncleared security-based swaps market can be reduced and may provide benefits to the entire financial system.

Further, the termination of redundant security-based swap transactions through the portfolio compression process is likely to result in the potential reduction of both counterparty and operational risk at the SBS Entity level. The use of portfolio compression also could reduce the overall level of bilateral risk exposures, while leaving the net positions of market participants unaltered, thereby improving operational efficiency. Improvements in operational efficiency may arise due to fewer overall positions for each entity, a reduction in carried margin and variation margin calculations, and fewer (and potentially less frequent) portfolio reconciliations. This would also reduce the number of bilateral positions that would have to be resolved in the event of insolvency of a market participant. These reductions in risk and improvements in operational efficiency of SBS Entities could benefit the financial system as a whole, thereby potentially increasing the number of market participants as well as improving liquidity.

Although the costs of participating in portfolio reconciliation are fully internalized by each counterparty, the potential benefits, particularly for multilateral compression exercises, increase with the number of counterparties that participate. Under Rule 15Fi–4(a), SBS Entities are required to establish, maintain, and follow written policies and procedures for periodically engaging in both bilateral portfolio compression exercises and multilateral portfolio compression exercises, in each case when appropriate, with counterparties that also are an SBS Entities.[338] To the extent that an SBS Entity transacts with a counterparties that are not SBS Entities, the policies and procedures required under the rule require only that portfolio compression exercises occur when appropriate and only if requested by any such counterparty. In the absence of these rules, some counterparties may not participate in compression activities reducing the potential benefits available to other counterparties and the financial system generally.

As noted in the economic baseline, the emergence of third-party vendors has provided portfolio compression services for security-based swaps. SBS Entities may be able to continue to benefit from the services of these third-

[333] *See supra* Section II.A for a discussion of the proposed reconciliation rules and the verification of transaction data by SDRs. *See also supra* note 57 for a discussion of differences between CFTC and Commission requirements concerning third party reconciliation.

[334] *See http://www2.isda.org/news/isda-publishes-paper-highlighting-achievements-in-portfolio-compression.*

[335] *See* Rules 15Fi–4(a)(2) and (3).

[336] *See* Rule 15Fi–4(b).

[337] For example, in 2008, the PWG identified frequent portfolio compression of outstanding trades as a key policy objective in the effort to strengthen the OTC derivatives market infrastructure. *See* PWG Report, *supra* note 248. Similarly, the 2010 staff report issued by the FRBNY outlined policy perspectives on OTC derivatives infrastructure and identified trade compression as an element of strong risk management and recommended that market participants engage in regular, market-wide portfolio compression exercises. *See* FRBNY OTC Derivatives Report, *supra* note 18. Since the years immediately following the 2008 financial crisis, compression outside of CCPs has been somewhat less common and has declined substantially from its 2008 peak. *See supra* note 286.

[338] *See supra* Section II.B.

party vendors to provide additional portfolio compression opportunities for these firms.

These rules provide flexibility to security-based swap market participants with respect to portfolio compression. The Commission believes that by not adopting prescriptive requirements, an SBS Entity can allow its counterparties flexibility in the manner in which they reduce the size of their security-based swap portfolios in light of each counterparty's unique risks and operations. Moreover, the rules regarding bilateral offset have been designed to reflect the understanding by the Commission that firms may have legitimate economic and business reasons for maintaining fully offsetting security-based swap transactions. For example, certain portfolio compression exercises could result in adverse credit exposures to certain counterparties. The results of a particular multilateral compression exercise may result in a credit exposure to a particular counterparty that exceeds credit exposure limits for that counterparty.

Thus, the Commission believes that the policies and procedures should be flexible enough to allow an SBS Entity to take the most appropriate course of action with respect to managing its risks, while at the same time, encouraging SBS Entities to consider the risk mitigation possibilities of portfolio compression in a non-arbitrary manner and consistent with the purposes of Section 15F(i) of the Exchange Act. As such, Rules 15Fi–4(a)(1) and (b) require a firm's policies and procedures to address the termination of fully offsetting security-based swaps only ''when appropriate.''

Finally, the Commission notes that both the CFTC and the EC have adopted portfolio compression requirements that are substantially similar to those being adopted by the Commission in this release.[339] By closely aligning portfolio compression requirements through consultation with the CFTC and European authorities, the Commission believes that SBS Entities will benefit from a largely unitary regulatory regime that does not require separate compliance and operational policies and procedures.

c. Costs

SBS Entities will necessarily have to design, compose, and implement policies and procedures to regularly evaluate compression opportunities with their counterparties as well as those opportunities offered by third parties. However, the Commission believes that given the large risk management benefits available from the regular compression of offsetting trades—benefits including reduced risk and enhanced operational efficiency—SBS Entities already undertake regular portfolio compression exercises. For this reason and those discussed below, the Commission believes that the relevant costs will primarily be the creation of policies and procedures.

The greater the level of standardization in security-based swaps, the less costly it becomes to identify compression opportunities. In April 2009, ISDA announced the implementation of the 2009 ISDA Credit Derivatives Determinations Committees and Auction Settlement CDS Protocol, known colloquially in the industry as the ''Big Bang Protocol,'' which introduced a number of documentation changes to help standardize single-name CDS contracts.[340] Among these changes were the introduction of standard coupon rates and standard effective dates. Following the standardization of single-name CDS, compression in this market segment increased.[341] As that standardization continues, we expect that the cost of identifying appropriate compression opportunities should continue to fall. Using single-name corporate CDS data from DTCC–TIW discussed above, we find the percentage of new trades in North American Single-Name Corporate that have standardized coupons has risen from 95.2% in 2012 to 99.8% in 2017. The reduction in the number of roll-dates from four to two in order to both improve liquidity as well as to align with updates to CDS indices[342] also may result in increased standardization and therefore may reduce the costs of identifying compression opportunities.

The Commission estimates that the development and implementation of written policies and procedures as required by Rule 15Fi–4 will impose an initial cost of $1,302,135 in aggregate.[343] Of the 55 market participants the Commission expects will register as SBS Entities and be subject to Rule 15Fi–4, the Commission estimates that approximately 20 of these market participants are registered with the CFTC, and are anticipated to already have policies and procedures in place with respect to portfolio compression. The expected additional time to revise the existing policies and procedures for these SBS Entities is expected to be one hour per SBS Entity, for a cumulative 20 hours, costing $461.75 per SBS Entity or $9,235 in aggregate.[344] For the remaining 35 SBS Entities, the Commission estimates that it will take approximately 80 hours per entity to establish the written policies and procedures. The costs for these SBS Entities will be $1,292,900, or $36,940 per SBS Entity.[345] Once established, the Commission estimates that it will cost SBS Entities approximately $1,015,850 or $18,470 per SBS Entity to revise and maintain these policies and procedures.[346]

The Commission further estimates that an SBS Entity will devote approximately 124.16 hours per year for portfolio offsets and compression exercises (6,828.8 aggregate hours), a substantial portion of which will be automated, and some of which may be handled by third-party vendors.[347]

[339] *See supra* note 6 and accompanying text.

[340] *See* Press Release, ISDA Announces Successful Implementation of 'Big Bang' CDS Protocol; Determinations Committees and Auction Settlement Changes Take Effect (Apr. 8, 2009), *available at: https://www.isda.org/a/XS6EE/ISDA-Announces-Successful-Implementation-of-%E2%80%98Big-Bang%E2%80%99-CDS-Protocol-Determinations-Committees-and-Auction-Settlement-Changes-Take-Effect.docx.*

[341] *See* Nicholas Vause, Counterparty risk and contract volumes in the credit default swap market, BIS Quarterly Review (Dec. 2010), *available at: http://www.bis.org/publ/qtrpdf/r_qt1012g.pdf.* (''TriOptima became the first company to offer CDS portfolio compression when it extended its TriReduce service from interest rate swaps to the CDS market in 2005. In the CDS market, TriReduce has compressed mainly portfolios of CDS indices and index tranches, but single names have accounted for an increasing share of its compression volumes since standardisation in 2009.'').

[342] *See http://www2.isda.org/asset-classes/credit-derivatives/single-name-cds-roll/.*

[343] This figure has been updated from that in the Proposing Release due to the updated estimate of the number of SBS Entities that will be dually registered with the CFTC and updates to hourly rates to account for inflation over the period. *See supra* note 310 and *supra* note 311.

[344] The estimate is based on the following: [((Compliance Attorney (30 minutes) at $372 per hour) + ((Director of Compliance (15 minutes) at $496 per hour) + ((Deputy General Counsel (15 minutes) at $607 per hour)] = $461.75 per hour per SBS Entity or ($461.75 per hour × 20 SBS dually-registered Entities) = $9,235.

[345] The estimate is based on the following: [((Compliance Attorney (40 hours) at $372 per hour) + ((Director of Compliance (20 hours) at $496 per hour) + ((Deputy General Counsel (20 hours) at $607 per hour)] = $36,940 per SBS Entity or ($36,940 × 20 SBS Entities that are not dually-registered) = $1,292,900.

[346] The estimate is based on the following: [((Compliance Attorney (20 hours) at $372 per hour) + ((Director of Compliance (10 hours) at $496 per hour) + ((Deputy General Counsel (10 hours) at $607 per hour)] = $18,470 per SBS Entity or ($18,470 × 55 SBS Entities) = $1,015,850 in aggregate.

[347] The Commission estimates that each SBS Entity will transact with approximately 368 counterparties (18 SBS Entities and 350 non-SBS market participants). It is estimated that approximately one offset per year will take place between counterparties and it is expected to take five minutes to complete, for a total number of hours of (2.5/60 × 18 + 5/60*350) or 29.91 hours

Continued

Similar to our discussion for portfolio reconciliation (Section VII.C.2.c), the Commission expects that the costs of implementing portfolio compression exercises through an automated process will be minimal for those SBS Entities that are dually-registered with the CFTC, as many of those systems will already be in place. With respect to the remaining 35 SBS Entities that are not dually-registered, the Commission anticipates that any cost associated with implementing the portfolio reconciliation system may also account for the portfolio compression exercises that may periodically take place; therefore, the overall costs of portfolio compression systems should be minimal.

In terms of quantification of the costs of compression, the Commission also notes that that there are a number of third-party vendors that provide compression services, and some of these providers may charge fees based on results achieved (such as number of swaps or security-based swaps compressed). Assuming that third-party vendors charge a fee directly related to the outcome of the compression exercise (as opposed to a fixed fee in whole or some portion thereof for portfolio compression activities), the direct costs of portfolio compression by third-party vendors would therefore likely be directly related to the economic benefits of reduced counterparty and operational risk realized through the compression exercises. The Commission does not currently have pricing data for third-party service providers that offer portfolio compression services and so is unable to quantify the costs to market participants who make use of these services.

Many non-SBS Entities typically trade only in small volumes and on one side of a particular security-based swap, to create a synthetic position in the underlying asset or to hedge another position, for example. Such one-sided market positions reduce the opportunities to engage in periodic compression cycles. For SBS Entities that do not currently participate in compression cycles, there could be costs to modify the participant's risk systems and connectivity enhancements that would allow for sharing the necessary information required to identify compression opportunities and for the booking and processing of a large volume of security-based swaps in a short time period. Multilateral compression cycles are typically managed with automated tools to support tear-up and new trade creation that end-users usually do not possess, and the costs of obtaining such tools cannot be justified by the benefits. The rule does not require market participants to engage in mandatory compression cycles, but only to establish, maintain, and follow written policies and procedures for engaging in certain forms of portfolio compression exercises.

d. Alternatives

The adopted rule requires that SBS Entities establish, maintain, and follow written policies and procedures as they relate to certain forms of portfolio compression exercises with each of its counterparties. As such, the Commission did not mandate the specific contents of the policies and procedures created to comply with these rules.[348] However, a number of more specific requirements for portfolio compression could be included. For example, the current rule as adopted only requires policies and procedures that address compression to the extent requested by the counterparty rather than a more prescriptive requirement.[349]

Pursuant to Rule 15Fi–4, SBS Entities are required ''periodically'' to examine the possibility for whether portfolio compression exercises can take place. While this provides flexibility to the counterparties in terms of the frequency with which rebalancing would have to be explored, it leaves open the possibility that market participants will suboptimally select the frequency with which portfolio compression exercises can occur, which could impose externalities on SBS counterparties as well as the financial system as a whole. As an alternative, the Commission considered requiring a minimum frequency of analysis of portfolio compression exercises. For instance, at least twice a year, SBS Entities could conduct an analysis of the possibility of a portfolio compression exercise in order to reduce their counterparty credit risk and engage in such a portfolio compression exercise, similar to those adopted by the EC.[350] Given that portfolio compression has been identified to be a valuable and important tool for risk management, it is likely that many SBS Entities already have in place policies and procedures for periodic evaluation of compression possibilities, thus imposing a minimum standard could be burdensome and costly for firms to implement with little if any corresponding benefit.

Relatedly, the frequency with which SBS Entities evaluate their prospects for portfolio compression opportunities could be related to the number of transactions between counterparties (as is required for portfolio reconciliation by Rule 15Fi–3). For instance, if counterparties have portfolios in excess of 500 transactions, an analysis of portfolio compression could be conducted quarterly, while for SBS Entities with portfolios between 50 and 500 transactions, portfolio compression exercises could be explored twice a year. For counterparties with fewer than 50 transactions between them (or for portfolios with non-SBS Entities), portfolio compression exercises could be simply ''periodically.'' This would allow counterparties to assess the counterparty credit risk at frequencies aligned with the complexities of their portfolios without incurring substantive additional costs of this increase in periodic evaluation of portfolio compression opportunities. The Commission considered the costs and benefits to market participants of imposing policies and procedures related to portfolio compression based on the number of transactions between counterparties. However, it is likely that market participants expected to register as SBS Entities already have policies and procedures in place to evaluate portfolio compression opportunities with counterparties, and requiring alterations to these policies could be costly for these entities without corresponding benefits.

Pursuant to Rule 15Fi–4(c), the new requirements regarding portfolio compression will not apply to a security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to Section 17A of the Exchange Act or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to Section 17A.[351] The Commission modified the proposed exception for cleared security-based swaps so that it now applies to the initial bilateral transaction between the original counterparties (in addition to the resulting transactions between those counterparties and the clearing agency

per year per SBS Entity. Further, each SBS Entity is expected to conduct six bilateral compressions with SBS Entities and 350 bilateral compressions with non-SBS counterparties, each taking 15 minutes for total hours of [(7.5/60 × 6) + (15/60 × 350)] = 88.25 hours. Lastly, each SBS Entity is anticipated to complete 12 multilateral compressions each year, each taking 30 minutes for a total of 6 hours. Total time for each SBS Entity for portfolio compression exercises is estimated to be (29.91 + 88.25 + 6) = 124.16 hours, or 6828.8 hours (124.16 hours × 55 SBS Entities).

[348] There is one exception to this statement. *See supra* note 97.

[349] *See supra* Section II.B.

[350] *See* EU Regulation 149/2013, art. 14, 2013 O.J. 11, 22.

[351] *See supra* Section II.B.3.

once the original transaction has been novated) and to permit the exception to be used when the clearing agency has been exempted from registration pursuant to Section 17A of the Exchange Act.[352] The Commission modified the exception in this manner in response to comments received, as well as to be consistent with the Commission's margin requirements for security-based swap transactions and the approach taken by the CFTC,[353] which should reduce implementation and compliance costs.

The Commission has considered as an alternative, allowing an SBS Entity to be deemed in compliance with certain rules regarding portfolio compression if the SBS Entity is also registered as a swap dealer or major swap participant with the CFTC and is in compliance with the corresponding CFTC portfolio compression rules. The Commission concluded that, as a practical matter, the rules are nearly equivalent, suggesting that any additional compliance cost arising from differences in these rules for an entity that is registered with both the CFTC and the Commission should be small. The Commission believes that the differences that do exist (such as the adopted rule providing that requested compression by an entity that is not a security-based swap dealer or major security-based swap participant need only be conducted if appropriate) [354] may provide marginal benefits to SBS market participants (such as by preventing portfolio compression that is not appropriate given the particular circumstances of the trade and the counterparties to that trade).[355]

4. Trading Relationship Documentation

OTC derivatives market participants typically have relied on the use of industry standard legal documentation, including master netting agreements, definitions, schedules, and confirmations, to document their security-based swap trading relationships. This industry standard documentation offers a framework for documenting the transactions between counterparties for OTC derivatives products.[356] The standard documentation is designed to set forth the legal, trading, and credit relationship between the parties and to facilitate netting of transactions in the event that parties have to close-out their position with one another or determine credit exposure for margin and collateral management. Notwithstanding the standardization of such documentation, some or all of the terms of the master agreement and other documents are subject to negotiation and modification.

a. Requirements

The Commission is adopting rules and interpretations that generally will require each SBS Entity to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes written trading relationship documentation with its counterparties prior to, or contemporaneously with, executing a security-based swap. The security-based swap trading relationship documentation is required to be in writing and to include all material terms governing the trading relationship between counterparties.

Further, the rules being adopted will also require that the security-based swap trading relationship documentation include credit support arrangements.[357] One of the key elements of Title VII reforms was to ensure that uncleared OTC derivatives were appropriately collateralized, thus the documentation of processes for calculating and exchanging margin in connection with security-based swaps helps to achieve the broader regulatory objective.[358]

The rules also will establish minimum standards with respect to identifying the matters that must be addressed in the security-based swap trading documentation, and outline certain requirements related to the resolution of discrepancies, particularly those involving differences in the valuation of security-based swaps. In the event that discrepancies in valuation arise, the rule requires that counterparties must provide documentation for either an alternative method for determining value of the security-based swap or documentation on the resolution process for such disputes.

The rule also requires that counterparties to the security-based swap provide information on their legal status, particularly in the event of liquidation, as well as to provide certain information of a security-based swap accepted for clearing by a clearing agency, in order to reduce any potential confusion regarding the status of the trade following its acceptance and novation at the clearing agency. Lastly, Rule 15Fi–5 requires a periodic independent audit to identify any material deficiencies in the trading relationship documentation policies and procedures.

b. Benefits

Inadequate or incomplete documentation of open security-based swap transactions could, in some cases, result in collateral and legal disputes between the two counterparties, thereby exposing both sides to significant counterparty credit risk. By way of contrast, adequate documentation between counterparties offers a framework for establishing the trading relationship between the parties from the outset of the transaction, which should minimize both the number and magnitude of potential disputes.

Further, having policies and procedures regarding trading relationship documentation in place is important for all aspects of the transaction, the valuation of the transaction and how it affects margin requirements on an on-going basis is critical for managing both counterparty credit as well as operational risk. Pursuant to Rule 15Fi–5, counterparties are required to provide information on the valuation methods, procedures, rules, and inputs (within limits so as to not reveal private information regarding proprietary valuation models), while further stipulating that either alternative valuation methods or valuation discrepancy resolutions are detailed in the trading relationship documentation. These benefits are both complemented by, and accrue to, the portfolio reconciliation process contemplated by Rule 15Fi–3. That is, comprehensive and accurate documentation of a transaction may contribute to a smoother reconciliation process by reducing the possibility of discrepancies; and any discrepancies that may still arise could subsequently be identified and resolved through reconciliation.

As discussed above, because shortcomings in credit risk management and documentation may only become evident during a crisis, some benefits of

[352] *See id.*

[353] Specifically, CFTC Rule § 23.503(c) provides that ''[n]othing in this section shall apply to a swap that is cleared by a derivatives clearing organization.'' 17 CFR 23.503(c).

[354] *See supra* Section II.B.1.

[355] The corresponding CFTC compression rule applicable to transactions with counterparties that are not Swap Entities does not contain the caveat that any form of compression or offset covered by the applicable policies and procedures would only need to occur ''when appropriate.'' *See supra* Section II.B.1.

[356] One commonly used form of the industry standard documentation is the ISDA Master Agreement and related definitions, schedules, and confirmations specific to particular asset classes. As noted in Section VI.B.4, over 99% of uncleared security-based swap transactions use an ISDA Master Agreement as reported in DTCC–TIW.

[357] *See supra* Section II.C.

[358] 15 U.S.C. 78c–5(f).

complying with these rules will accrue to the financial system as a whole while the ongoing direct costs are borne by the individual market participant. Therefore, in the absence of these rules, trading relationship documentation practices employed by individual market participants may be less thorough than would be desired by all market participants in order to properly manage risks to the financial system. However, the widespread use of standard documentation mitigates both the potential benefit and costs of the rules being adopted.

c. Costs

Market participants will likely incur ongoing costs associated with the rules concerning trading relationship documentation. Market participants will have to (1) negotiate and document all terms of each trading relationship; (2) design, compose, and implement policies and procedures reasonably designed to ensure the execution of security-based swap trading relationship documentation, including valuation documentation; (3) obtain documentation from counterparties who are claiming the end user exception to clearing; and (4) periodically audit documentation and keep records and/or make reports as required under these rules.

The Commission estimates that the initial burden to negotiate and draft trading relationship documentation will be $4,666,103 per SBS Entity, or $256,635,638 in aggregate across the 55 SBS Entities.[359] The Commission further estimates that the development and implementation of written policies and procedures as required under Rule 15Fi–5 will impose an initial cost of $1,302,135 in aggregate.[360] Of the total 55 SBS Entities as expected by the Commission that would be subject to Rule 15Fi–5, 20 are anticipated to be registered concurrently with the CFTC, and are anticipated to already have policies and procedures in place with respect to relationship documentation. The expected additional time to revise the existing policies and procedures for these Entities is expected to be one hour per Entity, for a cumulative 20 hours, costing $461.75 per Entity or $9,235 in aggregate.[361] For the remaining 35 SBS Entities, the Commission estimates that it will take approximately 80 hours per entity to establish the written policies and procedures. The costs for these SBS Entities will be $1,292,900, or $36,940 per SBS Entity.[362] Once established, the Commission estimates that it will cost SBS Entities approximately $1,015,850 or $18,470 per SBS Entity to revise and maintain these policies and procedures.[363] Lastly, Rule 15Fi–5 requires periodic independent audits of the trading relationship documentation. The Commission estimates that the costs associated with these audits will be $853,760 per SBS Entity, or $46,956,800 in aggregate.[364]

Memorializing the specific terms of the security-based swap trading relationship and security-based swap transactions between counterparties is prudent business practice and, in fact, many market participants already use standardized documentation.[365] Accordingly, the Commission believes that many, if not most, market participants that are expected to register as SBS Entities currently execute and maintain trading relationship documentation of the type required by these rules in the ordinary course of their businesses, including documentation that contains several of the terms that will be required by these rules. Thus, the hour and dollar burdens associated with the security-based swap trading relationship documentation requirements may be limited to amending existing documentation to expressly include any additional terms required by the rules. In addition the Commission anticipates that standardized security-based swap trading relationship documentation will eventually incorporate changes that may be necessary to comply with many of the requirements of this rule reducing the cost to individual security-based swap market participants.[366]

Rule 15Fi–5 also includes certain exceptions that are intended to mitigate costs incurred by market participants while preserving the risk mitigating benefits of thorough trading relationship documents. First, the rule will provide an exception for security-based swaps executed prior to the date on which the SBS Entity is required to be in compliance with the trading relationship documentation rule, as it may be costly and impractical to require SBS Entities to bring existing transactions into compliance with these rules. The Commission notes that this exception may increase the likelihood of disputes in valuation with respect to such transactions, which will be subject to the portfolio reconciliation requirement of Rule 15Fi–3 even though they are not subject to the documentation requirements of Rule 15Fi–5. Such disputes could be costly to resolve and may lead to greater uncertainty with respect to counterparty credit risk.

The rule further provides exceptions for any security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to Section 17A of the Exchange Act or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to Section 17A. Once a security is cleared, the transaction is primarily governed by the terms of the agreement between clearing member and the clearing agency. Lastly, the rule will provide an exception for security-based swaps executed anonymously on a national securities exchange or an SB SEF, provided that these security-based swaps are intended to be cleared and are actually submitted for clearing to a clearing agency that provides CCP services. This exception is intended to

[359] Each SBS Entity is anticipated to be counterparty to 18 other SBS Entities and 350 non-SBS market participants, for a total of 368 counterparties. The initial negotiation and draft in expected to take 15 hours per counterparty that is a SBS entity and 30 hours per counterparty for all other counterparties. *See* Section VI.D.5. The estimation is as follows: [((Compliance Manager (15 hours) × $315) + (Director of Compliance (7.5 hours) × $496) + (Deputy General Counsel (7.5 hours) × $607)) × 350 counterparties] + [((Compliance Manager (7.5 hours) × $315) + (Director of Compliance (3.75 hours) × $496) + (Deputy General Counsel (3.75 hours) × $607)) × 18 SBS entity counterparties] = $4,666,102.50 per SBS Entity, or ($4,666,102.50 × 55 SBS Entities) = $256,635,637.50 in aggregate.

This figure has been updated from that in the Proposing Release due to the updated estimate of the number of SBS Entities that will be dually registered with the CFTC and updates to hourly rates to account for inflation over the period. *See supra* note 310 and *supra* note 311.

[360] *Id.*

[361] The estimate is based on the following: [((Compliance Attorney (30 minutes) at $372 per hour) + ((Director of Compliance (15 minutes) at $496 per hour) + ((Deputy General Counsel (15 minutes) at $607 per hour)] = $461.75 per hour per SBS Entity or ($461.75 per hour × 20 SBS dually-registered Entities) = $9,235.

[362] The estimate is based on the following: [((Compliance Attorney (40 hours) at $372 per hour) + ((Director of Compliance (20 hours) at $496 per hour) + ((Deputy General Counsel (20 hours) at $607 per hour)] = $36,940 per SBS Entity or ($36,940 × 35 SBS Entities that are not dually-registered) = $1,292,900 in aggregate.

[363] The estimate is based on the following: [((Compliance Attorney (20 hours) at $372 per hour) + ((Director of Compliance (10 hours) at $496 per hour) + ((Deputy General Counsel (10 hours) at $607 per hour)] = $18,470 per SBS Entity or ($18,470 × 55 SBS Entities) = $1,015,850 in aggregate.

[364] The estimate is based on the following: [368 counterparties × 10 hours per Audit × Auditor ($232 per hour)] = $853,760 per SBS Entity, or ($853,760 × 55 SBS Entities) = $46,956,800 in aggregate.

[365] As noted in Section VII.B.4, as of 2017, the DTCC–TIW data shows that over 99% of SBS Entities use the ISDA Master Agreement.

[366] In response to prior Dodd Frank Act related regulatory requirements, ISDA in partnership with third party providers, has created technology-based solutions enabling counterparties to modify OTC derivatives related documentation quickly and efficiently. *See http://www2.isda.org/dodd-frank-documentation-initiative/.*

recognize that documentation requirements may be nearly impossible to fulfill within the context of cleared anonymous transactions.[367]

d. Alternatives

As proposed, Rule 15Fi–5(b)(1) would have required that the trading relationship documentation also include terms governing ''applicable regulatory reporting obligations (including pursuant to Regulation SBSR).'' ISDA and SIFMA noted that the particular documentation requirement would have essentially mirrored the reporting requirements in Regulation SBSR, including the reporting hierarchy established by that rule, which would be duplicative, burdensome and impose additional costs on SBS Entities, and that also may not address the underlying SDR verification issue.[368] Accordingly, the Commission has carefully considered these comments and has modified Rule 15Fi–5(b)(1), such that it no longer requires that the trading relationship documentation include terms governing applicable regulatory reporting obligations.

The Commission has evaluated reasonable alternatives to the rules on trading relationship documentation. One alternative would be that all SBS Entities are required to adhere to an industry-accepted standard form of trading documentation, instead of establishing policies and procedures related to documentation. It is unlikely that this alternative would materially alter the primary benefits of the rule, namely that of reducing disputes over documentation that could lead to increased counterparty risk, but could increase overall compliance costs without analogous increases in benefits, due to reduced operational flexibility.

Further, the rule requires that SBS Entities undertake a periodic, independent audit to identify material weaknesses in its documentation policies and procedures. As adopted, there is flexibility on behalf of the SBS Entity as to how and when those audits occur. Alternatively, the Commission has considered limiting to only external auditors and requiring a once per year audit of trading relationship documentation. Although this alternative would not materially amend the primary benefits related to the audit of SBS Entities' policies and procedures related to trading relationship documentation, the Commission anticipates that this alternative could increase compliance costs by reducing operational flexibility.

Rule 15Fi–5(a)(1)(ii) provides an exception to the trading relationship documentation requirements for any security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to Section 17A of the Exchange Act or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to Section 17A.[369] The Commission modified the proposed exception for cleared security-based swaps so that it now applies the initial bilateral transaction between the original counterparties (in addition to the resulting transactions between those counterparties and the clearing agency once the original transaction has been novated) and to permit the exception to be used when the clearing agency has been exempted from registration pursuant to Section 17A of the Exchange Act.[370] The Commission modified the exception in this manner in response to comments received, as well as to be consistent with the Commission's margin requirements for security-based swap transactions and the approach taken by the CFTC,[371] which should reduce implementation and compliance costs.

The Commission has considered as an alternative, allowing an SBS Entity to be deemed in compliance with certain rules regarding trading relationship documentation if the SBS Entity is also registered as a swap dealer or major swap participant with the CFTC and is in compliance with the corresponding CFTC trading relationship documentation rules. The Commission concluded that, as a practical matter, the rules are nearly equivalent, suggesting that any additional compliance cost arising from differences in these rules for an entity that is registered with both the CFTC and the Commission should be small. The Commission believes that differences that do exist are necessary and appropriate. For example, to the extent that a transaction entered into on an anonymous basis on a national securities exchange or SB SEF that is then rejected for clearing but continues to exist, the Commission believes that the counterparties to the ongoing security-based swap should have in place a written agreement on the terms of that transaction.[372]

5. Recordkeeping Requirements

The Commission is also adopting rules that will modify existing Rules 17a–3 and 17a–4, as well as recently adopted Rules 18a–5 and 18a–6 for the recordkeeping and reporting requirements applicable to SBS Entities. The amendments will involve requiring each SBS Entity to make and keep current information relevant to portfolio reconciliation and portfolio compression exercises and to retain all security-based swap trading relationship documentation required to be created under Rule 15Fi–5, as well as each policy and procedure created pursuant to Rules 15Fi–3, 15Fi–4, and 15Fi–5.

a. Requirements

The Commission is amending Rule 17a–3 (which applies to SBS Entities that are also registered with the Commission as broker-dealers) and recently adopted Rule 18a–5 (which applies to SBS Entities that are not registered with the Commission as broker-dealers). Under these amendments, each SBS Entity will be required to make and keep records of each security-based swap portfolio reconciliation and portfolio compression exercise, which is believed to promote compliance with Rules 15Fi–3 and 15Fi–4 as well as support SBS Entities in the event that disputes arise in relation to previous reconciliations or compressions. The amendments will also require that SBS Entities make and keep records of valuation disputes in excess of $20 million if not resolved within three (for SBS Entities) or five (for non-SBS counterparties) days.

The Commission also is amending Rule 17a–4 (which applies to SBS Entities that are also registered with the Commission as broker-dealers) and recently adopted Rule 18a–6 (which applies to SBS Entities that are not registered with the Commission as broker-dealers), which address record retention. All records made and kept under the amendments to Rule 17a–3 and recently adopted Rule 18a–5 will need to be retained for at least three years. Further, all policies and procedures related to Rules 15Fi–3 through 15Fi–5, all written agreements between counterparties on terms of portfolio reconciliation, and all security-based swap trading relationship documentation with counterparties will need to be retained until at least three years following the termination of said

[367] The exception with respect to security-based swap transactions on national exchanges or SB SEF is limited. *See* Section II.C for a complete discussion of those limitations.

[368] *See supra* Section II.C.1. *See also* ISDA/SIFMA Letter.

[369] *See supra* Section II.C.5.

[370] *See id.*

[371] Specifically, CFTC Rule § 23.504(a)(1)(iii) excludes from the written trading relationship documentation requirements ''swaps cleared by a derivatives clearing organization.'' 17 CFR 23.504(a)(1)(iii).

[372] *See supra* Section II.C.

policies and procedures and/or documentation.

b. Benefits

In proposing these requirements, the Commission considered the potential benefits of improving the oversight, transparency, and documentation of security-based swap activities. The amendments to Rules 17a–3 and 17a–4, and recently adopted Rules 18a–5 and 18a–6 are intended to facilitate oversight of SBS Entities, thus the benefits associated with the amendments related to recordkeeping are beneficial not only to the SBS Entities, but also are expected to facilitate regulatory oversight.

Requiring retention of records related to portfolio reconciliation, portfolio compression, and trading relationship documentation for a minimum of three years provides SBS Entities with a well-established track record should disputes about terms of the security-based swap arise. The benefits of these amendments, to the extent that they enhance existing practice, could reduce both counterparty credit risk as well as operational risk for the SBS Entities. Further, the amendments are expected to facilitate examinations by the Commission of SBS Entities.

c. Costs

The Commission also recognizes that there will be costs associated with the new rules and rule amendments. These include the costs of creating procedures to ensure that records are kept as required and the costs associated with ongoing record maintenance. As the recordkeeping requirements are being adopted as amendments to Rules 17a–3 and 17a–4 and recently adopted Rules 18a–5 and 18a–6, the incremental costs of compliance from these amendments is likely to be minimal.

Rules 15Fi–3, 15Fi–4, and 15Fi–5 require that SBS Entities establish and maintain written policies and procedures related to portfolio reconciliation, portfolio compression exercises, and trading relationship documentation. Further, SBS Entities are already required to comply with the retention of written policies and procedures with respect to Rule 15Fi–2 related to trade acknowledgement and verification, and should have recordkeeping systems previously instituted. Therefore, only minor modifications will need to be made in order to make the systems compliant with the amendments regarding recordkeeping requirements for portfolio reconciliation, portfolio compression exercises, and trading relationship documentation.

Generally, the Commission does not expect the amendments to Rules 17a–3 and 17a–4, and recently adopted Rules 18a–5 and 18a–6 to create material burdens for registrants, although as noted above the Commission does expect that there will be incremental costs related to complying with the rule amendments.[373]

d. Alternatives

The Commission has considered reasonable alternatives to the adopted amendments. In particular, the costs and benefits associated with the required recordkeeping horizon have been evaluated. Shorter horizons (of less than three years) would lessen the overall recordkeeping burden by reducing the retention requirements and corresponding storage of records. However, as it may take time for disputes, particularly in the event of liquidations to be fully settled, shorter horizons may lead to the elimination of relevant records prior to resolution. On the other hand, longer horizons for maintaining records could be costly with respect to storage and system requirements. However, longer record preservation would reduce the likelihood that historical records are unavailable if needed at some point in the future.

Rule 15Fi–5(c) requires each SBS Entity to have an independent auditor conduct periodic audits sufficient to identify any material weakness in it documentation policies and procedures required by the rule. The Commission considered using the same requirement as that required by the CFTC that the audit be conducted by an independent internal or external auditor. The Commission chose not to follow this approach because in its experience overseeing accounting and auditing standards in the context of certain disclosure requirements under the federal securities laws, an internal auditor typically reports to the management of the applicable entity, which by definition would not satisfy the test for auditor independence under any existing statutory or regulatory provision that the Commission administers.[374] However, because the rule would still encompass any auditor, whether external or internal, that is in fact independent, the Commission believes that the practical differences between the Commission's rule and the corresponding CFTC rule are negligible.

[373] *See supra* Section II.D.

[374] *See supra* Section II.C.

6. Cross-Border Application of Rules 15Fi–3 Through 15Fi–5.

In early 2016, the Commission adopted Rule 3a71–6 under the Exchange Act, which determined that non-U.S. SBS Entities could satisfy certain requirements of Section 15F by complying with comparable regulatory requirements of a foreign financial regulatory system.[375] At the time the substituted compliance rule was initially adopted, it applied solely to business conduct standards; however, Rule 3a71–6 was amended in the Trade Acknowledgement and Verification Adopting Release to provide foreign SBS Entities with the potential to rely on substituted compliance to satisfy Title VII trade confirmation requirements.[376]

a. Requirements

The Commission is further amending Rule 3a71–6 to allow non-U.S. SBS Entities to potentially be able to satisfy through substituted compliance the Title VII portfolio reconciliation, portfolio compression, and trading relationship documentation requirements in Rules 15Fi–3 through 15Fi–5. The Commission has determined that the principles previously set forth in the Business Conduct Standards Adopting Release and the Trade Acknowledgement and Verification Adopting Release with respect to substituted compliance should in large part similarly pertain to the reconciliation, compression, and documentation requirements in these rules.

b. Benefits

The Commission is adopting amendments to Rule 3a71–6 to permit consideration of substituted compliance in order to reduce the probability that SBS Entities are subject to potentially duplicative or conflicting regulation. Market participants that face duplicative regulatory regimes are likely to attain comparable regulatory outcomes, but at a cost of increased compliance burdens without an analogous increase in benefits. The availability of substituted compliance could decrease the compliance burden for non-U.S. SBS Entities, particularly as it pertains to portfolio reconciliation, portfolio compression, and trading relationship documentation. Allowing for the possibility of substituted compliance may help achieve the risk mitigation requirements set forth in Rules 15Fi–3

[375] *See* Business Conduct Standards Adopting Release, 81 FR at 30074.

[376] *See* Trade Acknowledgement and Verification Adopting Release, 81 FR at 39827–28.

through 15Fi–5, in particular as it reduces legal uncertainty, counterparty credit risk exposure, and operational risk for market participants.

Further, the Commission anticipates broader market implications of substituted compliance, namely an increase in foreign SBS dealers' activity in the U.S. market, the expansion of access by both U.S. and foreign SBS Entities to global liquidity, and a reduction in the possibility of liquidity fragmentation along jurisdictional lines. The availability of substituted compliance for non-U.S. SBS Entities also could promote market efficiency, while enhancing competition in U.S. markets. Increased participation and access to liquidity is likely to improve efficiencies related to hedging and risk sharing, while simultaneously increasing competition between domestic and foreign SBS Entities.

c. Costs

The Commission believes that the availability of substituted compliance for portfolio reconciliation, portfolio compression, and trading relationship documentation will not substantially alter the benefits intended by Rules 15Fi–3 through 15Fi–5. In particular, it is expected that the availability of substituted compliance will not detract from the risk mitigation benefits that stem from periodic portfolio reconciliation, as well as policies and procedures regarding portfolio compression exercises and trading relationship documentation.

To the extent that substituted compliance reduces duplicative compliance costs, non-U.S. SBS Entities entering into transactions in which substituted compliance is available may incur lower overall costs associated with portfolio reconciliation, portfolio compression, and documentation exercises with their counterparties than they would otherwise incur without the option of substituted compliance availability, either because a non-U.S. SBS Entity may have already implemented foreign regulatory requirements which have been deemed comparable by the Commission, or because security-based swap counterparties eligible for substituted compliance do not need to duplicate compliance with two sets of comparable requirements.

A substituted compliance request can be made either by a foreign regulatory jurisdiction on behalf of its market participants, or by the registered market participant itself.[377] The decision to request substituted compliance is voluntary, and therefore, to the extent that requests are made by individual market participants, such participants would request substituted compliance only if compliance with foreign regulatory requirements was less costly, in their own assessment, than compliance with both the foreign regulatory regime and the relevant Title VII requirements, including portfolio reconciliation, portfolio compression, and trading relationship documentation requirements. Even after a substituted compliance determination is made, market participants would only choose substituted compliance for portfolio reconciliation, compression, and documentation requirements if the benefits that they expect to receive from transacting in the U.S. markets exceed the costs that they expect to bear for doing so.

VIII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (''RFA'')[378] requires the Commission, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)[379] of the Administrative Procedure Act,[380] as amended by the RFA, the Commission certified in the Proposing Release that new Rules 15Fi–3 through 15Fi, and the proposed amendments to Rules 3a71–6, 15Fi–1, 17a–3, 17a–4, 18a–5 and 18a–6 would not have a significant economic impact on any ''small entity'' [381] for purposes of the RFA.[382] The Commission received no comments on its certification.

For purposes of Commission rulemaking in connection with the RFA,[383] a small entity includes: (1) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less; [384] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[385] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[386] Under the standards adopted by the Small Business Administration, small entities in the finance and insurance industry include the following: (i) For entities engaged in credit intermediation and related activities, entities with $175 million or less in assets; [387] (ii) for entities engaged in non-depository credit intermediation and certain other activities, entities with $7 million or less in annual receipts; [388] (iii) for entities engaged in financial investments and related activities, entities with $7 million or less in annual receipts; [389] (iv) for insurance carriers and entities engaged in related activities, entities with $7 million or less in annual receipts; [390] and (v) for funds, trusts, and other financial vehicles, entities with $7 million or less in annual receipts.[391]

With respect to SBS Entities, based on feedback from market participants and our information about the security-based swap markets, and consistent with our position in prior Dodd-Frank Act rulemakings, the Commission continues to believe that (1) the types of entities that will engage in more than a *de minimis* amount of dealing activity involving security-based swaps—which generally would be large financial institutions—would not be ''small entities'' for purposes of the RFA and (2) the types of entities that may have security-based swap positions above the level required to be ''major security-based swap participants'' would not be

[377] *See* Cross-Border Adopting Release, 79 FR at 47277.

[378] 5 U.S.C. 601 *et seq.*

[379] 5 U.S.C. 603(a).

[380] 5 U.S.C. 551 *et seq.*

[381] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this rulemaking, are set forth in 17 CFR 240.0–10 (''Rule 0–10''). *See* Statement of Management on Internal Accounting Control, Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982).

[382] *See* Proposing Release, 84 FR at 4670–71.

[383] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this rulemaking, are set forth in Rule 0–10 under the Exchange Act, 17 CFR 240.0–10. *See* Exchange Act Release No. 18451 (Jan., 28, 1982), 47 FR 5215 (Feb., 4, 1982) (File No. AS–305)

[384] *See* 17 CFR 240.0–10(a).

[385] 17 CFR 240.17a–5(d).

[386] *See* 17 CFR 240.0–10(c).

[387] *See* 13 CFR 121.201 (Subsector 522).

[388] *See id.* at Subsector 522.

[389] *See id.* at Subsector 523.

[390] *See id.* at Subsector 524.

[391] *See id.* at Subsector 525.

''small entities'' for purposes of the RFA.[392]

For the foregoing reasons, the Commission certifies that Rules 15Fi–3 through 15Fi, and the amendments to Rules 3a71–6, 15Fi–1, 17a–3, 17a–4, 18a–5 and 18a–6 will not have a significant economic impact on a substantial number of small entities for the purposes of the RFA.

IX. Other Matters

Pursuant to the Congressional Review Act,[393] the Office of Information and Regulatory Affairs has designated these rules as a ''major rule,'' as defined by 5 U.S.C. 804(2).

If any of the provisions of these final rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Statutory Basis

Pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* as amended, and particularly sections 3(b), 15F, 17, and 23(a) (15 U.S.C. 78c(b), 78*o*–10, 78q, 78w(a), and 78mm), the Commission is amending §§ 240.3a71–6, 240.15Fi–1, 240.17a–3, 240.17a–4, 240.18a–5, and 240.18a–6 and adopting §§ 240.15Fi–3, 240.15Fi–4, and 240.15Fi–5 under the Exchange Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Security-based swaps, Security-based swap dealers, Major security-based swap participants.

Text of the Amendments

In accordance with the foregoing, the Securities and Exchange Commission is amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 2. Section 240.3a71–6 is amended by adding paragraph (d)(7) to read as follows:

§ 240.3a71–6 Substituted compliance for security-based swap dealers and major security-based swap participants.

* * * * *

(d) * * *

(7) *Portfolio reconciliation, portfolio compression, and trading relationship documentation requirements.* The portfolio reconciliation, portfolio compression, and trading relationship documentation requirements of section 15F(i) of the Act (15 U.S.C. 78o–10(i)) and §§ 240.15Fi–3 through 240.15Fi–5; provided, however, that prior to making such a substituted compliance determination the Commission intends to consider whether the requirements of the foreign financial regulatory system for engaging in portfolio reconciliation and portfolio compression and for executing trading relationship documentation with counterparties, the duties imposed by the foreign financial regulatory system, and the information that is required to be provided to counterparties pursuant to the requirements of the foreign financial regulatory system, are comparable to those required pursuant to the applicable provisions arising under the Act and its rules and regulations.

■ 3. Revise § 240.15Fi–1 to read as follows:

§ 240.15Fi–1 Definitions.

For the purposes of §§ 240.15Fi–1 through 240.15Fi–5:

(a) The term *bilateral portfolio compression exercise* means an exercise by which two security-based swap counterparties wholly terminate or change the notional value of some or all of the security-based swaps submitted by the counterparties for inclusion in the portfolio compression exercise and, depending on the methodology employed, replace the terminated security-based swaps with other security-based swaps whose combined notional value (or some other measure of risk) is less than the combined notional value (or some other measure of risk) of the terminated security-based swaps in the exercise.

(b) The term *business day* means any day other than a Saturday, Sunday, or legal holiday.

(c) Solely for purposes of § 240.15Fi–2, the term *clearing agency* means a clearing agency as defined in section 3(a)(23) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(23)) that is registered pursuant to section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) and provides central counterparty services for security-based swap transactions.

(d) The term *clearing transaction* means a security-based swap that has a clearing agency as a direct counterparty.

(e) The term *day of execution* means the calendar day of the counterparty to the security-based swap transaction that ends the latest, provided that if a security-based swap transaction is:

(1) Entered into after 4:00 p.m. in the place of a counterparty; or

(2) Entered into on a day that is not a business day in the place of a counterparty, then such security-based swap transaction shall be deemed to have been entered into by that counterparty on the immediately succeeding business day of that counterparty, and the day of execution shall be determined with reference to such business day.

(f) The term *execution* means the point at which the counterparties become irrevocably bound to a transaction under applicable law.

(g) The term *financial counterparty* means a counterparty that is not a security-based swap dealer or a major security-based swap participant and that is one of the following:

(1) A swap dealer;

(2) A major swap participant;

(3) A commodity pool as defined in section 1a(10) of the Commodity Exchange Act (7 U.S.C. 1a(10));

(4) A private fund as defined in section 202(a)(29) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a));

(5) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); and

(6) A person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843k).

(h) The term *fully offsetting security-based swaps* means security-based swaps of equivalent terms where no net cash flow would be owed to either counterparty after the offset of payment obligations thereunder.

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[392] *See* Proposing Release, 84 FR at 4670; SBS Entity Registration Adopting Release, 80 FR at 49013; SBS Books and Records Proposing Release, 79 FR at 25296–97 and n.1441; Intermediary Definitions Adopting Release, 77 FR at 30743. *See also* Sections V (Paperwork Reduction Act) and VI (Economic Analysis) (discussing, among other things, the economic impact, including the estimated compliance costs and burdens, of the amendments).

[393] 5 U.S.C. 801 *et seq.*

(i) The term *material terms* means each term that is required to be reported to a registered security-based swap data repository or the Commission pursuant to § 242.901 of this chapter; provided, however, that such definition does not include any term that is not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap.

(j) The term *multilateral portfolio compression exercise* means an exercise by which multiple security-based swap counterparties wholly terminate or change the notional value of some or all of the security-based swaps submitted by the counterparties for inclusion in the portfolio compression exercise and, depending on the methodology employed, replace the terminated security-based swaps with other security-based swaps whose combined notional value (or some other measure of risk) is less than the combined notional value (or some other measure of risk) of the terminated security-based swaps in the exercise.

(k) The term *national securities exchange* means an exchange as defined in section 3(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(1)) that is registered pursuant to section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(l) The term *portfolio reconciliation* means any process by which the counterparties to one or more security-based swaps:

(1) Exchange the material terms of all security-based swaps in the security-based swap portfolio between the counterparties;

(2) Exchange each counterparty's valuation of each security-based swap in the security-based swap portfolio between the counterparties as of the close of business on the immediately preceding business day; and

(3) Resolve any discrepancy in valuations or material terms.

(m) The term *prudential regulator* has the meaning given to the term in section 3(a)(74) of the Act (15 U.S.C. 78c(a)(74)) and includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Association, and the Federal Housing Finance Agency, as applicable to the security-based swap dealer or major security-based swap participant.

(n) The term *security-based swap execution facility* means a security-based swap execution facility as defined in section 3(a)(77) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)) that is registered pursuant to section 3D of the Securities Exchange Act of 1934 (15 U.S.C. 78c–4).

(o) The term *security-based swap portfolio* means all security-based swaps currently in effect between a particular security-based swap dealer or major security-based swap participant and a particular counterparty.

(p) The term *trade acknowledgment* means a written or electronic record of a security-based swap transaction sent by one counterparty of the security-based swap transaction to the other.

(q) The term *valuation* means the current market value or net present value of a security-based swap.

(r) The term *verification* means the process by which a trade acknowledgment has been manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty.

■ 4. Section 240.15Fi–3 is added to read as follows:

§ 240.15Fi–3 Security-based swap portfolio reconciliation.

(a) *Security-based swaps with security-based swap dealers or major security-based swap participants.* Each security-based swap dealer and major security-based swap participant shall engage in portfolio reconciliation as follows for all security-based swaps in which its counterparty is also a security-based swap dealer or major security-based swap participant.

(1) Each security-based swap dealer or major security-based swap participant shall agree in writing with each of its counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the portfolio reconciliation.

(2) The portfolio reconciliation may be performed on a bilateral basis by the counterparties or by a third party selected by the counterparties in accordance with paragraph (a)(1) of this section.

(3) The portfolio reconciliation shall be performed no less frequently than:

(i) Once each business day for each security-based swap portfolio that includes 500 or more security-based swaps;

(ii) Once each week for each security-based swap portfolio that includes more than 50 but fewer than 500 security-based swaps on any business day during the week; and

(iii) Once each calendar quarter for each security-based swap portfolio that includes no more than 50 security-based swaps at any time during the calendar quarter.

(4) Each security-based swap dealer and major security-based swap participant shall resolve immediately any discrepancy in a material term of a security-based swap identified as part of a portfolio reconciliation or otherwise.

(5) Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to resolve any discrepancy in a valuation identified as part of a portfolio reconciliation or otherwise as soon as possible, but in any event within five business days after the date on which the discrepancy is first identified, provided that the security-based swap dealer and major security-based swap participant establishes, maintains, and follows written policies and procedures reasonably designed to identify how the security-based swap dealer or major security-based swap participant will comply with any variation margin requirements under section 15F(e) of the Act (15 U.S.C. 78o–10(e)) and § 240.18a–3 (and any subsequent regulations promulgated pursuant to section 15F(e) of the Act (15 U.S.C. 78o–10(e))) pending resolution of the discrepancy in valuation. For purposes of this paragraph (a)(5), a difference between the lower valuation and the higher valuation of less than 10 percent of the higher valuation need not be deemed a discrepancy.

(b) *Security-based swaps with entities other than security-based swap dealers or major security-based swap participants.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation for all security-based swaps in which its counterparty is neither a security-based swap dealer nor a major security-based swap participant as follows.

(1) Each security-based swap dealer or major security-based swap participant shall agree in writing with each of its counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation.

(2) The portfolio reconciliation may be performed on a bilateral basis by the counterparties or by one or more third parties selected by the counterparties in accordance with paragraph (b)(1) of this section.

(3) The portfolio reconciliation will be required to be performed no less frequently than:

(i) Once each calendar quarter for each security-based swap portfolio that includes more than 100 security-based swaps at any time during the calendar quarter; and

(ii) Once annually for each security-based swap portfolio that includes no more than 100 security-based swaps at any time during the calendar year.

(4) Each security-based swap dealer or major security-based swap participant shall establish, maintain, and follow written procedures reasonably designed to resolve any discrepancies in the valuation or material terms of each security-based swap identified as part of a portfolio reconciliation or otherwise with a counterparty that is neither a security-based swap dealer nor major security-based swap participant in a timely fashion. For purposes of this paragraph (b)(4), a difference between the lower valuation and the higher valuation of less than 10 percent of the higher valuation need not be deemed a discrepancy.

(c) *Reporting of security-based swap valuation disputes*—(1) *Notice requirement.* Each security-based swap dealer and major security-based swap participant shall promptly notify the Commission, in a form and manner acceptable to the Commission, and any applicable prudential regulator of any security-based swap valuation dispute in excess of $20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level, if not resolved within:

(i) Three business days, if the dispute is with a counterparty that is a security-based swap dealer or major security-based swap participant; or

(ii) Five business days, if the dispute is with a counterparty that is not a security-based swap dealer or major security-based swap participant.

(2) *Amendments.* Each security-based swap dealer and major security-based swap participant shall notify the Commission, in a form and manner acceptable to the Commission, and any applicable prudential regulator, if the amount of any security-based swap valuation dispute that was the subject of a previous notice made pursuant to paragraph (c)(1) of this section increases or decreases by more than $20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level. Such amended notice shall be provided to the Commission and any applicable prudential regulator no later than the last business day of the calendar month in which the applicable security-based swap valuation dispute increases or decreases by the applicable dispute amount.

(d) *Reconciliation of cleared security-based swaps.* Nothing in this section shall apply to any security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to section 17A of the Act (15 U.S.C. 78q–1).

■ 5. Section 240.15Fi–4 is added to read as follows:

§ 240.15Fi–4 Security-based swap portfolio compression.

(a) *Portfolio compression with security-based swap dealers and major security-based swap participants*—(1) *Bilateral offset.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures for terminating each fully offsetting security-based swap between a security-based swap dealer or major security-based swap participant and another security-based swap dealer or major security-based swap participant in a timely fashion, when appropriate.

(2) *Bilateral compression.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures for periodically engaging in bilateral portfolio compression exercises, when appropriate, with each counterparty that is also a security-based swap dealer or major security-based swap participant. Such policies and procedures shall address, among other things, the evaluation of bilateral portfolio compression exercises that are initiated, offered, or sponsored by any third party.

(3) *Multilateral compression.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures for periodically engaging in multilateral portfolio compression exercises, when appropriate, with each counterparty that is also a security-based swap dealer or major security-based swap participant. Such policies and procedures shall address, among other things, the evaluation of multilateral portfolio compression exercises that are initiated, offered, or sponsored by any third party.

(b) *Portfolio compression with counterparties other than security-based swap dealers and major security-based swap participants.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures for periodically terminating fully offsetting security-based swaps and for engaging in bilateral or multilateral portfolio compression exercises with respect to security-based swaps in which its counterparty is an entity other than a security-based swap dealer or major security-based swap participant, when appropriate and to the extent requested by any such counterparty.

(c) *Portfolio compression of cleared security-based swaps.* Nothing in this section shall apply to any security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to section 17A of the Act (15 U.S.C. 78q–1).

■ 6. Section 240.15Fi–5 is added to read as follows:

§ 240.15Fi–5 Security-based swap trading relationship documentation.

(a) *Scope*—(1) *Applicability.* The requirements of this section shall not apply to:

(i) Security-based swaps executed prior to the date on which a security-based swap dealer or major security-based swap participant is required to be in compliance with this section;

(ii) Any security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to section 17A of the Act (15 U.S.C. 78q–1); and

(iii) Security-based swaps executed anonymously on a national securities exchange or a security-based swap execution facility, *Provided that:*

(A) Such security-based swaps are intended to be cleared and are actually submitted for clearing to a clearing agency;

(B) All terms of such security-based swaps conform to the rules of the clearing agency; and

(C) Upon acceptance of such security-based swap by the clearing agency:

(*1*) The original security-based swap is extinguished;

(*2*) The original security-based swap is replaced by equal and opposite security-based swaps with the clearing agency; and

(*3*) All terms of the security-based swap shall conform to the product specifications of the cleared security-based swap established under the clearing agency's rules; and *Provided further,* That if a security-based swap dealer or major security-based swap

participant receives notice that a security-based swap transaction has not been accepted for clearing by a clearing agency, the security-based swap dealer or major security-based swap participant shall be required to comply with the requirements of this section in all respects promptly after receipt of such notice.

(2) *Policies and procedures.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that the security-based swap dealer or major security-based swap participant executes written security-based swap trading relationship documentation with its counterparty that complies with the requirements of this section. The policies and procedures shall be approved in writing by a senior officer of the security-based swap dealer or major security-based swap participant, and a record of the approval shall be retained. Other than trade acknowledgements and verifications of security-based swap transactions under § 240.15Fi–2, the security-based swap trading relationship documentation shall be executed prior to, or contemporaneously with, executing a security-based swap with any counterparty.

(b) *Security-based swap trading relationship documentation.* (1) The security-based swap trading relationship documentation shall be in writing and shall include all terms governing the trading relationship between the security-based swap dealer or major security-based swap participant and its counterparty, including, without limitation, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, governing law, valuation, and dispute resolution.

(2) The security-based swap trading relationship documentation shall include all trade acknowledgements and verifications of security-based swap transactions under § 240.15Fi–2.

(3) The security-based swap trading relationship documentation shall include credit support arrangements, which shall contain, in accordance with applicable requirements under Commission regulations or regulations adopted by prudential regulators and without limitation, the following:

(i) Initial and variation margin requirements, if any;

(ii) Types of assets that may be used as margin and asset valuation haircuts, if any;

(iii) Investment and re-hypothecation terms for assets used as margin for uncleared security-based swaps, if any; and

(iv) Custodial arrangements for margin assets, including whether margin assets are to be segregated with an independent third party, in accordance with the notice requirement in section 3E(f)(1)(A) of the Act (15 U.S.C. 78c–5(f)(1)(A)) (and either § 240.15c3–3(p)(4)(i) or § 240.18a–4(d)(1) thereunder, as applicable), if any.

(4)(i) The security-based swap trading relationship documentation between security-based swap dealers, between major security-based swap participants, between a security-based swap dealer and major security-based swap participant, between a security-based swap dealer or major security-based swap participant and a financial counterparty, and, if requested by any other counterparty, between a security-based swap dealer or major security-based swap participant and such counterparty, shall include written documentation in which the parties agree on the process, which may include any agreed upon methods, procedures, rules, and inputs, for determining the value of each security-based swap at any time from execution to the termination, maturity, or expiration of such security-based swap for the purposes of complying with the margin requirements under section 15F(e) of the Act (15 U.S.C. 78o–10(e)) and § 240.18a–3 (and any subsequent regulations promulgated pursuant to section 15F(e) of the Act (15 U.S.C. 78o–10(e))), and the risk management requirements under section 15F(j) of the Act (15 U.S.C. 78o–10(j)) of the Act and § 240.15Fh–3(h)(2)(iii)(I) (and any subsequent regulations promulgated pursuant to section 15F(j) of the Act (15 U.S.C. 78o–10(j))). To the maximum extent practicable, the valuation of each security-based swap shall be based on recently executed transactions, valuations provided by independent third parties, or other objective criteria.

(ii) Such documentation shall include either:

(A) Alternative methods for determining the value of the security-based swap for the purposes of complying with this paragraph (b)(4) in the event of the unavailability or other failure of any input required to value the security-based swap for such purposes; or

(B) A valuation dispute resolution process by which the value of the security-based swap shall be determined for the purposes of complying with this paragraph (b)(4).

(iii) A security-based swap dealer or major security-based swap participant is not required to disclose to the counterparty confidential, proprietary information about any model it may use to value a security-based swap.

(iv) The parties may agree on changes or procedures for modifying or amending the documentation at any time.

(5) The security-based swap trading relationship documentation of a security-based swap dealer or major security-based swap participant shall include the following:

(i) A statement of whether the security-based swap dealer or major security-based swap participant is an insured depository institution (as defined in 12 U.S.C. 1813) or a financial company (as defined in section 201(a)(11) of the Dodd-Frank Act, 12 U.S.C. 5381(a)(11));

(ii) A statement of whether the counterparty is an insured depository institution or financial company;

(iii) A statement that in the event either the security-based swap dealer or major security-based swap participant or its counterparty becomes a covered financial company (as defined in section 201(a)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5381(a)(8)) or is an insured depository institution for which the Federal Deposit Insurance Corporation (FDIC) has been appointed as a receiver (the ''covered party''), certain limitations under Title II of the Dodd-Frank Act or the Federal Deposit Insurance Act may apply to the right of the non-covered party to terminate, liquidate, or net any security-based swap by reason of the appointment of the FDIC as receiver, notwithstanding the agreement of the parties in the security-based swap trading relationship documentation, and that the FDIC may have certain rights to transfer security-based swaps of the covered party under section 210(c)(9)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5390(c)(9)(A), or 12 U.S.C. 1821(e)(9)(A); and

(iv) An agreement between the security-based swap dealer or major security-based swap participant and its counterparty to provide notice if either it or its counterparty becomes or ceases to be an insured depository institution or a financial company.

(6) The security-based swap trading relationship documentation of each security-based swap dealer and major security-based swap participant shall contain a notice that, upon acceptance of a security-based swap by a clearing agency:

(i) The original security-based swap is extinguished;

(ii) The original security-based swap is replaced by equal and opposite security-based swaps with the clearing agency; and

(iii) All terms of the security-based swap shall conform to the product specifications of the cleared security-based swap established under the clearing agency's rules.

(c) *Audit of security-based swap trading relationship documentation.* Each security-based swap dealer and major security-based swap participant shall have an independent auditor conduct periodic audits sufficient to identify any material weakness in its documentation policies and procedures required by this section. A record of the results of each audit shall be retained.

■ 7. Section 240.17a–3 is amended by adding paragraph (a)(31) to read as follows:

§ 240.17a–3 Records to be made by certain exchange members, brokers and dealers.

* * * * *

(a) * * *

(31)(i) A record of each security-based swap portfolio reconciliation, whether conducted pursuant to § 240.15Fi–3 or otherwise, including the dates of the security-based swap portfolio reconciliation, the number of portfolio reconciliation discrepancies, the number of security-based swap valuation disputes (including the time-to-resolution of each valuation dispute and the age of outstanding valuation disputes, categorized by transaction and counterparty), and the name of the third-party entity performing the security-based swap portfolio reconciliation, if any.

(ii) A copy of each notification required to be provided to the Commission pursuant to § 240.15Fi–3(c).

(iii) A record of each bilateral offset and each bilateral portfolio compression exercise or multilateral portfolio compression exercise in which it participates, whether conducted pursuant to § 240.15Fi–4 or otherwise, including the dates of the offset or compression, the security-based swaps included in the offset or compression, the identity of the counterparties participating in the offset or compression, the results of the compression, and the name of the third-party entity performing the offset or compression, if any.

* * * * *

■ 8. Section 240.17a–4 is amended by revising paragraph (b)(1) and adding paragraphs (e)(11) and (12) to read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(b) * * *

(1) All records required to be made pursuant to § 240.17a–3(a)(4), (6) through (11), (16), (18) through (20), and (25) through (31), and analogous records created pursuant to § 240.17a–3(e).

* * * * *

(e) * * *

(11) The written policies and procedures required pursuant to §§ 240.15Fi–3, 240.15Fi–4, and 240.15Fi–5 until three years after termination of the use of the policies and procedures.

(12)(i) Each written agreement with counterparties on the terms of portfolio reconciliation with those counterparties as required to be created under § 240.15Fi–3(a)(1) and (b)(1) until three years after the termination of the agreement and all transactions governed thereby.

(ii) Security-based swap trading relationship documentation with counterparties required to be created under § 240.15Fi–5 until three years after the termination of such documentation and all transactions governed thereby.

(iii) A record of the results of each audit required to be performed pursuant to § 240.15Fi–5(c) until three years after the conclusion of the audit.

* * * * *

■ 9. Section 240.18a–5 is amended by adding paragraphs (a)(18) and (b)(14) to read as follows:

§ 240.18a–5 Records to be made by certain security-based swap dealers and major security-based swap participants.

* * * * *

(a) * * *

(18)(i) A record of each security-based swap portfolio reconciliation, whether conducted pursuant to § 240.15Fi–3 or otherwise, including the dates of the security-based swap portfolio reconciliation, the number of portfolio reconciliation discrepancies, the number of security-based swap valuation disputes (including the time-to-resolution of each valuation dispute and the age of outstanding valuation disputes, categorized by transaction and counterparty), and the name of the third-party entity performing the security-based swap portfolio reconciliation, if any.

(ii) A copy of each notification required to be provided to the Commission pursuant to § 240.15Fi–3(c).

(iii) A record of each bilateral offset and each bilateral portfolio compression exercise or multilateral portfolio compression exercise in which it participates, whether conducted pursuant to § 240.15Fi–4 or otherwise, including the dates of the offset or compression, the security-based swaps included in the offset or compression, the identity of the counterparties participating in the offset or compression, the results of the compression, and the name of the third-party entity performing the offset or compression, if any.

(b) * * *

(14)(i) A record of each security-based swap portfolio reconciliation, whether conducted pursuant to § 240.15Fi–3 or otherwise, including the dates of the security-based swap portfolio reconciliation, the number of portfolio reconciliation discrepancies, the number of security-based swap valuation disputes (including the time-to-resolution of each valuation dispute and the age of outstanding valuation disputes, categorized by transaction and counterparty), and the name of the third-party entity performing the security-based swap portfolio reconciliation, if any.

(ii) A copy of each notification required to be provided to the Commission pursuant to § 240.15Fi–3(c).

(iii) A record of each bilateral offset and each bilateral portfolio compression exercise or multilateral portfolio compression exercise in which it participates, whether conducted pursuant to § 240.15Fi–4 or otherwise, including the dates of the offset or compression, the security-based swaps included in the offset or compression, the identity of the counterparties participating in the offset or compression, the results of the compression, and the name of the third-party entity performing the offset or compression, if any.

* * * * *

■ 10. Section 240.18a–6 is amended by revising paragraphs (b)(1)(i) and (b)(2)(i) and adding paragraphs (d)(4) and (5) to read as follows:

§ 240.18a–6 Records to be preserved by certain security-based swap dealers and major security-based swap participants.

* * * * *

(b) * * *

(1) * * *

(i) All records required to be made pursuant to § 240.18a–5(a)(5) through (9) and (12) through (18).

* * * * *

(2) * * *

(i) All records required to be made pursuant to § 240.18a–5(b)(4) through (7) and (9) through (14).

* * * * *

(d) * * *

(4) The written policies and procedures required pursuant to §§ 240.15Fi–3, 240.15Fi–4, and 240.15Fi–5 until three years after termination of the use of the policies and procedures.

(5)(i) Each written agreement with counterparties on the terms of portfolio reconciliation with those counterparties as required to be created under § 240.15Fi–3(a)(1) and (b)(1) until three years after the termination of the agreement and all transactions governed thereby.

(ii) Security-based swap trading relationship documentation with counterparties required to be created under § 240.15Fi–5 until three years after the termination of such documentation and all transactions governed thereby.

(iii) A record of the results of each audit required to be performed pursuant to § 240.15Fi–5(c) until three years after the conclusion of the audit.

* * * * *

Dated: December 18, 2019.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–27762 Filed 2–3–20; 8:45 am]

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