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DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 5

[Docket No. DHS–2020–0003]

Disclosure of Records and Information Regulations; Technical Amendment

AGENCY: DHS, Privacy Office.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (''DHS'') is updating its regulations related to the procedures for disclosure of records information under the Privacy Act. Specifically, DHS is updating its regulations to state that the DHS Office of the General Counsel or its designee is the authorized appeals authority with respect to requests made under the Privacy Act.

DATES: This final rule is effective on February 28, 2020.

FOR FURTHER INFORMATION CONTACT: For information about this document call Jonathan R. Cantor, Chief Privacy Officer (Acting), telephone 202–343–1717.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Rule

The Department of Homeland Security (''DHS'') is updating its regulations to state that the DHS Office of the General Counsel or its designee is the authorized appeals authority with respect to requests made under the Privacy Act.[1] Pursuant to the Privacy Act, DHS promulgated regulations implementing procedures for processing requests made by an individual regarding records or information pertaining to that individual. *See* 5 U.S.C. 552a(f); 6 CFR 5.20–5.36. The regulations provide for appeals within the agency after initial adverse determinations. *See* 5 U.S.C. 552a(f)(4); 33 CFR 5.24, 5.25, 5.26, 5.27. In all instances where these regulations designate the appellate authority as the Associate General Counsel (General Law), this technical amendment updates the regulations to reflect that the appellate authority is the Office of General Counsel or its designee.

II. Regulatory History

DHS did not publish a notice of proposed rulemaking for this rule. Under Title 5 of the United States Code (U.S.C.), Section 553(b)(A), this final rule is exempt from notice and public comment rulemaking requirements because the change involves rules of agency organization, procedure, or practice. In addition, under 5 U.S.C. 553(b)(B), an agency may waive the notice and comment requirements if it finds, for good cause, that notice and comment is impracticable, unnecessary, or contrary to the public interest. DHS finds that notice and comment is unnecessary under 5 U.S.C. 553(b)(B) because the change of the named appellate authority is an agency procedural update that will have no substantive effect on the public. For the same reasons, DHS finds that good cause exists under 5 U.S.C. 553(d) for making this final rule effective immediately upon publication.

III. Regulatory Analyses

DHS considered numerous statutes and executive orders related to rulemaking when developing this rule. Below are summarized analyses based on these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled ''Guidance Implementing Executive Order 13771, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017). This rule involves non-substantive changes and internal agency practices and procedures; it will not impose any additional costs on the public. The benefit of the non-substantive change that updates internal agency procedures is increased clarity and accuracy of regulations for the public.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, DHS has considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule is not preceded by a notice of proposed rulemaking. Therefore, it is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Regulatory Flexibility Act does not apply when notice and comment rulemaking is not required. This rule consists of a technical amendment to internal agency procedures and does not have any substantive effect on the regulated industry or small businesses.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

D. Environment

DHS reviews proposed actions to determine whether the National Environmental Policy Act (NEPA)

[1] *See* 5 U.S.C. 552a; 6 CFR 5.20–5.36.

applies to them and if so what degree of analysis is required. DHS Directive 023–01 Rev. 01 (Directive) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(2)(ii), 1508.4. For an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual section V.B(2)(a)–(c).

This rule is a technical amendment that updates internal agency procedures. Specifically, the amendment updates the designated appeals authority for requests made under the Privacy Act. Therefore, it clearly fits within categorical exclusion A3(a) ''Promulgation of rules . . . of a strictly administrative or procedural nature.'' Instruction Manual, Appendix A, Table 1. Furthermore, the rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental impacts. Therefore, the amendment is categorically excluded from further NEPA review.

List of Subjects in 6 CFR Part 5

Classified information, Courts, Freedom of information, Government employees, Privacy.

For the reason stated in the preamble, DHS amends 6 CFR part 5 as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301.

Subpart A also issued under 5 U.S.C. 552
Subpart B also issued under 5 U.S.C. 552a.

§ 5.24 [Amended]

■ 2. In § 5.24, remove, ''Associate General Counsel (General Law)'' and add, in its place, ''DHS Office of the General Counsel or its designee''.

§ 5.25 [Amended]

■ 3. In § 5.25, amend paragraphs (a) and (b) by removing, ''Associate General Counsel (General Law)'' and adding in its place, ''DHS Office of the General Counsel or its designee''.

§ 5.26 [Amended]

■ 4. In § 5.26(c), remove ''Associate General Counsel (General Law)'' and add in its place, ''DHS Office of the General Counsel or its designee''.

§ 5.27 [Amended]

■ 5. In § 5.27(c), remove ''Associate General Counsel (General Law)'' and addin its place ''DHS Office of the General Counsel or its designee''.

Jonathan R. Cantor,

Chief Privacy Officer (Acting), Department of Homeland Security.

[FR Doc. 2020–02943 Filed 2–27–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–SC–19–0091; SC19–930–3 FR]

Tart Cherries Grown in the States of Michigan, et al.; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Cherry Industry Administrative Board (Board) to decrease the assessment rate established for the 2019–20 and subsequent fiscal years. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective March 30, 2020.

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; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Jennie.Varela@usda.gov* or *Christian.Nissen@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202)720–8938, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries produced in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Part 930 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Board locally administers the Order and is comprised of producers and handlers of tart cherries operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, tart cherry handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable tart cherries for the 2019–20 crop year and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law

and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate from $0.0075, the rate that was established for the 2016–17 and subsequent fiscal years, to $0.00575 per pound of tart cherries handled for the 2019–20 and subsequent fiscal years. Under the marketing order, the Board also recommends an allocation of assessments for operations and for promotion activities. This action decreases the portion of assessments allocated to research and promotion activities from $0.0065 to $0.005 per pound of tart cherries and decreases the portion allocated to administrative expenses from $0.001 to $0.00075 per pound of tart cherries.

The Order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2016–17 and subsequent fiscal years, the Board recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 12, 2019, and unanimously recommended 2019–20 expenditures of $1,956,500, and an assessment rate of $0.00575 per pound of tart cherries, divided into $0.005 for promotional expenses and $0.00075 for administrative expenses. In comparison, last year's budgeted expenditures were $2,374,450. The assessment rate of $0.00575 is $0.00175 lower than the rate currently in effect. The Board recommended decreasing the assessment rate to reduce the assessment burden on handlers and utilize funds from the authorized reserve to help cover its expenses.

The major expenditures recommended by the Board for the 2019–20 year include $1,514,500 for research and promotion, $250,000 for salaries and wages, and $130,000 for administrative expenses. Budgeted expenses for these items in 2018–19 were $1,867,450, $275,000, and $130,000, respectively.

The Board derived the recommended assessment rate by considering anticipated expenses, an estimated crop of 230.74 million pounds of tart cherries, and the amount of funds available in the authorized reserve. Income derived from handler assessments, calculated at $1,326,755 (230.74 million pounds × $0.00575/pound), along with interest income and funds from the Board's authorized reserve, should be adequate to cover budgeted expenses of $1,956,500. Funds in the reserve are estimated to be $81,553 at the end of the 2019–20 fiscal year.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2019–20 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared the regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 400 producers of tart cherries in the regulated area and approximately 40 handlers of tart cherries who are subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS) and Board data, the average annual grower price for tart cherries utilized for processing during the 2018–19 season was approximately $0.196 per pound. With total utilization at 288.8 million pounds for the 2018–19 season, the total 2018–19 value of the crop utilized for processing is estimated at $56.6 million. Dividing the crop value by the estimated number of producers (400) yields an estimated average receipt per producer of $141,500. This is well below the SBA threshold for small producers.

A free on board (FOB) price of $0.80 per pound for frozen tart cherries was reported by the Food Institute during the 2018–19 season. Based on utilization, this price represents a good estimate of the price for processed cherries. Multiplying this FOB price by total utilization of 288.8 million pounds results in an estimated handler-level tart cherry value of $231 million. Dividing this figure by the number of handlers (40) yields estimated average annual handler receipts of $5.8 million, which is below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

This rule decreases the assessment rate collected from handlers for the 2019–20 and subsequent fiscal years from $0.0075 to $0.00575 per pound of tart cherries, with $0.005 per pound allocated to promotion and research and $0.00075 per pound allocated to administrative expenses. The Board unanimously recommended 2019–20 expenditures of $1,956,500, and an assessment rate of $0.00575 per pound of tart cherries. The assessment rate of $0.00575 per pound is $0.00175 lower than the 2018–19 rate. The volume of assessable tart cherries for the 2019–20 fiscal year is estimated at 230.74 million. Thus, the $0.00575 rate should

provide $1,326,755 in assessment income (230.74 million pounds × $0.00575/pound). Income derived from handler assessments, along with interest income and funds from the Board's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2019–20 year include $1,514,500 for research and promotion, $250,000 for salaries and wages, and $130,000 for administrative expenses. Budgeted expenses for these items in 2018–19 were $1,867,450, $275,000, and $130,000, respectively.

The Board recommended decreasing the assessment rate and utilizing funds from its authorized reserve in order to relieve the assessment burden on handlers. This action will use the Board's reserve balance and maintain it below the levels authorized under the Order.

Prior to arriving at this budget and assessment rate, the Board considered information from the Board's Executive Committee (Committee). Alternative expenditure levels were discussed by the Committee, which reviewed the relative value of various activities to the tart cherry industry. The Committee determined all program activities were adequately funded and essential to the functionality of the Order; thus, no alternate expenditure levels were deemed appropriate. Additionally, the Board discussed alternatives of maintaining the current assessment rate of $0.0075 per pound or reducing marketing expenditures to achieve a lower rate. However, the Board determined it would be appropriate to reduce the assessment burden to handlers using some of the reserves built up following recurring seasons with large crops. The Board also determined the recommended promotion expenditures, which are lower than in previous seasons, were appropriate and further reduction might hinder sales growth.

Based on these discussions and estimated deliveries, the recommended assessment rate of $0.00575 per pound of tart cherries should provide $1,326,755 in assessment income. Further, the Board recommended allocating $0.005 for promotional expenses and $0.00075 for administrative expenses. The Board determined that assessment revenue, along with funds from the reserve and interest income, should be adequate to cover budgeted expenses for the 2019–20 fiscal year.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2019–20 crop year should be approximately $0.20 per pound of tart cherries. Therefore, the estimated assessment revenue for the 2019–20 crop year as a percentage of total grower revenue would be about 2.9 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may also reduce the burden on producers.

The Board's meeting was widely publicized throughout the tart cherry industry. All interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 12, 2019, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581–0177, Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on November 26, 2019 (84 FR 65021). Copies of the proposed rule were also mailed or sent via email to all tart cherry handlers. The proposal was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending December 26, 2019, was provided for interested persons to respond to the proposal.

No comments were received. Accordingly, no changes will be made to the proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 930.200 is revised to read as follows:

§ 930.200 Assessment rate.

On and after October 1, 2019, the assessment rate imposed on handlers shall be $0.00575 per pound of tart cherries grown in the production area and utilized in the production of tart cherry products. Included in this rate is $0.005 per pound of tart cherries to cover the cost of the research and promotion program and $0.00075 per pound of tart cherries to cover administrative expenses.

Dated: February 18, 2020.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–03524 Filed 2–27–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. APHIS–2017–0105]

RIN 0579–AE43

Establishment of Regulations for the Evaluation and Recognition of the Animal Health Status of Compartments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are establishing standards to allow us to recognize compartments for animal disease status, consistent with World Organization for Animal Health international standards. Under this action, when a foreign government submits a request for recognition of a compartment, we will conduct a compartmentalization evaluation based on a list of factors that parallel those we use when conducting regionalization evaluations, and will provide for public notice of and comment on the risk assessment. We are also adding provisions for imposing import restrictions or prohibitions when a compartment we have recognized as disease-free experiences an outbreak, and for lifting those sanctions once the outbreak has been controlled. These standards for compartmentalization will provide a means for preserving international trade when regionalization is not feasible.

DATES: Effective March 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dr. Lisa Rochette, Staff Officer, Regionalization Evaluation Services, Strategy and Policy, VS, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; (919) 855–7276; *lisa.t.rochette@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, ''Importation of Animals and Animal Products; Procedures for Requesting Recognition of Regions'' (referred to below as the regulations), set forth the process by which a foreign government may request recognition of the animal health status of a region. In order to conduct a valid evaluation of a region's animal health status and any risk that may be associated with the action requested, it is important for the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture to have pertinent information regarding the region, its disease history, its animal health practices and capabilities, and any effect its import practices or relationship to adjacent regions might have on disease risk.

When regionalization is not feasible, compartmentalization is a means that may be used to preserve trade. Under compartmentalization, a country may define and manage animal subpopulations of distinct health status and under common biosecurity management within its territory, in accordance with the guidelines in the World Organization for Animal Health (OIE) Terrestrial Animal Health Code, for the purpose of disease control and international trade. Compartmentalization is distinct from regionalization, which involves the recognition of geographical zones of a country that can be identified and characterized by their level of risk for different diseases, but the two are not mutually exclusive.

On April 3, 2019, we published in the **Federal Register** (84 FR 12955–12959, Docket No. APHIS–2017–0105) a proposal [1] to amend the regulations by establishing standards to allow us to recognize compartments for animal disease status, consistent with OIE international standards.

We solicited comments concerning our proposal for 60 days ending June 3, 2019. We received seven comments on the proposal. They were from a foreign government, meat and poultry trade organizations, an organization representing poultry veterinarians, and the public. All responses were in favor of the proposed rule, though one requested further information regarding issues largely related to implementation of the proposed regulations. The comments and APHIS' responses are discussed below.

Compartment Evaluation

The commenter asked how APHIS will prioritize the compartmentalization requests it receives.

Similar to regionalization evaluations, APHIS will evaluate compartmentalization requests in the order they are received and process them with the resources available.

The commenter wanted to know how long it will take for APHIS to begin evaluating a compartmentalization request after we receive it.

As with regionalization evaluations, the timeframe to initiate and complete a compartmentalization evaluation is subject to several factors, including the timely submission of supporting information by the country requesting the evaluation. Supporting information required as part of the request is listed in § 92.2(d) of this final rule.

The commenter asked how we plan to conduct compartmentalization evaluations. Specifically, the commenter asked whether APHIS will perform evaluations on each of the compartments proposed by the country's national competent authority, or will APHIS instead recognize the competent authority's evaluation and approval of compartments presented by companies in that country.

Unlike regionalization, where the national competent authority of a country provides oversight and programs to all entities within the region, compartments are a function of the individual company that controls the compartment. We anticipate a limited number of compartments per country, and therefore expect to evaluate and approve the national competent authority's program and all individual compartment's controlling company and compartment components. We may also consider developing a compartmentalization systems approach if several compartments become approved in a country. This approach would be dependent on our assessment of the ability of the national competent authority of that country to administer and oversee a compartmentalization program.

A commenter asked if APHIS will conduct site visits to evaluate compartments and what the role of the requesting country's government would be in the evaluation process.

As one of the requirements for our evaluation of a country's compartmentalization program, we will conduct an initial site visit to compartments and associated facilities such as national competent authority offices and laboratories. We may also require additional site visits to approve compartments that become recognized by the country's national competent authority after our initial site visit, as well as visits to confirm ongoing satisfactory maintenance of the compartmentalization program or the status of an individual compartment. We intend to collaborate with the country's national competent authority when conducting each compartment evaluation.

The commenter asked what happens if APHIS does not approve a country's compartment request.

As with regionalization evaluations, we will use a risk assessment framework

[1] To view the proposed rule, the supporting document, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0105.*

to document compartmentalization evaluations. The risk assessment draws upon eight factors, listed in § 92.2, required for a country's national competent authority to effectively administer a compartmentalization program, as well as technical criteria an individual compartment must meet. If during the evaluation we find minor deficiencies in the country's compartmentalization program or in an individual compartment, we may allow the requesting country's national competent authority and the company involved to correct the deficiencies. However, if we find major deficiencies in competent authority oversight or company implementation of a compartment, we will not approve the program or the compartment.

If we do not approve a compartmentalization program or individual compartment, we may not draft a formal risk evaluation document, but we will inform the requesting country of the reasons that the program or the compartment they have requested does not meet APHIS' criteria.

The commenter asked what the procedure would be for restoring a compartment's status after a disease outbreak.

A livestock or poultry disease outbreak involving animals for which the compartment was approved constitutes a major noncompliance. If a component [2] within a certified compartment is found to have a major noncompliance, the entire compartment is immediately suspended. To regain approved status, APHIS expects the country's national competent authority to investigate the noncompliance and submit a new request for APHIS to evaluate the compartment, as indicated in § 92.4. APHIS may elect to conduct its own evaluation, which may include a site visit. Finally, a disease outbreak within the compartment involving animals other than those for which the compartment is approved would be subject to regulations and conditions for export pertaining to that disease and the animals involved.

The commenter asked how APHIS will protect the privacy of business and confidential proprietary information submitted with compartmentalization requests, particularly considering that we intend to publish evaluations and supporting documents for public comment.

When providing information to APHIS, submitters must indicate that the provided information is confidential business information. Upon intake, APHIS will review this information to ensure that the provided information is not information that the submitter would ordinarily disclose to the public. APHIS intends to protect confidential business information in accordance with legal and regulatory obligations and practice.

Finally, the commenter asked if the consultations and decisions resulting from compartmentalization requests will be published on the APHIS website.

A list of countries requesting an APHIS compartmentalization evaluation and a description of each compartment requested will be available on the APHIS website.[3] If our evaluation of the information submitted indicates that a request can be safely granted, we will post our evaluation and supporting documentation for public comment on *www.regulations.gov* and announce the availability of these documents through a notice in the **Federal Register**. Once we review all comments we receive on the evaluation, we will make a final determination regarding the compartmentalization request and announce our decision in a follow-up **Federal Register** notice. We will also maintain a list of approved national competent authority compartmentalization programs on the aforementioned APHIS website.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. This final rule is not an Executive Order 13771 regulatory action because this final rule is not significant under Executive Order 12866. Further, APHIS considers this rule to be a deregulatory action under Executive Order 13771 as the action is intended to minimize trade disruptions and could thereby provide benefits to producers and consumers.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

APHIS is establishing standards to allow us to recognize compartments for animal disease status, consistent with World Organization for Animal Health international standards. Like our existing process for recognizing foreign regions for disease status, our process will include information requirements for evaluating the animal health status of a compartment for which a market access request has been submitted. Under this rule, we will perform a risk assessment to evaluate the animal health status of a compartment. If after conducting the evaluation, we deem the risk of importing animals or animal products from that compartment to be acceptable, we will publish a **Federal Register** notice announcing the availability of the risk documentation for public review and comment.

This rule will add compartmentalization as an option for evaluating disease status, but not propose a specific implementation of this option. Compartmentalization may be used when regionalization's broader geographic requirements are more costly or simply not feasible. The potential economic effects of imports based on a compartmentalization approach depend on the disease status evaluation specific to the particular commodity and facility, and the expected volume of the commodity imported under this option.

This final rule sets forth compartmentalization as a means of minimizing trade disruptions and delineate the information requirements that will be used for the evaluation of compartments. There are no costs or cost savings that will directly result from this rule. Only in the application of compartmentalization might gains from related trade be realized.

The APHIS Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this final rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995

[2] A compartment is made up of at least two sites or facilities, known as components. For example, components of a compartment could include a feed mill, farm, hatchery, or egg depot.

[3] The compartmentalization request list can be found at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/export/international-standard-setting-activities-oie/regionalization/ct_reg_request.*

(44 U.S.C. 3501 *et seq.*), the information collection requirements included in this final rule have already been approved by the Office of Management and Budget under control number 0579–0040.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this final rule, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Region, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 92 as follows:

PART 92—IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS AND COMPARTMENTS

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. The heading of part 92 is revised to read as set forth above.

■ 3. Section 92.1 is amended by adding in alphabetical order a definition of *Compartment* to read as follows:

§ 92.1 Definitions.

* * * * *

Compartment. Any defined animal subpopulation contained in one or more establishments under a common biosecurity management system for which surveillance, control, and biosecurity measures have been applied with respect to a specific disease.

* * * * *

■ 4. Section 92.2 is revised to read as follows:

§ 92.2 Application for recognition of the animal health status of a region or a compartment.

(a) The representative of the national government(s) of any country or countries who has the authority to make such a request may request that APHIS recognize the animal health status of a region or a compartment.[1] Such requests must be made in English and must be sent to the Administrator, c/o Strategy and Policy, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231. (Where possible, include a copy of the request and accompanying information in electronic format.)

(b) Requests for recognition of the animal health status of a region, other than requests submitted in accordance with paragraph (c) of this section, must include, in English, the information in paragraphs (b)(1) through (8) of this section about the region. More detailed information regarding the specific types of information that will enable APHIS to most expeditiously conduct an evaluation of the request is available at: *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/export/international-standard-setting-activities-oie/regionalization/ct_reg_request* or by contacting the National Director, Regionalization Evaluation Services, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737.

(1) Scope of the evaluation being requested.

(2) Veterinary control and oversight.

(3) Disease history and vaccination practices.

(4) Livestock demographics and traceability.

(5) Epidemiological separation from potential sources of infection.

(6) Surveillance.

(7) Diagnostic laboratory capabilities.

(8) Emergency preparedness and response.

(c) Requests for recognition that a region is historically free of a disease based on the amount of time that has elapsed since the disease last occurred in a region, if it has ever occurred, must include, in English, the information in paragraphs (c)(1) through (6) of this section about the region. More detailed information regarding the specific types of information that will enable APHIS to most expeditiously conduct an evaluation of the request is available at: *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/export/international-standard-setting-activities-oie/regionalization/ct_reg_request* or by contacting the National Director, Regionalization Evaluation Services, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737. For a region to be considered historically free of a disease, the disease must not have been reported in domestic livestock for at least the past 25 years and must not have been reported in wildlife for at least the past 10 years.

(1) Scope of the evaluation being requested.

(2) Veterinary control and oversight.

(3) Disease history and vaccination practices.

(4) Disease notification.

(5) Disease detection.

(6) Barriers to disease introduction.

(d) Requests for recognition of the animal health status of a compartment must include, in English, the information in paragraphs (d)(1) through (8) of this section about the compartment. More detailed information regarding the specific types of information that will enable APHIS to most expeditiously conduct an evaluation of the request is available at: *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/export/international-standard-setting-activities-oie/regionalization/ct_reg_request* or by contacting the National Director, Regionalization Evaluation Services, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737.

(1) Scope of the evaluation being requested.

(2) Veterinary control and oversight of the compartment.

(3) Disease history and vaccination practices.

(4) Livestock or poultry commodity movement and traceability.

(5) Epidemiologic separation of the compartment from potential sources of infection.

(6) Surveillance.

(7) Diagnostic laboratory capabilities.

(8) Emergency preparedness and response.

(e) A list of those regions for which an APHIS recognition of their animal health status has been requested, the disease(s) under evaluation, and, if available, the animal(s) or product(s) the region wishes to export, is available at: *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/export/international-standard-setting-activities-oie/regionalization/ct_reg_request.*

(f) A list of countries that have requested an APHIS compartmentalization evaluation, and a description of the requested compartment is available at: *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/export/international-standard-setting-activities-oie/regionalization/ct_reg_request.*

(g) If, after review and evaluation of the information submitted in accordance with paragraph (b), (c), or (d) of this section, APHIS believes the request can be safely granted, APHIS will indicate its intent and make its evaluation available for public comment

[1] Additionally, APHIS may choose to initiate an evaluation of the animal health status of a foreign region or compartment on its own initiative. In such cases, APHIS will follow the same evaluation and notification procedures set forth in this section.

through a document published in the **Federal Register**.

(h) APHIS will provide a period of time during which the public may comment on its evaluation. During the comment period, the public will have access to the information upon which APHIS based its evaluation, as well as the evaluation itself. Once APHIS has reviewed all comments received, it will make a final determination regarding the request and will publish that determination in the **Federal Register**.

(i) If a region or compartment is granted animal health status under the provisions of this section, the representative of the national government(s) of any country or countries who has the authority to make a regionalization or compartmentalization request may be required to submit additional information pertaining to animal health status or allow APHIS to conduct additional information collection activities in order for that region or compartment to maintain its animal health status.

(Approved by the Office of Management and Budget under control number 0579–0040)

■ 5. Section 92.4 is revised to read as follows:

§ 92.4 Reestablishment of a region or compartment's disease-free status.

This section applies to regions or compartments that are designated under this subchapter as free of a specific animal disease and then experience an outbreak of that disease.

(a) *Interim designation.* If a region or a compartment recognized as free of a specified animal disease in this subchapter experiences an outbreak of that disease, APHIS will take immediate action to prohibit or restrict imports of animals and animal products from the entire region, a portion of that region, or the compartment. APHIS will inform the public as soon as possible of the prohibitions and restrictions by means of a notice in the **Federal Register**.

(b) *Reassessment of the disease situation.* (1) Following removal of disease-free status from all or part of a region or a compartment, APHIS may reassess the disease situation in that region or compartment to determine whether it is necessary to continue the interim prohibitions or restrictions. In reassessing disease status, APHIS will take into consideration the standards of the World Organization for Animal Health (OIE) for reinstatement of disease-free status, as well as all relevant information obtained through public comments or collected by or submitted to APHIS through other means.

(2) Prior to taking any action to relieve prohibitions or restrictions, APHIS will make information regarding its reassessment of the region's or compartment's disease status available to the public for comment. APHIS will announce the availability of this information by means of a notice in the **Federal Register**.

(c) *Determination.* Based on the reassessment conducted in accordance with paragraph (b) of this section regarding the reassessment information, APHIS will take one of the following actions:

(1) Publish a notice in the **Federal Register** of its decision to reinstate the disease-free status of the region, portion of the region, or compartment;

(2) Publish a notice in the **Federal Register** of its decision to continue the prohibitions or restrictions on the imports of animals and animal products from that region or compartment; or

(3) Publish another document in the **Federal Register** for comment.

Done in Washington, DC, this 19th day of February 2020.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–03719 Filed 2–27–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–0330; Special Conditions No. 25–761–SC]

Special Conditions: The Boeing Company Model 777–9 Series; Overhead Flight Attendant Rest Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Company (Boeing) Model 777–9 series airplane. This airplane 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 an overhead flight attendant rest (OFAR) compartment. 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 30, 2020.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, Airframe and Cabin Safety Section, 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 206–231–3209; email *shannon.lennon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 24, 2018, The Boeing Company applied for an amendment to Type Certificate No. T00001SE to include the new Model 777–9 series airplane. The Boeing Model 777–9 series airplane, which is a derivative of the 777–300ER currently approved under Type Certificate No. T00001SE, is a twin-engine, transport category airplane with seating for up to 495 passengers depending upon airplane configuration, and a maximum takeoff weight of approximately 775,000 lbs.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 777–9 series airplane continues to meet the applicable provisions of part 25, as amended by amendments 25–1 through 25–139, and parts 26, 34, and 36, and the regulations listed in Type Certificate No. T00001SE 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 777–9 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, 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 777–9

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 Boeing Model 777–9 series airplane will incorporate the following novel or unusual design features:

This airplane will have an installation of an OFAR compartment. The OFAR compartment of the Boeing Model 777–9 series airplane is novel and unusual due to its design, location, and use on the airplane. It is located in the overhead area of the passenger compartment and crewmembers may occupy this compartment for crew rest purposes during flight.

Discussion

Boeing has previously installed certified OFAR compartments on Boeing Model 777 series airplanes in varied locations, such as the main passenger seating area, the overhead space above the main passenger cabin seating area, and below the passenger cabin seating area within the cargo compartment. In each case, the Administrator determined that the applicable regulations did not provide all of the necessary requirements because each installation had novel or unusual features by virtue of its design, location, and use on the airplane.

When the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16. The special conditions contain safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

For the Boeing Model 777–9 series airplane, the OFAR compartment is located in the overhead space, above the main passenger cabin seating area, adjacent to Door 5. The OFAR compartment will contain six, eight, or ten private berths depending upon customer configuration. Additionally, only crewmembers who have been trained in OFAR procedures will occupy this compartment, and do so only in flight, not during taxi, takeoff, or landing. Crewmembers will access the OFAR compartment from the main deck by stairs through a vestibule. In addition, a secondary evacuation route, which opens directly into the main passenger seating area, will be available as an alternate route for evacuating occupants of the compartment. The compartment will provide a smoke detection system, an oxygen system, and occupant amenities.

The FAA's design standards, including part § 25.853 (a), (e), and (h), do not adequately address the Boeing Model 777–9 series airplane OFAR compartment due to its design, location, and use on the airplane. This compartment is novel in that it is located in the overhead area of the passenger compartment and crewmembers may occupy this compartment for crew rest purposes during flight. Due to the novel or unusual features associated with the installation of this compartment, the FAA finds that special conditions are necessary to provide a level of safety equal to that established by the airworthiness regulations.

Boeing originally requested that Special Conditions No. 25–230–SC (68 FR 17513, April 9, 2003) for the OFAR compartment on the Model 777 airplane be made applicable to the Boeing Model 777–9 series airplane. However, after the issuance of Special Conditions No. 25–230–SC, the FAA issued Special Conditions No. 25–419–SC (76 FR 10482, February 25, 2011), for OFAR compartments allowed to be occupied during flight on Boeing Model 787 series airplanes, with changes to better address oxygen systems and fire suppression. Those special conditions reflected the methodology necessary to provide an equivalent level of safety for remote OFAR compartments, therefore new special conditions were proposed for these design features on Boeing Model 777–9 series airplanes.

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

Notice of Proposed Special Conditions No. 25–19–05–SC for the Boeing Model 777–9 series airplane was published in the **Federal Register** on August 19, 2019 (84 FR 42842). The FAA received one comment, from Boeing.

Boeing requested that the FAA specify that analyses could be used in lieu of flight tests to show compliance with special conditions numbers 10, 11, 12e, and 18b. The FAA does not agree with the requested change. Flight testing is necessary to establish in-flight ventilation conditions, in order to assess the performance of smoke detectors, the penetration of smoke from the OFAR to the cabin, and the capability of the suppression system. Also, the current language has been used on similar special conditions, and these special conditions permitted the use of the similarity analysis that Boeing has requested. The text of this special condition (*i.e., the applicant must conduct flight tests to show compliance with this requirement*) does not eliminate the use of similarity analysis to justify validity and applicability of previously generated flight test data in lieu of conducting a new flight test. Applicants may propose the use of flight test certification data from a previously certificated design. The FAA's acceptance of the use of that data to determine compliance will depend upon the comparison between the previously certificated design and the proposed design in order to show that the previously generated flight test data is valid and applicable to represent the performance of proposed design and will show compliance to the special condition. Insertion of the term, analysis, in the conditions is unnecessary based on previous acceptance of the similarity approach described above. Furthermore, the addition of the term, analysis, changes the meaning of the conditions, which may subsequently result in confusion, and/or use of unintended compliance approaches. Therefore, the FAA finds that no change to the special condition is warranted.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 777–9 series airplane. Should Boeing 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 certain novel or unusual design features on one model series of airplanes. 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 the Boeing Model 777–9 series airplane.

Overhead Flight Attendant Rest (OFAR) Special Conditions

1. *OFAR Compartment Occupancy.* Occupancy of the OFAR compartment is limited to the total number of installed bunks and seats in each compartment. An approved seat or berth—able to withstand the maximum flight loads when occupied for each occupant permitted in the OFAR compartment—must be available. Maximum occupancy in the OFAR compartment is six, eight, or ten crewmembers during flight depending upon customer configuration.

a. Appropriate placards must be located inside and outside each entrance to the OFAR compartment to indicate:

(1) The maximum number of occupants allowed during flight.

(2) Occupancy is restricted to crewmembers who are trained in the evacuation procedures for the OFAR compartment.

(3) Occupancy is prohibited during taxi, take-off, and landing.

(4) Smoking is prohibited in the OFAR compartment.

(5) That stowage in the OFAR compartment must be limited to emergency equipment, airplane-supplied equipment (*e.g.,* bedding), and crew personal luggage; the stowage of cargo and passenger baggage is not allowed.

b. At least one ashtray must be located on both the inside and the outside of any entrance to the OFAR compartment.

c. A limitation in the airplane flight manual, or other means, must be established to restrict occupancy to crewmembers that the pilot in command has determined to be trained in the emergency procedures for the OFAR compartment.

d. A limitation in the airplane flight manual, or other means, must be established to restrict occupancy to crewmembers that have received training to be able to rapidly use the evacuation routes of the OFAR compartment.

e. A means must be in place for any door installed between the OFAR compartment and the passenger cabin to be quickly opened from inside the compartment, even when crowding occurs at each side of the door.

f. For all OFAR compartment doors installed, a means must be in place that precludes anyone from being trapped inside the OFAR compartment. If a manufacturer or operator installs a locking mechanism on a door, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the OFAR compartment at any time.

g. The means of opening doors and hatches to the OFAR compartment must be simple and obvious. Crewmembers must be able to close OFAR compartment doors and hatches from the main passenger cabin. Doors or hatches that separate the OFAR compartment from the main deck must not adversely affect evacuation of occupants on the main deck, for example, by slowing evacuation by encroaching into aisles, or causing injury to those occupants during opening of doors, or while doors are opened.

2. *Emergency Evacuation Routes.* At least two emergency evacuation routes must be available for occupants of the OFAR compartment to evacuate rapidly to the main cabin. OFAR compartment doors must be able to close these evacuation routes from the main passenger cabin after evacuation. In addition–

a. These routes must be located with sufficient separation within the OFAR compartment to minimize the possibility of an event either inside or outside of the OFAR compartment rendering both routes inoperative.

b. The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the OFAR compartment outlets.

c. One of the two OFAR evacuation routes must not be located where egress from the OFAR compartment may be impeded during times when normal movement or occupancy is allowed or evacuation by passengers occurs (for example, the main aisle, cross aisle, or galley complex). If an evacuation route is in an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck.

d. If low headroom is at or near the evacuation route, provisions must be made to prevent or to protect occupants of the OFAR compartment from head injury.

e. Use of evacuation routes must not depend on any powered device.

f. If an OFAR compartment outlet is over an area of passenger seats, a maximum of five passengers may be displaced from their seats temporarily during the process of evacuating an incapacitated person(s).

g. If an evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

h. OFAR compartment emergency evacuation procedures—including procedures for emergency evacuation of an incapacitated occupant from the OFAR compartment—must be established by the applicant. The applicant must transmit all of these procedures to each owner and operator for incorporation into its training programs and appropriate operational manuals.

i. A limitation must be included in the airplane flight manual, or other suitable means, to require that crewmembers are trained in the use of the OFAR compartment evacuation routes.

3. *Evacuation of Incapacitated Person.* A means must be available for evacuating an incapacitated person (representative of a 95th percentile male) from the OFAR compartment to the passenger cabin floor.

Exit Signs and Placards. The following exit signs and placards, meeting the following criteria, must be placed in the OFAR compartment:

a. At least one exit sign, located near each OFAR compartment outlet, meeting the emergency lighting requirements of § 25.812(b)(1)(i).

(1) One allowable exception to the minimum area requirement of § 25.812(b)(1)(i) is an exit sign having a reduced background area of no less than 5.3 square inches that is installed where the material surrounding the exit sign is light in color (such as white, cream, or light beige).

(2) If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch-wide background border around the letters is acceptable.

(3) Another allowable exception requirement of § 25.812(b)(1)(i) in the OFAR compartment is a sign with a symbol that the FAA has determined to be equivalent for use as an exit sign that meets § 25.811(d).

b. An appropriate placard for general access should be located conspicuously on or near each OFAR compartment door or hatch that defines the location and the operating instructions for access to and operation of the outlet door or hatch.

c. Placards must be readable from a distance of 30 inches under emergency lighting conditions.

d. The door handles, hatch handles, and operating-instruction placards required by Special Condition 4(b) of these special conditions must be illuminated to at least 160 micro lamberts under emergency lighting conditions.

5. *Emergency Illumination.* A means must be available, in the event of failure of the aircraft's main power system, and of the normal OFAR compartment lighting system, for emergency illumination to be automatically provided for the OFAR compartment.

a. This emergency illumination must be powered independent of the main lighting system.

b. The sources of general cabin illumination of the OFAR may be common to both the emergency and the main lighting systems, if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

c. The emergency illumination level must be sufficient to allow occupants of the OFAR compartment to locate and move to the main passenger cabin floor by means of each evacuation route.

d. The emergency illumination level must be sufficient, with the privacy curtains in the closed position, for each occupant of the OFAR compartment to locate a deployed oxygen mask required by Special Condition 13 of these special conditions.

6. *Two-Way Voice Communications.* A means must be available for two-way voice communications between crewmembers on the flight deck and occupants of the OFAR compartment.

a. Two-way communications must also be available between occupants of the OFAR compartment and each flight attendant station in the passenger cabin that is required per § 25.1423(g) to have a microphone for the public address system.

b. The public address system must be able to communicate the relevant safety information to the crewmembers in the OFAR compartment (for example, fire in flight, aircraft depressurization, and preparation of the compartment for landing).

7. *Emergency Alarm System.* A means must be available for manual activation of an aural emergency alarm system, audible during normal and emergency conditions that enable crewmembers on the flight deck and at each pair of the required floor-level emergency exits to alert occupants of the OFAR compartment of an emergency. The use of a public address or crew interphone system is acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight and after the shutdown or failure of all engines and auxiliary power units for a period of at least ten minutes.

8. *Seatbelt Fasten Signal.* A signal, readily detectable by seated or standing occupants of the OFAR compartment, must be in place to indicate when seat belts should be fastened.

a. If the OFAR compartment has no seats, at least one means must be provided to cover anticipated turbulence (*e.g.,* sufficient handholds).

b. Seatbelt-type restraints must be provided for berths and must be compatible for the sleeping position during cruise conditions.

c. A placard on each berth must require that these restraints be fastened when occupied.

d. If compliance with any of the other requirements of these special conditions predicates a specific head position, a placard must identify that head position.

9. *Protective Breathing Equipment (PBE).* In lieu of the requirements specified in § 25.1439(a) pertaining to PBE in isolated compartments, and to provide a level of safety equivalent that is provided to occupants of an isolated galley, the following equipment must be provided in the OFAR compartment:

a. Two PBE devices suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater. All PBE devices must be approved to Technical Standard Order (TSO)-C116 or equivalent.

b. At least one approved, hand-held fire extinguisher appropriate for the kinds of fires likely to occur.

c. One flashlight.

Note: Additional PBE devices and fire extinguishers in specific locations, beyond the minimum numbers prescribed in Special Condition 9, may be required as a result of the egress analysis accomplished to satisfy Special Condition 2(a) of these special conditions.

10. *Smoke and fire detection system.* Smoke and fire detection system(s) must be provided that monitor each occupiable area within the OFAR compartment, including those areas partitioned by curtains or doors. The applicant must conduct flight tests to show compliance with this requirement. Each smoke or fire detection system(s) must provide:

a. A visual indication to the flight deck within one minute after the start of a fire.

b. An aural warning in the OFAR compartment.

c. An aural or visual warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the locations of flight attendants throughout the main passenger compartment during various phases of flight.

11. *Built-in fire suppression system.* The OFAR compartment must be designed such that fires within the compartment can be controlled without a crewmember having to enter the compartment (*i.e.,* built-in fire suppression system), or the design of the access provisions must allow crewmembers equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the firefighting equipment, and to gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source. The acceptable duration that the suppression capability of a built-in fire suppression system can be maintained must be verified by certification flight-testing.

12. *Hazardous Smoke and Extinguishing Agent.* The applicant must provide a means to prevent hazardous quantities of smoke or extinguishing agent originating in the OFAR compartment from entering the flight deck, passenger cabin, or any other occupiable compartment.

a. Small quantities of smoke may penetrate from the OFAR compartment into other occupied areas during the one-minute smoke detection time.

b. Firefighting procedures must ensure that crewmembers close all doors and hatches at the OFAR compartment outlets after evacuation of the compartment and during firefighting to minimize smoke and extinguishing agent entering other occupiable compartments.

c. Hazardous quantities of smoke may not enter any occupied compartment while a crewmember accesses an OFAR compartment to manually fight a fire there. The amount of smoke entrained by a crewmember exiting the OFAR compartment is not considered a hazardous amount.

d. Smoke entering any occupiable compartment, when access to the OFAR compartment is open for evacuation, must dissipate within five minutes after the access to the OFAR compartment is closed.

e. The applicant must conduct flight tests to show compliance with this requirement.

13. *Supplemental Oxygen System.* A supplemental oxygen system within the OFAR compartment that supplies oxygen in the event of decompression must provide the following:

a. At least one oxygen mask for each seat and berth in the OFAR compartment.

b. If a destination area, such as a changing area, is provided in the OFAR compartment, an oxygen mask must be readily available for each occupant who can reasonably be expected to be in the destination area. The maximum number of required oxygen masks within the destination area is limited to the placarded maximum occupancy of the OFAR compartment.

c. An oxygen mask must be readily accessible to each occupant who can reasonably be expected to be moving from the main cabin into the OFAR compartment, moving around within the OFAR compartment, or moving from the OFAR compartment to the main cabin.

d. The supplemental oxygen system must provide an aural and visual alert to warn occupants of the OFAR compartment to don oxygen masks in the event of decompression.

(1) The aural and visual alerts must activate concurrently with deployment of the oxygen masks in the passenger cabin.

(2) To compensate for sleeping occupants, the aural alert must be heard in each section of the OFAR compartment and must sound continuously for a minimum of five minutes or until a reset switch within the OFAR compartment is activated.

(3) A visual alert that informs occupants that they must don an oxygen mask must be visible in each section.

e. A means must be in place by which oxygen masks in the OFAR compartment can be manually deployed from the flight deck.

f. The applicant must establish approved procedures for OFAR occupants in the event of decompression. These procedures must be provided to the operator for incorporation into its training programs and appropriate operational manuals.

g. The supplemental oxygen system for the OFAR compartment must meet the same 14 CFR part 25 regulations for the supplemental oxygen system for the passenger cabin occupants, except for the 10 percent additional masks requirement of 14 CFR 25.1447(c)(1).

h. The illumination level of the normal OFAR compartment lighting system must automatically be sufficient for each occupant of the compartment to locate a deployed oxygen mask.

14. *Divided OFAR Compartments.* The following requirements apply to OFAR compartments that are divided into more than one section by the installation of curtains or partitions:

a. A placard is required adjacent to each curtain that visually divides or separates the OFAR compartment into smaller sections. The placard must require that the curtain(s) remains open when that section is unoccupied. The vestibule section adjacent to the stairway is not considered a private section and, therefore, does not require a placard.

b. For each section of the OFAR compartment created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(1) No-smoking placard (Special Condition 1),

(2) Emergency illumination (Special Condition 5),

(3) Aural emergency alarm system (Special Condition 7),

(4) Seatbelt-fasten signal or return-to-seat signal as applicable (Special Condition 8),

(5) Smoke or fire detection system requirement (Special Condition 10), and

(6) Oxygen system (Special Condition 13).

c. OFAR compartments that are divided by curtains to the extent that evacuation could be adversely affected must have exit signs directing occupants to the primary stairway outlet. The exit signs must be provided in each separated section of the OFAR compartment, except for curtained bunks, and must meet the requirements of § 25.812(b)(1)(i). An exit sign with reduced background area or a symbolic exit sign, as described in Special Condition 4(a), may be used to meet this requirement.

d. For OFAR compartments that are divided using an installation of a rigid partition with a door separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) A secondary evacuation route from each section to the main deck is required, or alternatively, the applicant must show that any door between the sections precludes anyone from being trapped inside a section of the compartment. The applicant must consider removal of an incapacitated occupant from within this area. A secondary evacuation route from a small room designed for only one occupant for a short time duration, such as a changing area or lavatory, is not required, but the applicant must consider removal of an incapacitated occupant from within such a small room.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) No more than one door may be located between any seat or berth and the primary stairway door.

(4) In each section, exit signs meeting requirements of § 25.812(b)(1)(i), or shown to have an equivalent level of safety, must direct occupants to the primary stairway outlet. An exit sign with reduced background area or a symbolic exit sign, as described in Special Condition 4(a), may be used to meet this requirement.

(5) Special Conditions 1 (no-smoking placards), 5 (emergency illumination), 7 (emergency alarm system), 8 (fasten-seatbelt signal or return to seat signal as applicable), 10 (smoke or fire detections system), and 13 (oxygen system) must be met with the door open or closed.

(6) Special Condition 6 (two-way voice communication) and 9 (Emergency firefighting and protective equipment) must be met independently for each separate section except for lavatories or other small areas that are not intended to be occupied for extended periods of time.

15. *Waste Disposal Receptacle.* If a waste-disposal receptacle is fitted in the OFAR compartment, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

16. *OFAR Compartment Materials.* Materials (including finishes or decorative surfaces applied to the materials) of OFAR compartments must comply with flammability requirements of § 25.853(a) as amended by Amendment 25–116. Seat cushions and mattresses must comply with the flammability requirements of § 25.853(c) as amended by Amendment 25–116 and the test requirements of part 25, appendix F, part II, or other equivalent methods.

17. *OFAR Compartment Lavatory.* A lavatory within the OFAR compartment must meet the same requirements as a lavatory installed on the main deck except with regard to Special Condition 10 for smoke detection.

18. *OFAR Compartment Stowage.* Each stowage compartment in the OFAR compartment, except for under-seat compartments for occupant convenience, must be completely enclosed. All enclosed stowage compartments within the OFAR compartment that are not limited to stowage of emergency equipment or airplane-supplied equipment (*e.g.,* bedding) must meet the design criteria described in table 1 of these special conditions. The in-flight accessibility of very large, enclosed, stowage compartments and the subsequent impact on the crewmembers' ability to effectively reach any part of the compartment with the contents of a hand-held fire-extinguishing system will require additional fire-protection

considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

TABLE 1—DESIGN CRITERIA FOR ENCLOSED STOWAGE COMPARTMENTS NOT LIMITED TO STOWAGE OF EMERGENCY OR AIRPLANE-SUPPLIED EQUIPMENT

Fire protection features	Applicability of fire protection requirements by interior volume		
	Less than 25 cubic feet	25 cubic feet to less than 57 cubic feet	57 Cubic feet to 200 cubic feet
Compliant Materials of Construction [a].	Yes	Yes	Yes.
Smoke or Fire Detectors [b]	No	Yes	Yes.
Liner [c]	No	Conditional	Yes.
Fire Location Detector [d]	No	Yes	Yes.

a. *Materials of Construction:* The material used in constructing each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components (*i.e.,* 14 CFR part 25 Appendix F, Parts I, IV, and V) per the requirements of § 25.853. For compartments less than 25 ft^3 in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

b. *Smoke or Fire Detectors:* Enclosed stowage compartments equal to or exceeding 25 ft^3 in interior volume must be provided with a smoke or fire detection system to ensure that a fire can be detected within a one-minute detection time. The applicant must conduct flight tests to show compliance with this requirement. Each smoke or fire detection system(s) must provide:

(1) A visual indication to the flight deck within one minute after the start of a fire.

(2) An aural warning in the OFAR compartment.

(3) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the locations of flight attendants throughout the main passenger compartment during various phases of flight.

c. Stowage compartment liner.

(1) If the material used in constructing the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment (§ 25.855 at Amendment 25–116, and Appendix F, part I, paragraph (a)(2)(ii)), then no liner is required for enclosed stowage compartments equal to or greater than 25 ft^3, but less than 57 ft^3 in interior volume.

(2) For all enclosed stowage compartments equal to or greater than 57 ft^3 in interior volume, but less than or equal to 200 ft^3, a liner must be provided that meets the requirements of § 25.855 for a Class B cargo compartment.

d. *Fire Location Detector:* If an OFAR compartment has enclosed stowage compartments exceeding 25 ft^3 interior volume that are located separately from the other stowage compartments' central location, such as the entry to the OFAR compartment or other common area, that OFAR compartment requires additional fire protection features and devices to assist a firefighter in determining the location of that fire.

Issued in Des Moines, Washington, on February 14, 2020.

James E. Wilborn,

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

[FR Doc. 2020–03475 Filed 2–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0799; Airspace Docket No. 19–AGL–13]

RIN 2120–AA66

Amendment of VHF Omnidirectional Range (VOR) Federal Airway V–71 and Area Navigation Route T–285 Due to the Decommissioning of the Winner, SD, VOR

Correction

In rule document 2020–03280, appearing on pages 10052 through 10053 in the issue of Friday, February 21, 2020 make the following correction.

§ 71.1 [Corrected]

On page 10053, in the table, on the final line, ''(Lat. 44°26′24.30″ N, long. 98°18′39.89″ W)'' should read ''(Lat. 44°26′24.30″ N, long. 98°18′39.89″ W)''.

[FR Doc. C1–2020–03280 Filed 2–27–20; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9885]

RIN 1545–BO56

Base Erosion and Anti-Abuse Tax; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains corrections to final regulations (TD 9885) that were published in the **Federal Register** on Friday, December 6, 2019. The final regulations implements the base erosion and anti-abuse tax, designed to prevent the reduction of tax liability by certain large corporate taxpayers through certain payments made to foreign related parties and certain tax credits.

DATES: This correction is effective on February 28, 2020 and is applicable on December 6, 2019.

FOR FURTHER INFORMATION CONTACT: Concerning § 1.6038A–1, Brad McCormack or Anand Desai at (202) 317–6939 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9885) that are the subject of this correction are under section 1.6038A of the Internal Revenue Code.

Need for Correction

As published the final regulations (TD 9885) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9885), that are subject of FR Doc. 2019–25744, published on December 6, 2019 (84 FR 66968), are corrected as follows:

1. On page 66997, in the third column, the last line from the bottom of the last full paragraph, the language ''years beginning Monday'' is corrected to read ''years beginning on or after Monday''.

2. On page 67007, in the third column, the second line of the second full paragraph, the language ''taxable years beginning Monday'' is corrected to read ''taxable years beginning on or after Monday''.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2020–03277 Filed 2–27–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR PART 85

[Docket ID: DOD–2019–OS–0111]

RIN 0790–AK25

Health Promotion

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule removes an unnecessary and outdated Department of Defense (DoD) rule relating to a health promotion program. The majority of the content of this part includes internal DoD policy, which does not require rulemaking. Additionally, since this rule was codified, the General Services Administration (GSA) issued a rule that superseded the public-facing content of this part. Therefore, this part can be removed from the CFR.

DATES: This rule is effective on February 28, 2020.

FOR FURTHER INFORMATION CONTACT: Donald Shell, MD, MA, Director, Disease Prevention, Disease Management and Population Health, OASD (HA) Health Services Policy and Oversight, Email: *Donald.shell4civ@mail.mil,* Phone: (703) 681–1705.

SUPPLEMENTARY INFORMATION:

This final rule removes an unnecessary and outdated Department of Defense (DoD) regulation on a health promotion program, which was last updated August 30, 1988 (53 FR 33123). The DoD program continues to operate under the existing internal policies, the General Services Administration (GSA) has since issued a rule that superseded the public-facing content of this part.

Internal policies are available in DoD Instruction (DoDI) 1010.10, ''Health Promotion and Disease Prevention'' (available at: *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/101010p.PDF?ver=2018-01-12-113645-193*). It is a general practice and goal of DoD to provide healthy environments for Service members, medical beneficiaries, civilian DoD employees, and visitors on military installations.

The rule also sets forth an outdated smoking policy on DoD property. However, since codification of this part, GSA issued a rule at title 41 CFR part 102–74, ''Facility Management'' (70 FR 67798, Nov. 8, 2005), which regulates smoking policies for the executive branch of the government and superseded this part.

Part 85 should now be removed as its content is either internal or obsolete. This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' therefore, the requirements of E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' do not apply.

List of Subjects in 32 CFR Part 85

Government employees, Health.

PART 85—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 85 is removed.

Dated: February 24, 2020.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–04045 Filed 2–27–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 232

[Docket ID: DOD–2013–OS–0133]

RIN 0790–ZA14

Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Interpretive rule.

SUMMARY: The Department of Defense (Department) is amending its interpretive rule for the Military Lending Act (the MLA). The MLA, as implemented by the Department, limits the military annual percentage rate (MAPR) that a creditor may charge to a maximum of 36 percent, requires certain disclosures, and provides other substantive consumer protections on ''consumer credit'' extended to Service members and their families. On July 22, 2015, the Department amended its regulation primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products (the July 2015 Final Rule). On August 26, 2016, the Department issued the first set of interpretations of that regulation in the form of questions and answers. On December 14, 2017, the Department issued a second set of interpretations of that regulation in the form of amended questions and answers. The Department is now withdrawing the amended question and answer number 2 (Q&A #2), published in the December 14, 2017 Interpretive Rule, which discussed when credit is extended for the purpose of purchasing a motor vehicle or personal property and the creditor simultaneously extends credit in an amount greater than the purchase price of the motor vehicle or personal property. In withdrawing this amended question and answer, the Department is reverting back to the original Q&A #2 published in the August 26, 2016 Interpretive Rule. This will allow the Department to conduct additional analysis on this matter. The Department is also adding a new question and answer to address questions about the use of Individual Taxpayer Identification Numbers to identify covered borrowers in the Department's database.

DATES: *Effective Date:* This interpretive rule is effective February 28, 2020.

FOR FURTHER INFORMATION CONTACT: Andrew Cohen, 703–692–5286.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

In July 2015, the Department of Defense (Department) issued a final rule [1] (July 2015 Final Rule) amending its regulation implementing the Military Lending Act (MLA) [2] primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products, rather than the limited credit products that had been defined as ''consumer credit.'' [3] Among other amendments, the July 2015 Final Rule modified provisions relating to the optional mechanism a creditor may use when assessing whether a consumer is a ''covered borrower,'' modified the

[1] 80 FR 43560 (July 22, 2015).

[2] 10 U.S.C. 987.

[3] 32 CFR 232.3(b) as implemented in a final rule published at 72 FR 50580 (Aug. 31, 2007).

disclosures that a creditor must provide to a covered borrower, and implemented the enforcement provisions of the MLA.

Subsequently, the Department received requests to clarify its interpretation of points raised in the July 2015 Final Rule. In an effort to assist industry in complying with the July 2015 Final Rule, the Department elected to answer these requests through an interpretive rule in the form of questions and answers. The Department issued the first set of such interpretations on August 26, 2016 (August 26, 2016 Interpretive Rule).[4] The Department issued a second set of such interpretations on December 14, 2017 (December 14, 2017 Interpretive Rule).[5]

The present interpretive rule amends and adds to those questions and answers. Subsequent to the publication of the December 14, 2017 Interpretive Rule, the Department received several formal requests for the Department to withdraw the amended Q&A #2 from the December 14, 2017 Interpretive Rule.[6] One point raised in the requests for withdrawal was a concern that creditors' would be unable to technically comply with the MLA if the purchase included products not expressly related to the purchase of the vehicle as described in the amended Q&A #2 from the December 14, 2017 Interpretive Rule, because § 232.8(f) of the regulation would prohibit creditors from taking a security interest in the vehicle in those circumstances and creditors may not extend credit if they could not take a security interest in the vehicle being purchased. The Department finds merit in this concern and agrees additional analysis is warranted. In withdrawing the amended Q&A #2, published on December 14, 2017, because of unforeseen technical issues between the amended Q&A #2 and 32 CFR 232.8(f), the Department, absent of additional analysis, takes no position on any of the arguments or assertions advanced as a basis for withdrawing the amended Q&A #2 from the December 14, 2017 Interpretive Rule. In addition, the Department is adding Q&A #21 to its interpretations in response to inquiries regarding the use of an Individual Taxpayer Identification Number when an individual does not possess a Social Security Number to conclusively determine if an individual is covered borrower in the Department's MLA database for the purpose of safe harbor.

This amended interpretive rule does not change the regulation implementing the MLA, but merely states the Department's preexisting interpretations of an existing regulation. Therefore, under 5 U.S.C. 553(b)(A), this rulemaking is exempt from the notice and comment requirements of the Administrative Procedure Act, and, pursuant to 5 U.S.C. 553(d)(2), this rule is effective immediately upon publication in the **Federal Register**.

II. Interpretations of the Department

The following questions and answers represent official interpretations of the Department on issues related to 32 CFR part 232. For ease of reference, the following terms are used throughout this document: MLA refers to the Military Lending Act (codified at 10 U.S.C. 987); MAPR refers to the military annual percentage rate, as defined in 32 CFR 232.3(p).

In order to provide further guidance to industry and the public on the Department's view of its existing regulation, the Department is amending its guidance on one question and answer, and by adding one new question and answer.

The numbering of this document follows the numbering of the questions and answers provided in the August 26, 2016 and December 14, 2017 Interpretive Rules. The text of the amended and new questions and answers follows:

2. Does credit that a creditor extends for the purpose of purchasing personal property, which secures the credit, fall within the exception to ''consumer credit'' under 32 CFR 232.3(f)(2)(iii) where the creditor simultaneously extends credit in an amount greater than the purchase price?

Answer: No. Section 232.3(f)(1) defines ''consumer credit'' as credit extended to a covered borrower primarily for personal, family, or household purposes that is subject to a finance charge or payable by written agreement in more than four installments. Section 232.3(f)(2) provides a list of exceptions to subparagraph (f)(1), including an exception for any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased. A hybrid purchase money and cash advance loan is not expressly intended to finance the purchase of personal property, because the loan provides additional financing that is unrelated to the purchase. To qualify for the purchase money exception from the definition of consumer credit, a loan must finance only the acquisition of personal property. Any credit transaction that provides purchase money secured financing of personal property along with additional ''cash-out'' financing is not eligible for the exception under § 232.3(f)(2)(iii) and must comply with the provisions set forth in the MLA regulation.

21. Does a creditor qualify for the safe harbor set forth in 32 CFR 232.5(b)(2)(i)(A) if the creditor uses an Individual Taxpayer Identification Number (ITIN) to search the Department's database to conclusively determine whether credit is offered or extended to a covered borrower, and thus may be subject to 10 U.S.C. 987 and the requirements of 32 CFR 232.5(b)?

Answer: Yes. The Department recognizes that while all members of the Armed Forces will have a Social Security Number (SSN), a limited population of dependents, who meet the definition of a covered borrower in 32 CFR 232.3(g), may not qualify for a SSN due to their citizenship status. An ITIN is a tax processing number issued by the Federal government in lieu of a SSN. ITINs are only available for certain nonresident and resident aliens, their spouses, and dependents who cannot obtain a SSN and can be used in searches of the Department's database.[7] Since all covered borrowers will have a SSN or ITIN, the Defense Manpower Data Center (DMDC) MLA database contains ITINs for covered borrowers who are not eligible to obtain an SSN. Therefore, for purposes of 32 CFR 232.5(b)(2)(i)(A), an ITIN is a ''Social Security number.''

III. Regulatory Impact

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563

[4] 81 FR 58840 (August 26, 2016).

[5] 82 FR 58739 (December 14, 2017).

[6] The Department received formal requests from the National Automobile Dealers Association/American Financial Services Association (January 18, 2018), American Bankers Association (January 19, 2018), Consumer Bankers Association (January 30, 2018), National Association of Federally-Insured Credit Unions/Defense Credit Union Council (January 31, 2018), National Independent Automobile Dealers Association (February 2, 2018), and the Guaranteed Asset Protection Alliance (February 12, 2018).

[7] Internal Revenue Service, ''Taxpayer Identification Numbers (TIN)'' (last updated May 2, 2018).

emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. It has been determined that this rule is a significant regulatory action under Executive Order 12866, and it has been reviewed by the Office of Management and Budget. It is not a major rule under 5 U.S.C. 804.

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs''

This rule is exempt from the requirements of Executive Order 13771 because it results in no more than de minimis costs.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule does not impose reporting and record keeping requirements under the Paperwork Reduction Act of 1995.

Dated: February 24, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–04041 Filed 2–27–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0108]

RIN 1625–AA08

Special Local Regulation, Salinas Power Boat Race; Bahia De Rincon, PR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the waters of Bahia De Rincon, Puerto Rico during the Salinas Power Boat Race. Approximatly 50 high speed boats and personal water crafts are expected to participate in the race. The special local regulation is necessary to ensure the safety to race participants, participant vessels, and the general pubic during the event. The special local regulation establishes a race area, where all persons and vessels, except those participating in the race, will be prohibited from entering, transiting through, anchoring in, or remaining within unless authorized by the Captain of the Port San Juan or a designated representatives.

DATES: This rule is effective daily from 6 a.m. until 6 p.m. on Febuary 29, 2020 and March 1, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0108 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Pedro L. Mendoza, Waterways Management division, U.S. Coast Guard; telephone 787–691–7058, email *Pedro.L.Mendoza@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive the necessary information to publish notice for this event until January 28, 2020, which is 32 days before the event is scheduled to occur. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the race participants, participating vessels, spectators and the general public. It is impracticable to publish an NPRM because we must establish this special local regulation by Febuary 28, 2020.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons listed above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Juan (COTP) has determined that potential hazards associated with the event will be a safety concern for anyone in the area. This rule is needed to ensure safety of life on navigable waters of the United States during the event.

IV. Discussion of the Rule

This rule extablishes a special local regulation daily from 6 a.m. until 6 p.m. on Febuary 29, 2020 and March 1, 2020. The municipality of Salinas and the Caribbean Power Boat Association is sponsoring the Salinas Power Boat Championship—a high speed power boat and personal water craft (PWC) race in the waters near Salinas, Puerto Rico. Approximately 50 high speed boats and PWC's are expected to participate in the races.

The special local regulation encompasses certain waters of the Municipality of Salinas, Puerto Rico in Bahia de Rincon, and will consist of one large area in which there will be: One race area for high-speed power boats, once race area for PWC's and a buffer area. All persons and vessels, except those persons and vessels participating in the race or enforcing the special local regulation, are prohibited from entering, transiting through, anchoring in, or remaining within the area. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area by contacting the Captain of the Port San Juan by telephone at 787–289–2041, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative. The Coast Guard will provide notice of the regulated area by Broadcast Notice to Mariners, and on-scene designated representatives.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a

budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on: (1) The special local regulation will be enforced for twelve hours daily over a two day period; (2) although persons and vessels will not be able to enter, transit through anchor in, or remain within the race area, without authorization from the Captain of the Port San Juan or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the race area, during the enforcement period. If authorized by the Captain of the Port San Juan or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Broadcast Notice to Mariners.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves creation of a special local regulation in conjunction with a regatta or marine parade to ensure the safety of race participants, participant vessels and the general public during the event. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T07–0108 to read as follows:

§ 100.T07–0108 Special Local Regulation; Salinas Power Boat Race; Salinas, PR.

(a) *Regulated Area.* The following regulated area is established as a special local regulation. All coordinates are North American Datum 1983.

(1) *Power Boat Race Area.* All waters of Bahia de Rincon Bay encompassed within the following points: Starting at Point 1 in position 17°58′32.6562″ N, 66°19′22.6986″ W; thence south to Point 2 in position 17°58′25.7478″ N, 66°19′09.7242″ W; thence east to Point 3 in position 17°15′21.8190″ N,

66°18′35.7336″ W; thence north-east to point 4 in position 17°57′21.5238″ N, 66°19′42.6138″ W; thence west-northwest back to origin.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard cowswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the regulated area.

(c) *Regulations.* (1) Except for those persons and vessels participating in the race or enforcing the special local regulation, all persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within a 200-yard radius of the power boat race area. Persons and vessels may request authorization to enter, transit through, anchor in, remain within the regulated area by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

(2) The Coast Guard will provide notice of the regulated area by Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced daily from 6 a.m. until 6 p.m. on Feburary 29, 2020 and March 1, 2020, unless sooner terminated by the Captain of the Port San Juan.

Dated: February 14, 2020.

G.H. Magee,

CAPT, U.S. Coast Guard, Alterante Captain of the Port.

[FR Doc. 2020–03462 Filed 2–27–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0106]

RIN 1625–AA00

Temporary Safety Zone, Blowfish Experiment; Juneau, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 50-yard radius of USCG Station Juneau. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a Navy test involving remotely operated vehicles (ROVs) with a tethered cable which could tangle in a boat's prop. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Southeast Alaska.

DATES: This rule is effective between 7:30 a.m. and 5 p.m. from February 25, 2020, through February 29, 2020. For the purposes of enforcement, actual notice will be used from February 19, 2020, through February 28, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0106 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Jesse Collins, Sector Juneau Waterways Management Division, U.S. Coast Guard; telephone 907–463–2846, email *Jesse.O.Collins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to safeguard the boating public. It is impracticable to publish an NPRM because immediate action is necessary to protect the public.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to protect the public and Navy assets from the potential safety hazards associated with the operation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Southeast Alaska (COTP) has determined that potential hazards associated with the Navy's operation starting February 25, 2020, will be a safety concern for anyone within a 50-yard radius of USCG Station Juneau. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the Navy operation is in effect.

IV. Discussion of the Rule

This rule establishes a safety zone from 8 a.m. on February 25, 2020 until 4 p.m. on February 29, 2020. The safety zone will cover all navigable water within 50 yards of USCG Station Juneau. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the Navy operation is in effect. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration,

and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which would impact a small designated area of the Gasineau Channel during a period of the year when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 7 hours per day that will prohibit entry within 50 yards of USCG Station Juneau. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T17–0106 to read as follows:

§ 165.T17–0106 Safety Zone for Blowfish Experiment; Gastineau Channel, Juneau, AK.

(a) *Location.* The following area is a safety zone: The following area is a safety zone: the waters in Juneau Harbor within a 50 yard radius of the USCG Station Juneau pier located at 58°17′57″ N, 134°24′55″ W between 7:30 a.m. and 5:00 p.m. from February 25, 2020 through February 29, 2020.

(b) *Definitions.* As used in this section:

(1) *Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Juneau.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Southeast Alaska to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's

designated representative by telephone at 907–463–2980 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement.* This safety zone may be enforced during the period described in paragraph (f) of this section.

(f) *Enforcement period.* This section may be enforced from 7:30 a.m. on February 25, 2020, until 5 p.m. on February 29, 2020.

Dated: February 19, 2020.

Stephen R. White,

Captain, U.S. Coast Guard, Captain of the Port Southeast Alaska.

[FR Doc. 2020–03648 Filed 2–26–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 361

[Docket ID ED–2019–OSERS–0140]

State Vocational Rehabilitation Services Program

AGENCY: Office of Special Education and Rehabilitative Services, U.S. Department of Education.

ACTION: Policy interpretation; request for comments.

SUMMARY: The U.S. Department of Education (Department) issues this interpretation to clarify current policy and announce a change in policy regarding the use of Federal vocational rehabilitation (VR) funds reserved for pre-employment transition services.

DATES: This policy is effective February 28, 2020. We must receive your comments on or before March 30, 2020.

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

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to use *Regulations.gov.*''
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about this notice of interpretation, address them to Carol Dobak, U.S. Department of Education, 400 Maryland Avenue SW, Room 5153, Potomac Center Plaza, Washington, DC 20202–5108.

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

FOR FURTHER INFORMATION CONTACT: Carol Dobak, U.S. Department of Education, 400 Maryland Avenue SW, Room 5153, Potomac Center Plaza, Washington, DC 20202–5108. Telephone: (202) 245–7325. Email: *Carol.Dobak@ed.gov.*

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments on this notice of interpretation. We will consider these comments in determining whether to take any future action.

See **ADDRESSES** for instructions on how to submit comments.

During and after the comment period, you may inspect all public comments about this interpretation by accessing *Regulations.gov.* You may also inspect the comments in person in Room 3W104, 400 Maryland Avenue SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

The Department published a request for comments in the **Federal Register** on June 22, 2017, inviting the public to provide comments on identifying regulations and guidance for repeal, replacement, or modification. After extending the closing date from August 21, 2017 to September 20, 2017, the Rehabilitation Services Administration, within the Office of Special Education and Rehabilitative Services, received 847 comments from the public. Of those comments, and others received since September 2017, approximately 30 included questions, suggestions, and implementation concerns regarding the statutory provision requiring States to provide pre-employment transition services.

The Rehabilitation Act of 1973, as amended by title IV of the Workforce Innovation and Opportunity Act (Rehabilitation Act), requires States to reserve at least 15 percent of their VR program allotments to provide, or arrange for the provision of, pre-employment transition services to all students with disabilities in need of such services who are eligible or potentially eligible for the VR program. In response to the many questions and comments about the allowable use of the reserved funds for auxiliary aids and services and other VR services listed in the Rehabilitation Act, the Department issues this notice of interpretation to: (1) Clarify current policy regarding the use of Federal VR funds reserved for the provision of pre-employment transition services to pay for auxiliary aids and services needed by all students with disabilities in order to access or participate in required pre-employment transition services under section 113(b) of the Rehabilitation Act, and (2) announce a change in policy with respect to additional VR services needed by eligible students with disabilities that may be paid for with Federal VR grant funds reserved for the provision of pre-employment transition services and the circumstances under which those funds may be used to pay for those additional VR services.

Background

The amendments to the Rehabilitation Act made by title IV of the Workforce Innovation and Opportunity Act (WIOA) place heightened emphasis on the provision of services to students and youth with disabilities to ensure that they have meaningful opportunities to receive the training and other services they need to achieve employment outcomes in competitive integrated employment. The Rehabilitation Act, as amended by WIOA, expands not only the population of students with disabilities who may receive services under the VR program but also the kinds of services the designated State units

(DSUs) may provide to these students with disabilities who are transitioning from school to postsecondary education and employment.

Most notably, section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) require States to reserve at least 15 percent of their Federal VR grant for the provision of pre-employment transition services. Section 113(a) of the Rehabilitation Act and 34 CFR 361.48(a) require DSUs for the VR program to use the reserved funds to provide, or arrange for the provision of, pre-employment transition services to all students with disabilities in need of such services who are eligible or potentially eligible for services under the VR program.

Section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2) list the five required pre-employment transition services that DSUs, in collaboration with local educational agencies (LEAs), must make available to students with disabilities in need of these services. These services are—

- Job exploration counseling;
- Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that are provided in an integrated environment to the maximum extent possible;
- Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;
- Workplace readiness training to develop social skills and independent living; and
- Instruction in self-advocacy, which may include peer mentoring.

Pre-employment transition services represent the earliest set of services available for students with disabilities under the VR program, are short-term in nature, and are designed to help students identify career interests.

For purposes of this notice of interpretation, the Department focuses its discussion on these five required pre-employment transition services because these are the only pre-employment transition services that DSUs provide directly to students with disabilities as defined in section 7(37) of the Rehabilitation Act and 34 CFR 361.5(c)(51).[1]

Since implementation of the pre-employment transition services requirements, the Department has continued to receive comments from DSUs and other stakeholders regarding: (1)The need for further clarification about the extent to which funds reserved for the provision of pre-employment transition services may be used to pay for auxiliary aids and services; and (2) the ability of States to reserve and expend at least 15 percent of their VR grant allotments on the provision of pre-employment transition services under the Department's general interpretation of the statutory requirements related to the allowable use of funds. Specifically, DSUs and stakeholders have asked if funds reserved for pre-employment transition services may be used to cover the costs of auxiliary aids and services provided directly to students with disabilities as well as other VR services, such as transportation, tuition for postsecondary education, rehabilitation technology, and job coaching. The Department addresses these concerns in this notice of interpretation.

Policy Interpretation Clarification—Use of Reserved Funds for Providing Auxiliary Aids and Services to All Students With Disabilities Receiving Pre-Employment Transition Services

Subsequent to the publication of the State Vocational Rehabilitation Services program; State Supported Employment Services program; and Limitations on Use of Subminimum Wage regulations in the **Federal Register** on August 19, 2016 (81 FR 55630) (August 2016 regulations), it has been the Department's policy interpretation that DSUs may use funds reserved for the provision of pre-employment transition services to pay for auxiliary aids and services for students with disabilities with sensory and communicative disorders who need such aids and services in order to access or participate in pre-employment transition services under section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2) (Rehabilitation Services Administration email to DSUs dated December 28, 2016: *https://www2.ed.gov/policy/speced/guid/rsa/supporting/dear-director-letter-auxiliary-aids-and-services-12-28-2016.pdf*). The Department made clear that DSUs may use the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for any auxiliary aids and services needed by any student with a disability with a sensory or communicative disorder who needs those services to access pre-employment transition services, regardless of whether the student has applied or been determined eligible for the VR program.

As public entities, defined in section 12131 of the Americans with Disabilities Act (ADA), and as recipients of Federal funds, DSUs must ensure that no qualified individual with a disability is excluded from participation in or denied the benefits of services, programs, or activities on the basis of the individual's disability (section 12132 of the ADA and section 504(a) of the Rehabilitation Act). Because section 113(a) of the Rehabilitation Act and 34 CFR 361.48(a) make clear that pre-employment transition services must be provided to all students with disabilities who need them, this means that both eligible and potentially eligible students with disabilities meet the essential eligibility requirements[2] for pre-employment transition services under the VR program in accordance with section 113(a) of the Rehabilitation Act and thus are considered qualified individuals with disabilities for purposes of title II of the ADA and section 504 of the Rehabilitation Act (28 CFR 35.104; 34 CFR 104.3(l)(4)). Therefore, if any student with a disability requires an auxiliary aid or service to access or participate in any of the pre-employment transition services specified in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2), the DSU must pay for such costs if no other public entity is required to provide such aids or services.[3]

[1] Section 113(c) of the Rehabilitation Act describes services that are systemic in nature, *i.e.,* strategies the DSUs use in delivering pre-employment transition services, and section 113(d) describes the coordination activities for ensuring that students with disabilities receive the pre-employment transition services they need. This notice of interpretation does not address the pre-employment transition services described in section 113(c) and (d) of the Rehabilitation Act because they are not applicable to this interpretation (see also 34 CFR 361.48(a)(3) and (4)).

[2] It is important to note that potentially eligible students with disabilities are eligible to receive pre-employment transition services pursuant to section 113(a) of the Rehabilitation Act. As such, they are considered qualified individuals under the ADA for the receipt of pre-employment transition services. It should not be construed that these students with disabilities have satisfied the eligibility requirements of section 102(a) of the Rehabilitation Act for all other VR services provided under section 103 of the Rehabilitation Act.

[3] Please see 34 CFR 361.53(a) for the related assurance that DSUs must include in the VR services portion of the Unified or Combined State Plan. See also Section 101(a)(8)(A)(i) of the Rehabilitation Act. Because DSUs must conduct a search for comparable services and benefits only when providing VR services to eligible individuals, they need not conduct such a search when providing pre-employment transition services and auxiliary aids and services to students with disabilities who have not applied or been determined eligible for VR services, but they would be required to do so for those students with disabilities who have been determined eligible under the VR program pursuant to section 102(a)(1) of the Rehabilitation Act. In addition, rehabilitation technology, including telecommunications, sensory,

Continued

The ADA's title II implementing regulations define ''auxiliary aids and services'' in 28 CFR 35.104. For purposes of the Department's policy interpretation, auxiliary aids and services ensure equal access to information, materials, services, and activities available to students with disabilities participating in pre-employment transition services. As such, expenditures incurred for the purchase or acquisition of auxiliary aids and services, including, for example, interpreter and reader services under section 103(a)(10) of the Rehabilitation Act and 34 CFR 361.48(b)(10) and (11), for students with disabilities needing such aids or services to access or participate in pre-employment transition services specified in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2) constitute an allowable pre-employment transition services cost. This is true for both potentially eligible and eligible students with disabilities.

Because auxiliary aids and services necessary for students with disabilities to access or participate in pre-employment transition services are an allowable cost, DSUs may use funds reserved for providing pre-employment transition services to pay for those auxiliary aids and services for any student with a disability who needs them, regardless of whether they have applied and been determined eligible for VR services. For example, for a student who is deaf, DSUs could purchase interpreter services or video-based telecommunication products to ensure access to information and activities related to job exploration counseling or other pre-employment transition services. As another example, DSUs could purchase screen reader software programs to enable a student who is blind to access information on a computer during a work-based learning experience. DSUs could purchase the screen reader software for the student's personal laptop or for a laptop that would be available for other students needing the device. In these instances, it is important to note that the screen reader software for individuals who are blind or visually impaired, not the computer on which it is installed, meets the definition of ''auxiliary aids and services'' for purposes of the ADA and section 504 of the Rehabilitation Act and, as such, could be paid with funds reserved for the provision of pre-employment transition services. The Department addresses computers and other rehabilitation technology in a later discussion pertaining to section 103(a)(14) of the Rehabilitation Act and 34 CFR 361.48(b)(17).

On the other hand, personal devices and services do not meet the definition of auxiliary aids and services under the ADA or section 504 of the Rehabilitation Act. Personal devices and services include individually prescribed devices, such as prescription eyeglasses or hearing aids, readers for personal use or study, or services of a personal nature (28 CFR 35.135 and 34 CFR 104.44(d)(2)). If a student with a disability requires personal devices or services or individually prescribed assistive technology, the VR agency must determine whether the student meets the eligibility criteria of section 102(a) of the Rehabilitation Act and, if so, develop an IPE in partnership with the student pursuant to section 102(b) of the Rehabilitation Act for the provision of those additional services (see also 34 CFR 361.42(a)(1) and 361.45). DSUs must use funds reserved under section110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for only pre-employment transition services under section 113(b) and 34 CFR 361.48(a)(2), auxiliary aids and services needed by any student with a disability to access or participate in those services, or other VR services necessary for an eligible student to receive pre-employment transition services as discussed elsewhere in this notice of interpretation. DSUs must pay for any other additional VR services using non-reserved VR funds.

Policy Interpretation—Use of Reserved Funds for Providing Certain Other VR Services for Eligible Students With Disabilities Receiving Pre-Employment Transition Services

As explained here for purposes of this policy interpretation, which is separate and distinct from the policy clarification just described regarding auxiliary aids and services, DSUs may use the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for those pre-employment transition services needed by eligible students with disabilities, plus any other VR service needed by those eligible students to benefit from pre-employment transition services in accordance with an approved IPE. With respect to those students with disabilities who have not yet been determined eligible for the VR program (*i.e.,* potentially eligible students with disabilities), DSUs may use the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) only to pay for those pre-employment transition services set forth in section 113 and 34 CFR 361.48(a), as well as for auxiliary aids and services needed to access or participate in pre-employment transition services, as described in Department guidance issued to date.

Since the addition of the five required pre-employment transition services, the VR program can be characterized as providing a continuum of services, with pre-employment transition services being most beneficial to students with disabilities in the early stages of employment exploration. The Secretary is committed to ensuring that students with disabilities are held to high expectations and have the resources and supports needed to prepare them for success in postsecondary education or careers. Therefore, we believe that these services should be provided to the broadest population of students with disabilities to ensure that as many students with disabilities as possible are able to receive the services they need to prepare for postschool activities, including postsecondary education and employment. To that end, pre-employment transition services represent the earliest set of services available for students with disabilities under the VR program. These are short-term services designed to help students identify career interests.

Transition services represent the next set of services on the continuum of VR services available to eligible individuals. Transition services, for eligible students [4] with disabilities, provide for further development and pursuit of career interests with postsecondary education, vocational training, job search, job placement, job retention, job follow-up, and job follow-along services (section 103(a)(4), (5), and (15) of the Rehabilitation Act and 34 CFR 361.48(b)(6), (12), and (18)).

Employment-related services to eligible individuals are next in the continuum of services. These services typically are provided once eligible

and other technological aids and devices, among other VR services, are exempt under Section 101(a)(8)(A)(i) and 34 CFR 361.53(b)(5) from the determination of comparable services and benefits. Therefore, DSUs need not conduct a search for comparable services and benefits when providing auxiliary aids and services to either eligible or potentially eligible students with disabilities to the extent that these aids and services constitute ''rehabilitation technology'' as defined in Section 7(32) of the Rehabilitation Act and 34 CFR 361.5(c)(45), and are necessary for the student with a disability to participate in pre-employment transition services under section 113 of the Rehabilitation Act.

[4] Although DSUs may provide transition and other VR services to youth with disabilities, as defined at section 7(42) of the Rehabilitation Act and 34 CFR 361.5(c)(58), the discussion in this notice of interpretation focuses solely on students with disabilities because pre-employment transition services are only available to those individuals who meet the definition of a ''student with a disability'' at section 7(37) of the Rehabilitation Act and 34 CFR 361.5(c)(51).

students have identified their career interests, have further developed and pursued their career interests through postsecondary education and vocational training offered through transition services, and are pursuing specific employment outcomes. Employment-related services are identified in section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b) and are intended to assist the eligible individual with a disability in preparing for, securing, retaining, advancing in, or regaining an employment outcome that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

While a continuum of services across pre-employment transition services for students with disabilities, and transition services and employment-related services for eligible individuals who have IPEs, exists under the VR program, the five required pre-employment transition services are the only services available to potentially eligible students with disabilities.

In the preamble to the Department's August 2016 regulations, the Department made clear that the term ''potentially eligible'' students with disabilities, for purposes of receiving pre-employment transition services, includes all students with disabilities (81 FR 55630, 55631, and 55690–55691). Students with disabilities do not need to apply and be determined eligible for the VR program to receive pre-employment transition services. However, these students may not receive any VR services other than pre-employment transition services until they apply, and are determined eligible, for VR services, and have an approved IPE (81 FR 55629 at 55691). On the other hand, eligible students with disabilities, that is, those students who have applied and been determined eligible for the VR program, are able to receive any VR services, including pre-employment transition services, necessary to assist them in achieving their employment outcome, so long as those services are identified on their IPEs in accordance with section 103(a) of the Rehabilitation Act (81 FR 55691).

On May 21, 2014, the Congress of the United States released ''Statement of the Managers to Accompany the Workforce Innovation and Opportunity Act.'' In its statement, Congress made clear that the title IV ''. . . amendments established a framework to ensure every young person with a disability, regardless of their level of disability, has the opportunity to experience competitive, integrated employment. The pre-employment transition services will provide young people with disabilities with the opportunity to develop their skills and to use supports, available through State VR programs to experience competitive integrated employment as they leave school and enter the workforce.'' The intent of Congress makes clear that the ''framework'' for VR services includes pre-employment transition services for all students with disabilities and other services and supports for eligible students with disabilities with an approved IPE to develop their skills and experience success when they enter the workforce.

Section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) require each State to reserve at least 15 percent of its Federal VR grant for the provision of pre-employment transition services to students with disabilities. With this statutory provision, coupled with the ''Statement of the Managers to Accompany the Workforce Innovation and Opportunity Act,'' the Department interprets this requirement as meaning that DSUs may use these reserved funds to pay for other VR services under section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b), in accordance with an approved IPE, that are necessary for an eligible student with a disability to participate in pre-employment transition services identified in section 113(b) of the Rehabilitation Act. This means that, for eligible students with disabilities, DSUs may use the reserved funds to pay for the pre-employment transition services and any other VR services necessary for the eligible student to benefit from those pre-employment transition services in accordance with an approved IPE consistent with the requirements of section 103(a) of the Rehabilitation Act. However, for those students with disabilities who have not yet applied or been determined eligible for the VR program (*i.e.,* potentially eligible students), the DSUs may use the reserved funds to pay only those costs incurred in providing the pre-employment transition services identified in section 113 of the Rehabilitation Act and 34 CFR 361.48(a), as well as auxiliary aids and services needed to access or participate in pre-employment transition services, as described in guidance issued by the Department to date.

Although section 113 of the Rehabilitation Act is unique in that it permits VR agencies to provide pre-employment transition services to students with disabilities who have not yet been determined eligible for the VR program, section 103(a) of the Rehabilitation Act does not contain the same flexibility. Section 103(a) of the Rehabilitation Act makes clear that all VR services provided under that section are provided under an approved IPE that is developed when an individual with a disability has applied and been determined eligible for the VR program in accordance with section 102 of the Rehabilitation Act (see also 34 CFR 361.42 and 361.48(b)).

Section 102(b)(4)(A) of the Rehabilitation Act and 34 CFR 361.46(a)(1) make clear that the IPE for a student with a disability need only contain a ''description of the student's projected postschool employment outcome,'' as opposed to a description of a specific employment outcome. Despite this flexibility available to States, the Department has observed through monitoring that these IPEs for students with disabilities are underutilized. Because DSUs can develop initial IPEs for eligible students with disabilities that are more general in nature, DSUs are able to provide additional supports and services to eligible students as necessary for students to benefit from pre-employment transition services and activities and explore their career interests and, subsequently, refine the IPEs, through the amendment process under section 102(b)(3)(E) of the Rehabilitation Act and 34 CFR 361.45(a)(6), to include a specific employment goal and the VR services necessary to achieve that goal, as appropriate. Eligible students with disabilities are able to access any other VR services needed to participate in pre-employment transition services (as discussed in more detail below) or other VR services that are unrelated to pre-employment transition services, none of which would be available to them without approved IPEs.

This policy interpretation applies only to those students with disabilities who have been determined eligible for services under the VR program and who have an approved IPE. We recognize that some eligible students with disabilities may need certain VR services under section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b) to fully benefit from pre-employment transition services under section 113(b) and 34 CFR 361.48(a)(2). Receiving other VR services and supports, along with the pre-employment transition services, enables eligible students with a disability to develop the skills to experience competitive, integrated employment as they leave school and enter the workforce. Therefore, the Department believes that allowing the funds reserved under section 110(d)(1) and 34 CFR 361.65(a)(3)(i) to be used to

pay for other VR services needed by eligible students with disabilities who have IPEs to benefit from pre-employment transition services is consistent with the ''Statement of the Managers to Accompany the Workforce Innovation and Opportunity Act'' and with the statutory purpose for the reservation of these funds.

This interpretation regarding the use of the reserved funds for certain other VR services that are necessary for an eligible student with a disability to benefit from pre-employment transition services also is consistent with the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), codified at 2 CFR part 200. Specifically, 2 CFR 200.403(a) requires that costs paid from a Federal award must be allowable, meaning that they must be necessary, reasonable, and allocable to the award. Costs are reasonable if, in their nature and amount, they do not exceed that which would be incurred by a prudent person under the circumstances that existed at the time the decision was made to incur the cost (2 CFR 200.404). A cost is allocable to a Federal cost objective if the services are assignable to that cost objective in accordance with relative benefits received (2 CFR 200.405(a)). These fiscal requirements not only apply to costs incurred under the VR grant as a whole, but also to those costs incurred with the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i). In other words, costs incurred with these reserved funds must be—

- Necessary for the provision or receipt of pre-employment transition services;
- Reasonable, that is, those that a prudent person would agree are necessary for the provision or receipt of pre-employment transition services; and
- Allocable, that is, those that benefit the provision or receipt of pre-employment transition services.

Under the Department's interpretation, the reserved funds may be used for costs associated with providing certain VR services to eligible students with disabilities, in accordance with approved IPEs, who need those services to benefit from pre-employment transition services, as well as the costs associated with the pre-employment transition services themselves. As such, these costs would be reasonable, necessary, and allocable to the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i). If eligible students with disabilities need additional VR services that are not within the scope of pre-employment transition services and, thus, this interpretation, DSUs may still provide those services in accordance with the terms of the approved IPE. However, DSUs must provide those additional VR services with other VR funds that were not reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i).

In an effort to explain the application of this interpretation to the services outlined in section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b), we discuss each of those VR services in light of whether they are within the nature, scope, and purpose of any of the pre-employment transition services available under section 113(b) and 34 CFR 361.48(a)(2) (*i.e.,* are necessary, reasonable, and allocable) and, thus, may be paid with the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) if needed by an eligible student with a disability to benefit from pre-employment transition services. In so doing, we also explain that certain VR services outlined in section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b) fall outside the nature, scope, and purpose of pre-employment transition services and, thus, those services are not reasonable or necessary for an eligible student with a disability to benefit from pre-employment transition services under section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2). Therefore, the costs for such services are not allocable to the provision of pre-employment transition services and may not be paid with the funds reserved under section 110(d)(1) and 34 CFR 361.65(a)(3)(i) for that purpose. Nothing in this interpretation affects the DSU's responsibility to search for comparable services and benefits, when required by section 101(a)(8) of the Rehabilitation Act and 34 CFR 361.53, before providing any of the VR services discussed herein.

Through this interpretation, the following VR services in section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b) fall within the nature, scope, and purpose of pre-employment transition services when needed by an eligible student with a disability, in accordance with an approved IPE, to benefit from one or more of the pre-employment transition services described in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2). As such, costs incurred in providing these other VR services are allocable to the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i). As discussed here, the examples of when DSUs may use the reserved funds to pay for additional services in section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b), consistent with both the statutory purpose for these reserved funds and fiscal requirements of the Uniform Guidance, provide DSUs with significantly greater flexibility in delivering pre-employment transition services to eligible students with disabilities than has been allowed under Department guidance issued to date, thereby increasing the availability of pre-employment transition services to these students.

To the extent that a portion of the costs incurred for the additional VR services fall outside the nature, scope, and purpose of pre-employment transition services, DSUs must pay that portion with other VR program funds.

Assessment Services

Section 103(a)(1) and 34 CFR 361.48(b)(2) permit DSUs to provide assessment services to eligible individuals to determine VR needs. These services are generally provided in the very early stages of the VR process with an eligible individual with a disability and, thus, are consistent with the nature, scope, and purpose of pre-employment transition services. As stated in the preamble to the August 2016 regulations (81 FR at 55685), VR services are provided on a continuum, with pre-employment transition services being the earliest set of services available for students with disabilities. Given that the purpose of assessment services under section 103(a)(1) and 34 CFR 361.48(b)(2) is to determine the VR needs of individuals with disabilities, it is reasonable that an eligible student with a disability would need further assessment services while engaging in any of the pre-employment transition services set forth at section 113(b) and 34 CFR 361.48(a)(2) to fully benefit from those activities.

Counseling and Guidance

Section 103(a)(2) and 34 CFR 361.48(b)(3) permit DSUs to provide counseling and guidance services to eligible individuals throughout the VR process. These services are directly connected with the nature, scope, and purpose of two pre-employment transition services, specifically job exploration counseling (section 113(b)(1) and 34 CFR 361.48(a)(2)(i)) and counseling on opportunities for enrollment in comprehensive transition and other postsecondary education programs at institutions of higher education (section 113(b)(3) and 34 CFR 361.48(a)(2)(iii)). Given that counseling and guidance services are specifically listed among the pre-employment

transition services at section 113(b) and 34 CFR 361.48(a)(2), these services clearly fall within the nature, scope, and purpose of pre-employment transition services. Therefore, it is reasonable that an eligible student with a disability could need these services in order to benefit from pre-employment transition services activities.

Referral Services

Section 103(a)(3) and 34 CFR 361.48(b)(4) permit DSUs to provide referral services to eligible individuals with disabilities to secure needed services from other agencies throughout the VR process. While these services are not directly connected to any particular pre-employment transition services activity described in section 113(b) and 34 CFR 361.48(a)(2), section 113(a) of the Rehabilitation Act and 34 CFR 361.48(a) make clear that the VR agency must provide, or arrange for the provision of, pre-employment transition services to students with disabilities in need of such services. The Rehabilitation Act clearly envisioned circumstances in which the DSU itself would not be able to provide the pre-employment transition services and would need to reach agreements with other entities to provide those services. As such, it is reasonable that an eligible student with a disability could need a referral in order to participate in one or more of the pre-employment transition services set forth in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2). In this circumstance, the referral services under section 103(a)(3) and 34 CFR 361.48(b)(4) for that eligible student with a disability would fall squarely within the nature, scope, and purpose of pre-employment transition services.

Maintenance

Section 103(a)(7) and 34 CFR 361.48(b)(7) permit DSUs to provide maintenance to eligible individuals with disabilities to cover additional costs incurred while receiving VR services. DSUs may provide maintenance to eligible individuals with disabilities throughout the VR process, including during the early stages in the continuum of VR services. Maintenance is unique from most other VR services listed in section 103(a) and 34 CFR 361.48(b) because it must be provided in combination with another VR service, such as pre-employment transition services. It is reasonable that an eligible student with a disability who is participating in pre-employment transition services could incur additional costs to participate in those services (*e.g.,* purchase of required clothing for a work-based learning experience under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii) or the purchase of a talking alarm clock to participate in workplace readiness training under section 113(b)(4) and 34 CFR 361.48(a)(2)(iv)). Therefore, to the extent an eligible student with a disability needs maintenance, in accordance with an approved IPE, to benefit from pre-employment transition services, then such maintenance services fall within the nature, scope, and purpose of pre-employment transition services. However, we clarify that it is not reasonable to provide maintenance services to all eligible students with disabilities in all circumstances with the use of the reserved funds under this interpretation. DSUs must ensure the costs incurred for maintenance are allocable to the pre-employment transition services that the eligible student with a disability is receiving, as opposed to other VR services that the student may be receiving simultaneously. For example, if the DSU agreed to pay for the fee for the eligible student to take a college entrance test preparatory course, this VR service would be beyond the nature, scope, and purpose of all of the pre-employment transition services described in section 113(b) and 34 CFR 361.48(a)(2) and, as such, would not be allocable to those services. In this example, the DSU must pay the costs incurred for maintenance with other VR program funds, not the funds reserved under section 110(d)(1) and 34 CFR 361.65(a)(3)(i) for the provision of pre-employment transition services.

Transportation

Section 103(a)(8) and 34 CFR 361.48(b)(8) permit DSUs to provide transportation services, including training in the use of public transportation, to eligible individuals with disabilities throughout the VR process. As with the maintenance services just described, DSUs must provide transportation services only in combination with another VR service, such as pre-employment transition services. It is reasonable that an eligible student with a disability who is participating in pre-employment transition services could need transportation services to benefit from any of the pre-employment transition services described in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2) (*e.g.,* to attend counseling sessions under section 113(b)(1) and (3) and 34 CFR 361.48(a)(2)(i) and (iii), work-based learning experiences under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii), or self-advocacy training sessions under section 113(b)(5) and 34 CFR 361.48(a)(2)(v)). It is also reasonable that an eligible student with a disability could need transportation to participate in workplace readiness training under section 113(b)(4) and 34 CFR 361.48(a)(2)(iv) to learn how to travel independently in preparation for eventual employment. As such, to the extent an eligible student with a disability needs transportation services in accordance with an approved IPE to participate in any of the pre-employment transition services, the transportation services clearly fall within the nature, scope, and purpose of those pre-employment transition services. We clarify that it is not reasonable to provide all types of transportation services to all eligible students with disabilities with the use of the reserved funds under this interpretation. As with the maintenance services described earlier, DSUs must ensure the costs incurred for transportation services are allocable to the pre-employment transition services that the eligible student with a disability is receiving, as opposed to other VR services that the eligible student may be receiving simultaneously. For example, if the DSU agreed to pay for a vehicle modification to make it more accessible for the eligible student with a disability while participating in pre-employment transition services and other VR counseling services, as well as a dual enrollment program under the Individuals with Disabilities Education Act, the DSU must determine whether a prudent person would agree that the cost for the vehicle modification is reasonable as a cost associated with the pre-employment transition services the student is receiving and, if so, to what extent the cost is allocable to the pre-employment transition services activity. To make this determination, the DSU should take into account the duration of the pre-employment transition services that the eligible student with a disability is participating in to determine whether, or to what extent, the transportation cost in this circumstance would be allocable to the funds reserved under section 110(d)(1) and 34 CFR 361.65(a)(3)(i) or whether this cost more appropriately should be paid with other VR program funds.

Personal Assistance Services

Section 103(a)(9) and 34 CFR 361.48(b)(14) permit DSUs to provide personal assistance services to eligible individuals with disabilities when needed to participate in another VR service. As with maintenance and transportation services just described, DSUs may provide personal assistance

services only in combination with another VR service, such as pre-employment transition services. It is reasonable that an eligible student with a disability, particularly a student with a significant disability, who is participating in pre-employment transition services could need personal assistance services in order to participate in those services (*e.g.,* personal assistance services during a work-based learning experience under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii)). Therefore, to the extent an eligible student with a disability needs personal assistance services, in accordance with an approved IPE, to participate in pre-employment transition services, such personal assistance services fall within the nature, scope, and purpose of pre-employment transition services. We clarify that, as with the maintenance and transportation services just described, only those personal assistance services identified in an IPE directly related to the eligible student with a disability's participation in pre-employment transition services are allocable and, thus, could be paid with the reserved funds. DSUs must pay for all other personal assistance services needed by the eligible student with other VR program funds.

Rehabilitation Teaching & Orientation and Mobility Services

Section 103(a)(11) and 34 CFR 361.48(b)(11) permit DSUs to provide rehabilitation teaching services and orientation and mobility services to eligible individuals who are blind. These services, particularly the orientation and mobility services, also are offered as pre-employment transition services, namely ''workplace readiness'' training under section 113(b)(4) of the Rehabilitation Act and 34 CFR 361.48(a)(2). Therefore, it is reasonable and allocable to pre-employment transition services activities for a DSU to use funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for these services in the event an eligible student with a disability needs them, in accordance with an approved IPE, to benefit from pre-employment transition services. Because these services actually constitute workplace readiness training under section 113(b)(4) and 34 CFR 361.48(a)(2)(iv), the services under section 103(a)(11) and 34 CFR 361.48(b)(11) clearly fall within the scope, nature, and purpose of pre-employment transition services.

Rehabilitation Technology

Section 103(a)(14) and 34 CFR 361.48(b)(17) permit DSUs to provide eligible individuals with disabilities rehabilitation technology throughout the VR process when needed and identified on an approved IPE. It is reasonable that an eligible student with a disability, especially a student with a significant disability, could need rehabilitation technology to benefit from pre-employment transition services, particularly those involving work-based learning experiences under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii), workplace readiness training under section 113(b)(4) and 34 CFR 361.48(a)(2)(iv), and self-advocacy training under section 113(b)(5) and 34 CFR 361.48(a)(2)(v). For example, an eligible student with a disability may need an electronic device (that does not constitute an auxiliary aid or service as discussed elsewhere in this notice of interpretation) to participate in one of the pre-employment transition services training activities. In other words, without the rehabilitation technology, the eligible student with a disability might not be able to participate in the pre-employment transition services activity. Under this circumstance, the rehabilitation technology falls within the nature, scope, and purpose of pre-employment transition services under section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2) and, thus, is allocable to those services. However, DSUs must ensure that the costs incurred for the rehabilitation technology are needed by the eligible student with a disability to participate in pre-employment transition services, as opposed to other VR services the eligible student might be participating in simultaneously. Pursuant to 2 CFR 200.403 through 200.405, the DSUs may use the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for the costs of rehabilitation technology that is reasonably allocable to the pre-employment transition services activities of the eligible student with a disability. The DSU must use other VR funds to pay for the portion of the cost, or the entire cost if applicable, that is not allocable to the pre-employment transition services activities.

Pre-Employment Transition Services Under Section 103(a)

Section 103(a)(15) and 34 CFR 361.48(b)(18) permit DSUs to provide transition services, including pre-employment transition services, to eligible students with disabilities. For purposes of this interpretation, we discuss transition services separately in a later section. This discussion focuses solely on the pre-employment transition services available under section 103(a)(15) and 34 CFR 361.48(b)(18). As with the orientation and mobility services discussed above, these pre-employment transition services are at the core of the nature, scope, and purpose of the pre-employment transition services provided under section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2). Therefore, it is reasonable and allocable to pre-employment transition services activities for a DSU to use funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for these services in the event an eligible student with a disability needs them, in accordance with an approved IPE, to participate in pre-employment transition services under section 113(b) and 34 CFR 361.48(a)(2).

Family Services

Section 103(a)(19) and 34 CFR 361.48(b)(9) permit the DSU to provide services to family members of an eligible individual with a disability when these services are necessary for the eligible individual to achieve an employment outcome. As with certain other services (*i.e.,* maintenance, transportation, and personal assistance services), services to the family, by their very nature, must be provided in combination with another VR service, such as pre-employment transition services. Given that pre-employment transition services represent the earliest set of services available to students with disabilities under the VR program, it is reasonable that a family member could need services to enable the eligible student with a disability to benefit from pre-employment transition services. For example, the parent or guardian may need transportation services to accompany the eligible student with a disability to his or her pre-employment transition services activities or the parent or guardian may need language interpreter services in order to understand consent forms that he or she might need to sign on behalf of the underage eligible student with a disability participating in pre-employment transition services. In such circumstances, the services to family members clearly fall within the nature, scope, and purpose of the pre-employment transition services provided under section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2), thereby making the costs incurred for such services allocable to pre-employment transition services.

Coaching Services

Finally, with respect to those services in section 103(a) of the Rehabilitation Act that fall within the nature, scope, and purpose of pre-employment transition services described in section 113(b) and 34 CFR 361.48(a)(2), the Secretary notes that section 103(a) is not an exhaustive list of services (34 CFR 361.48(b)(21)). DSUs may provide any service that an eligible individual needs to achieve an employment outcome in accordance with an approved IPE. In the context of pre-employment transition services, one such service is coaching services for eligible students with disabilities participating in work-based learning experiences under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii). These coaches perform similar functions as job coaches do in supported employment settings by assisting the eligible student with a disability to perform the tasks assigned during the work-based learning experiences. While these particular coaching services are not specifically listed in section 103(a), they would be considered allowable VR services under section 103(a) and 34 CFR 361.48(b)(21) if needed by an eligible student with a disability, in accordance with an approved IPE, to participate in pre-employment transition services. Given that pre-employment transition services are among the earliest sets of services available to students with disabilities, it is reasonable to expect that these eligible students may need extra assistance through coaching services to participate in these activities. In such circumstances, these coaching services clearly fall within the nature, scope, and purpose of pre-employment transition services, particularly work-based learning experiences under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii), and, thus, would be allocable to those services.

Allocability of Certain Portions of VR Services

Next, the Secretary believes that the following VR services, set forth in section 103(a) and 34 CFR 361.48(b), have aspects of those services that fall within the nature, scope, and purpose of pre-employment transition services when needed by an eligible student with a disability, in accordance with an approved IPE, to benefit from one or more of the pre-employment transition services described in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2). In the narrow circumstances described in this notice of interpretation, costs incurred for certain portions of the following services could be allocable to pre-employment transition services under the right set of facts; therefore, in these circumstances, DSUs may pay these costs with the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i). However, most aspects of the following services fall outside the nature, scope, and purpose of pre-employment transition services and, thus, are not allocable to those services. In those more common circumstances, DSUs may not use funds reserved under section 110(d)(1) and 34 CFR 361.65(a)(3)(i) to pay for those costs.

Vocational and Other Training Services

Section 103(a)(5) and 34 CFR 361.48(b)(6) permit DSUs to provide vocational and other training services, including books, tools, and other training materials, for eligible individuals in accordance with an approved IPE. This provision also permits DSUs to pay for postsecondary education tuition, so long as maximum efforts have been made to obtain grant assistance. Before discussing these services, the Secretary notes that pre-employment transition services are intended to be an early set of exploration services for students with disabilities that are ''designed to help students with disabilities to begin to identify career interests that will be further explored through additional [VR] services, such as transition services. Following the continuum, transition services represent the next set of [VR] services available to students with disabilities. They are outcome-oriented and promote movement from school to post-school activities, including postsecondary education, vocational training, and competitive integrated employment. As such, transition services may include job-related services, such as job search and placement assistance, job retention services, follow-up services, and follow-along services based on the needs of the individual'' (81 FR at 55685). Given the clear nature, scope, and purpose of pre-employment transition services as a very early set of career interest and exploration services for students with disabilities, the services available under section 103(a)(5) and 34 CFR 361.48(b)(6) are predominately outside that scope. In fact, most of the services fit squarely within the vocational training purpose of transition services for those individuals transitioning from school to a specific employment outcome, as described by the Department at 81 FR at 55685 and, thus, are not allocable to pre-employment transition services. However, an eligible student with a disability could need a book, tool, or other training material to participate in pre-employment transition services, specifically a work-based learning experience under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii). While a DSU could use section 103(a)(7) of the Rehabilitation Act and 34 CFR 361.48(b)(7) as the authority to pay for the book, tool, or training material since it would be an additional cost incurred as a result of the participation in the pre-employment transition services, the DSU also could use the authority of section 103(a)(5) and 34 CFR 361.48(b)(6) to pay the costs of the service. To the extent the book, tool, or training material is necessary for the eligible student with a disability to participate in the work-based learning experience under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii), such service and associated cost would be allocable to pre-employment transition services.

Advanced Training

Section 103(a)(18) and 34 CFR 361.48(b)(6) permit DSUs to encourage eligible individuals to pursue advance training in the fields of science, technology, engineering, or mathematics (including computer science), law, medicine, or business. To the extent that a VR counselor or other provider of pre-employment transition services discusses these postsecondary options while discussing all opportunities for enrollment in comprehensive transition and other postsecondary education programs at institutions of higher education under section 113(b)(3) and 34 CFR 361.48(a)(2)(iii), the service under section 103(a)(18) and 34 CFR 361.48(b)(6) is squarely within the nature, scope, and purpose of pre-employment transition services. As such, the service is allocable to pre-employment transition services and could be paid for with funds reserved for that purpose. However, to the extent that the DSU encourages the advanced training under section 103(a)(18) by paying tuition at a postsecondary institution, such service is outside the nature, scope, and purpose of pre-employment transition services and, thus, is not allocable to those services. Once the eligible student has identified this career path and started postsecondary education, the service is one that enables the individual to transition from school to a specific employment outcome, as described at 81 FR at 55685, not simply to explore career interests through pre-employment transition services activities.

VR Services Not Allocable to Pre-Employment Transition Services

Lastly, the Secretary believes that the following VR services, set forth in section 103(a) and 34 CFR 361.48(b), are not allocable to pre-employment transition services in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2) because they are beyond the nature, scope, and purpose of those services. As such, these services are not allocable to pre-employment transition services, meaning that DSUs may not use funds reserved under section 110(d)(1) and 34 CFR 361.65(a)(3)(i) to pay for those costs even if provided to eligible students with disabilities who are also participating in pre-employment transition services.

Transition Related Services

Sections 103(a)(4), (5), (15), and (18) permit DSUs to provide eligible individuals with a variety of transition-related services in accordance with an approved IPE (see also 34 CFR 361.48(b)(6) and (12)). As discussed earlier, pre-employment transition services represent the earliest set of services available for students with disabilities. These are short-term services designed to help students identify career interests. In contrast, transition services represent the next set of services on the continuum of VR services to eligible individuals. During the receipt of transition services, eligible students with disabilities further develop and pursue their career interests with postsecondary education, vocational training, job search, job placement, job retention, job follow-up, and job follow-along services. By their very nature, transition-related services are beyond the nature, scope, and purpose of pre-employment transition services set forth at section 113(b) and 34 CFR 361.48(a)(2). For this reason, these services, with narrow exceptions described previously, are not allocable to pre-employment transition services. As such, DSUs may not use funds reserved under section 110(d)(1) and 34 CFR 361.65(a)(3)(i) to pay for these costs. Rather, they must use other VR program funds to pay these costs.

Medical Services

Section 103(a)(6) and 34 CFR 361.48(b)(5) permit DSUs to provide certain medical services to eligible individuals, in accordance with an approved IPE, under certain circumstances. Medical services are beyond the nature, scope, and purpose of all the pre-employment transition services described in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2). While it is possible that an eligible student with a disability could need such a service, it is not reasonable to believe that the need was tied solely to the student's participation in pre-employment transition services. Rather, it is most likely that the need is more general and associated with the eligible student with a disability's VR program as a whole, but not limited to the pre-employment transition services. As such, the service is not allocable to pre-employment transition services and DSUs must pay for the service with other VR program funds.

Employment-Related Services

Sections 103(a)(12), (13), (16), (17), and (20) permit the DSU to provide various employment-related services to eligible individuals (see also 34 CFR 361.48(b)(13), (15), (16), (19), and (20)). These services are next in the continuum of services, once eligible students have identified their career interests through pre-employment transition services and further developed and pursued them through postsecondary education and vocational training offered through transition services that assist them in transitioning from school to specific employment outcomes. These employment-related services are well beyond the continuum of services available as pre-employment transition services and are directly tied to specific occupations. For this reason, these services are beyond the nature, scope, and purpose of pre-employment transition services described in section 113(b) and 34 CFR 361.48(a)(2). Thus, they are not allocable to those services. DSUs must use other VR program funds to pay the costs associated with providing these services.

Conclusion

Through this notice of interpretation, the Secretary clarifies that DSUs may use VR funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for auxiliary aids and services needed by all students with disabilities (*i.e.,* both eligible and potentially eligible students with disabilities) who have sensory and communicative disorders to access or participate in pre-employment transition services. In addition, the Secretary explains that DSUs may use the reserved funds to pay for pre-employment transition services needed by eligible students with disabilities and certain other VR services in section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b) needed by those eligible students to benefit from pre-employment transition services in accordance with an approved IPE. Although the Department understands that pre-employment transition services are available for all students with disabilities, not just those determined eligible for the VR program, this interpretation permitting the use of the reserved funds for certain VR services other than pre-employment transition services is applicable only to those students with disabilities who are receiving pre-employment transition services, who have been determined eligible for the VR program, and who have an approved IPE. Under this interpretation, DSUs may use the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for those pre-employment transition services needed by eligible students with disabilities in accordance with an approved IPE, plus any other VR service needed by eligible students to benefit from pre-employment transition services. With respect to those students with disabilities who have not yet been determined eligible for the VR program (*i.e.,* potentially eligible students with disabilities), DSUs may use the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) only to pay for those pre-employment transition services set forth in section 113 and 34 CFR 361.48(a), as well as for auxiliary aids and services needed by those students to access or participate in pre-employment transition services, as described in Department guidance issued to date. The Secretary believes this interpretation is consistent with the ''Statement of the Managers to Accompany the Workforce Innovation and Opportunity Act,'' the statutory purpose for the reservation of these Federal VR funds, and the fiscal requirements of OMB's Uniform Guidance.

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

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

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*.

Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,

Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020–03208 Filed 2–27–20; 8:45 am]

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Copyright Royalty Board

37 CFR Part 380

[Docket No. 19–CRB–0005–WR (2021–2025) (Web V)]

Determination of Royalty Rates and Terms for Ephemeral Recording and Digital Performance of Sound Recordings (Web V)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges publish a final rule governing the rates and terms for the digital performances of sound recordings by certain public radio stations and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2021, and ending on December 31, 2025.

DATES: Effective January 1, 2021.

ADDRESSES: *Docket:* For access to the docket to read submitted background documents go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 19–CRB–0005–WR (2021–2025).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, Program Specialist, by telephone at (202) 707–0078 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On October 29, 2019, the Copyright Royalty Judges (Judges) published a proposed rule governing the rates and terms for the digital performances of sound recordings by certain public radio stations and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2021, and ending on December 31, 2025. 84 FR 57833. The rates and terms in the proposed rule were the subject of a settlement among SoundExchange, Inc. (''SoundExchange''), National Public Radio, Inc. (''NPR''), and the Corporation for Public Broadcasting (''CPB'') (together, the ''Settling Parties'') of their interests related to Web V [1] royalty rates and terms for certain internet transmissions by public broadcasters, NPR, American Public Media, Public Radio International, Public Radio Exchange, and certain other unnamed public radio stations for the period from January 1, 2021, through December 31, 2025. Joint Motion to Adopt Partial Settlement, Docket No. 19–CRB–0005–WR (2021–2025) (''Web V''). The Judges received no comments on the proposed rule.

The Judges ''may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement,'' only ''if any participant [in the proceeding] objects to the agreement and the [Judges] conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.'' 17 U.S.C. 801(b)(7)(A)(ii). Because no Web V participant has objected to the settlement, and the Judges find no basis in the record to conclude that the settlement does not provide a reasonable basis for setting statutory terms and rates, the Judges adopt the terms and rates as proposed.

List of Subjects in 37 CFR Part 380

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Final Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges amend 37 CFR part 380 as follows:

PART 380—RATES AND TERMS FOR TRANSMISSIONS BY ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES AND FOR THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE TRANSMISSIONS

■ 1. The authority citation for part 380 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

■ 2. Revise subpart D to read as follows:

Subpart D—Public Broadcasters

Sec.

380.30 Definitions.
380.31 Royalty fees for the public performance of sound recordings and for ephemeral recordings.
380.32 Terms for making payment of royalty fees and statements of account.

Subpart D—Public Broadcasters

§ 380.30 Definitions.

For purposes of this subpart, the following definitions apply:

Authorized website is any website operated by or on behalf of any Public Broadcaster that is accessed by website Users through a Uniform Resource Locator (''URL'') owned by such Public Broadcaster and through which website Performances are made by such Public Broadcaster.

CPB is the Corporation for Public Broadcasting.

Music ATH is aggregate tuning hours of website Performances of sound recordings of musical works.

NPR is National Public Radio, Inc.

Originating Public Radio Station is a noncommercial terrestrial radio broadcast station that—

(1) Is licensed as such by the Federal Communications Commission;

(2) Originates programming and is not solely a repeater station;

(3) Is a member or affiliate of NPR, American Public Media, Public Radio International, or Public Radio Exchange, a member of the National Federation of Community Broadcasters, or another public radio station that is qualified to receive funding from CPB pursuant to its criteria;

(4) Qualifies as a ''noncommercial webcaster'' under 17 U.S.C. 114(f)(4)(E)(i); and

(5) Either—

(i) Offers website Performances only as part of the mission that entitles it to be exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501); or

(ii) In the case of a governmental entity (including a Native American Tribal governmental entity), is operated exclusively for public purposes.

Person is a natural person, a corporation, a limited liability company, a partnership, a trust, a joint venture, any governmental authority or any other entity or organization.

Public Broadcasters are NPR, American Public Media, Public Radio International, and Public Radio Exchange, and up to 530 Originating Public Radio Stations as named by CPB. CPB shall notify SoundExchange annually of the eligible Originating Public Radio Stations to be considered Public Broadcasters per this definition (subject to the numerical limitations set forth in this definition). The number of

[1] Web V is short for Webcasting V. This proceeding is the fifth since Congress enacted the compulsory sound recording performance license for webcasting.

Originating Public Radio Stations treated per this definition as Public Broadcasters shall not exceed 530 for a given year without SoundExchange's express written approval, except that CPB shall have the option to increase the number of Originating Public Radio Stations that may be considered Public Broadcasters as provided in § 380.31(c).

Side Channel is any internet-only program available on an Authorized website or an archived program on such Authorized website that, in either case, conforms to all applicable requirements under 17 U.S.C. 114.

Term is the period January 1, 2021, through December 31, 2025.

Website is a site located on the World Wide Web that can be located by a website User through a principal URL.

Website Performances are all public performances by means of digital audio transmissions of sound recordings, including the transmission of any portion of any sound recording, made through an Authorized website in accordance with all requirements of 17 U.S.C. 114, from servers used by a Public Broadcaster (provided that the Public Broadcaster controls the content of all materials transmitted by the server), or by a contractor authorized pursuant to § 380.31(f), that consist of either the retransmission of a Public Broadcaster's over-the-air terrestrial radio programming or the digital transmission of nonsubscription Side Channels that are programmed and controlled by the Public Broadcaster; provided, however, that a Public Broadcaster may limit access to an Authorized website, or a portion thereof, or any content made available thereon or functionality thereof, solely to website Users who are contributing members of a Public Broadcaster. This term does not include digital audio transmissions made by any other means.

Website Users are all those who access or receive website Performances or who access any Authorized website.

§ 380.31 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

(a) *Royalty rates.* The total license fee for all website Performances by Public Broadcasters during each year of the Term, up to the total Music ATH set forth in paragraphs (a)(1) through (5) of this section for the relevant calendar year, and Ephemeral Recordings made by Public Broadcasters solely to facilitate such website Performances, shall be $800,000 (the ''License Fee''), unless additional payments are required as described in paragraph (c) of this section. The total Music ATH limits are:

(1) 2021: 360,000,000;

(2) 2022: 370,000,000;

(3) 2023: 380,000,000;

(4) 2024: 390,000,000; and

(5) 2025: 400,000,000.

(b) *Calculation of License Fee.* It is understood that the License Fee includes:

(1) An annual minimum fee for each Public Broadcaster for each year during the Term;

(2) Additional usage fees for certain Public Broadcasters; and

(3) A discount that reflects the administrative convenience to the Collective (for purposes of this subpart, the term ''Collective'' refers to SoundExchange, Inc.) of receiving annual lump sum payments that cover a large number of separate entities, as well as the protection from bad debt that arises from being paid in advance.

(c) *Increase in Public Broadcasters.* If the total number of Originating Public Radio Stations that wish to make website Performances in any calendar year exceeds the number of such Originating Public Radio Stations considered Public Broadcasters in the relevant year, and the excess Originating Public Radio Stations do not wish to pay royalties for such website Performances apart from this subpart, CPB may elect by written notice to the Collective to increase the number of Originating Public Radio Stations considered Public Broadcasters in the relevant year effective as of the date of the notice. To the extent of any such elections, CPB shall make an additional payment to the Collective for each calendar year or part thereof it elects to have an additional Originating Public Radio Station considered a Public Broadcaster, in the amount of the annual minimum fee applicable to Noncommercial Webcasters under subpart B of this part for each additional Originating Public Radio Station per year. Such payment shall accompany the notice electing to have an additional Originating Public Radio Station considered a Public Broadcaster.

(d) *Allocation between ephemeral recordings and performance royalty fees.* The Collective must credit 5% of all royalty payments as payment for Ephemeral Recordings and credit the remaining 95% to section 114 royalties. All Ephemeral Recordings that a Licensee makes which are necessary and commercially reasonable for making noninteractive digital transmissions are included in the 5%.

(e) *Effect of non-performance by any Public Broadcaster.* In the event that any Public Broadcaster violates any of the material provisions of 17 U.S.C. 112(e) or 114 or this subpart that it is required to perform, the remedies of the Collective shall be specific to that Public Broadcaster only, and shall include, without limitation, termination of that Public Broadcaster's right to be treated as a Public Broadcaster per this paragraph (e) upon written notice to CPB. The Collective and Copyright Owners also shall have whatever rights may be available to them against that Public Broadcaster under applicable law. The Collective's remedies for such a breach or failure by an individual Public Broadcaster shall not include termination of the rights of other Public Broadcasters to be treated as Public Broadcasters per this paragraph (e), except that if CPB fails to pay the License Fee or otherwise fails to perform any of the material provisions of this subpart, or such a breach or failure by a Public Broadcaster results from CPB's inducement, and CPB does not cure such breach or failure within 30 days after receiving notice thereof from the Collective, then the Collective may terminate the right of all Public Broadcasters to be treated as Public Broadcasters per this paragraph (e) upon written notice to CPB. In such a case, a prorated portion of the License Fee for the remainder of the Term (to the extent paid by CPB) shall, after deduction of any damages payable to the Collective by virtue of the breach or failure, be credited to statutory royalty obligations of Public Broadcasters to the Collective for the Term as specified by CPB.

(f) *Use of contractors.* The right to rely on this subpart is limited to Public Broadcasters, except that a Public Broadcaster may employ the services of a third Person to provide the technical services and equipment necessary to deliver website Performances on behalf of such Public Broadcaster, but only through an Authorized website. Any agreement between a Public Broadcaster and any third Person for such services shall:

(1) Obligate such third Person to provide all such services in accordance with all applicable provisions of the statutory licenses and this subpart;

(2) Specify that such third Person shall have no right to make website Performances or any other performances or Ephemeral Recordings on its own behalf or on behalf of any Person or entity other than a Public Broadcaster through the Public Broadcaster's Authorized website by virtue of its services for the Public Broadcaster, including in the case of Ephemeral Recordings, pre-encoding or otherwise establishing a library of sound recordings that it offers to a Public Broadcaster or others for purposes of making performances, but instead must obtain all necessary licenses from the

Collective, the copyright owner or another duly authorized Person, as the case may be;

(3) Specify that such third Person shall have no right to grant any sublicenses under the statutory licenses; and

(4) Provide that the Collective is an intended third-party beneficiary of all such obligations with the right to enforce a breach thereof against such third Person.

§ 380.32 Terms for making payment of royalty fees and statements of account.

(a) *Payment to the Collective.* CPB shall pay the License Fee to the Collective in five equal installments of $800,000 each, which shall be due December 31, 2020, and annually thereafter through December 31, 2024.

(b) *Reporting.* CPB and Public Broadcasters shall submit reports of use and other information concerning website Performances as agreed upon with the Collective.

(c) *Terms in general.* Subject to the provisions of this subpart, terms governing late fees, distribution of royalties by the Collective, unclaimed funds, record retention requirements, treatment of Licensees' confidential information, audit of royalty payments and distributions, and any definitions for applicable terms not defined in this subpart shall be those set forth in subpart A of this part.

Dated: February 10, 2020.

Jesse M. Feder,

Chief Copyright Royalty Judge.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2020–03305 Filed 2–27–20; 8:45 am]

BILLING CODE 1410–72–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Chapter 7

RIN 0412–AA94

U.S. Agency for International Development Acquisition Regulation (AIDAR): Designation of Personal Services Contractors (PSCs) as Contracting Officers and Agreement Officers

AGENCY: U.S. Agency for International Development.

ACTION: Final rule.

SUMMARY: The U.S. Agency for International Development (USAID) is issuing a final rule amending the Agency for International Development Acquisition Regulation (AIDAR) to streamline the procedures for issuing contracting officer and agreement officer warrants to U.S. Personal Services Contractors (US PSCs) and Cooperating Country National Personal Services Contractors (CCN PSCs).

DATES: This final rule is effective March 30, 2020.

FOR FURTHER INFORMATION CONTACT: Anne Sattgast, Telephone: 202–916–2623 or Email: *asattgast@usaid.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Agency for International Development (USAID) is located in offices in over 80 countries with programs in over 100 nations. USAID operates in a fluid environment responding to a myriad of crises such as war, natural disasters, epidemics, as well as working towards its long term mission of reducing poverty, strengthening democratic governance, and helping people emerge from humanitarian crises and progress beyond assistance.

The Agency's warranted work force is critical to managing these efforts. A shortage of warranted contracting/agreement officers requires that the Agency be able to designate highly qualified US Personal Services Contractors (US PSCs) and Cooperating Country National Personal Services Contractors (CCN PSCs) as contracting/agreement officers in an expeditious manner. The delegation of limited contracting/agreement officer authorities to a select number of CCN PSCs will also bolster the Agency to succeed in terms of building long-term, host country technical capacity to materially assist the Missions with procurement responsibility.

Currently, a US PSC can be designated as a contracting officer only when a deviation from AIDAR 701.603–70 is approved; and when the Assistant Administrator for the Bureau for Management (AA/M) approves an exception in accordance with AIDAR Appendix D 4(b)(3)e.

Additionally, the Agency currently allows for the delegation of certain limited contracting officer authorities to highly qualified CCN PSCs. The CCN warrant program ran as a pilot from 2011–2014. The program became permanent in September 2014, when USAID issued a two-year class deviation from 48 CFR AIDAR 701.603–70. In conjunction with the approval of the class deviation, the Assistant Administrator for the Bureau for Management (AA/M) approved a class exception to the limitations in AIDAR Appendix J 4(b)(3). Subsequent two-year class deviations were issued for the permanent CCN warrant program in September 2016 and September 2018.

USAID published a proposed rule in the **Federal Register** at 84 FR 27745 on June 14, 2019, to amend the AIDAR to allow for the designation of US PSCs and CCN PSCs as contracting officers and agreement officers. The proposed rule's supplementary information contains additional background on the designation of US PSCs and CCN PSCs as contracting and agreement officers, including more details on the permanent CCN warrant program and an analysis of the risks associated with designating non-U.S. citizens as contracting and agreement officers.

This final rule amends the AIDAR to streamline the procedures for issuing contracting officer and agreement officer warrants to US PSCs and CCN PSCs. Thirteen respondents submitted comments related to the proposed rule.

II. Discussion and Analysis

USAID reviewed and considered the public comments before the issuance of this final rule. No changes were made to the proposed rule as a result of the comments. A discussion of the comments is provided below.

A. General Support for the Rule

Comment: Eleven of the thirteen respondents expressed explicit support for the proposed rule. For example, several respondents stated that the rule helps PSCs and highlights their contributions to the Agency. Several other respondents noted that the current process for securing warrants for PSCs, which requires an exception from AA/M, was difficult and cumbersome and that the improvements in the proposed rule will result in a more efficient process, allowing the Agency to issue warrants to PSCs in a timely manner. Others noted that this rule will help address a shortage of contracting officers and is a positive change for an overburdened workforce.

Response: USAID agrees with these comments. PSCs are an important part of the Agency's workforce.

B. Designating CCN PSCs as Contracting Officers

Comment: One respondent was concerned that the delegation of warrant CCN PSCs would be in conflict with regulations relating to inherently governmental functions.

Response: USAID CCN PSCs are able to perform inherently governmental functions under federal law and USAID policy. (48 CFR) FAR subpart 7.5 exempts PSCs from the restrictions on

contracts for inherently governmental functions. (48 CFR) FAR does not specify that contracting officers must be U.S. citizen direct-hire employees of the Federal government.

Comment: One respondent stated that providing CCN warrants was an inherent conflict, given that USAID is distributing US taxpayer funds in a foreign environment and the possibility for corruption when approving subcontracts.

Response: USAID has had a permanent CCN warrant program in place for five years, and over that time period, the program has been extensively reviewed on multiple occasions. This final rule streamlines warrant issuance procedures. The Agency does not view the issuance of administrative warrants with limited authorities to CCN PSCs as a conflict. Concerning the possibility for corruption, warranted CCN PSCs do not provide subcontract approvals in isolation, as the Agency's procurement systems have a built-in segregation of duties, even for administrative contracting duties. When approving subcontracts, the Contracting Officer's Representative (COR) initiates the process and provides technical clearance. The warranted CCN PSC then reviews and executes the COR's request. This system applies to all staff, including US direct hires, US PSCs, and CCN PSCs, and is an important risk mitigation measure against fraud, waste, and abuse in USAID's procurement system.

Comment: Two respondents expressed concerns relating to the training, certification, and oversight of CCN PSCs.

Response: The Agency has built stringent qualifications and oversight measures into the warrant program to mitigate risk. The current training, certification and experience requirements for CCN PSCs to receive a limited, administrative warrant exceed those required for US citizens to receive a warrant to ensure that CCN PSCs understand the complexities associated with U.S. regulations and policies. CCN PSCs are required to have a Federal Acquisition Certification—Contracting (FAC–C) Level II certification along with seven years of Agency experience, and at least five years of that experience must be in the area of acquisition and assistance. As noted in the preamble to the proposed rule, the CCN warrant program requires the CCN contracting officer's supervisor to closely and frequently monitor the CCN PSC's work and review performance and progress every six months. The review includes an assessment of all actions where the warrant was used. This review is followed by periodic reviews conducted by the Bureau for Management, Office of Acquisition and Assistance, Evaluation Division, which is responsible for the program implementation.

Comment: One respondent expressed a desire for more information about the CCN warrant program, including information relating to the design, scope, duration, and results of the program, including information related to the State Department's program.

Response: This comment is outside the scope of the streamlined warrant issuance procedures in the final rule. The Agency provided some historical information in the preamble of the proposed rule to provide context for the rule. However, the warrant program is internal to the Agency and not contained in federal regulation.

C. Recommendation of an Independent Ombudsman

Comment: One respondent recommended an independent Ombudsman to investigate complaints related to the behavior of CCN PSCs and their ability to manage US funds.

Response: USAID agrees that an independent Ombudsman is important to support the integrity of its procurement system. The Agency has had a Personal Services Contractor Ombudsman since 2016.

D. Support for a ''Limited'' Program

Comment: One respondent provided support of a limited program to provide a temporary alternative solution to the direct-hire of full-time USAID employees as contracting and agreement officers, with appropriate limitations on the scope of warrants issued to these individuals.

Response: USAID agrees that certain limitations on PSC warrants are appropriate. US PSCs must meet the same requirements as US direct hires to receive a warrant. The CCN PSC warrant program has more stringent training, certification, and experience requirements than those required for US citizens and only allows for the delegation of limited contract administration functions. Warranted CCN PSCs are not delegated authority to make new awards or execute any actions or awards related to personal services contracts or public international organizations (PIOs). The program also limits delegated authority for select contract administration functions listed in (48 CFR) FAR 42.302(a), specifically, the contracting officer functions in which disputes or possible legal challenges may arise due to decisions of the contracting officer, functions related to novation, and contractor name changes, which may be a result of changes in a contractor's business structure as governed under applicable U.S. state law and other functions based on U.S. state laws, functions related to small business contracting matters, and those requiring extensive knowledge of specific U.S. laws and government-wide policies not specifically related to contracting. Accordingly, the functions specified in items 5–7, 9–12, 18, 21–26, 29, 32, 50, 52–55, 62–63, 66 and 68–71 of (48 CFR) FAR 42.302(a) are not redelegated to CCN PSC contracting officers.

Comment: One respondent expressed concern that issuing warrants to PSCs would dilute the Agency's position in advocating for increasing funding for direct-hire contracting staff.

Response: USAID continues to advocate strongly for more operational expense funding for direct-hire staff. The US PSC and CCN PSC warrant programs could not and are not intended to be a permanent solution to the shortage of direct-hire contracting staff. These warrant programs are significantly limited in scope and are only available to overseas Missions with a demonstrated need for additional warranted individuals. The Agency does not view the issuance of these warrants to PSCs as diluting the argument for both a larger direct-hire acquisition workforce and the funding necessary to support that workforce.

E. Number of PSCs at USAID Missions

Comment: One respondent commented on the number of PSCs with warrants and inquired if the positions noted in the preamble of the proposed rule were a fixed number designated to be filled or if they were the only ones that the Agency was able to fill.

Response: This comment is outside the scope of the streamlined warrant issuance procedures in the rule. At the time of the issuance of the proposed rule, there were 21 PSCs with warrants. However, this is not a fixed number. The Agency only issues warrants to US PSCs and CCN PSCs when there is a demonstrated need for such warrants.

III. Regulatory Findings

Executive Orders 12866, 13563, and 13771

This final rule has been drafted in accordance with Executive Orders (E.O.s) 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential

economic, environmental, public health and safety effects, distributive impacts, and equality). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. USAID has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in E.O.s 12866 and 13563 and finds that the benefits of issuing this rule outweigh any costs, which the Agency assesses to be minimal. The Office of Management and Budget's Office of Information and Regulatory Affairs (OMB/OIRA) has determined that this regulatory action is ''significant'' and therefore subject to the requirements of the E.O. and subject to review by OMB. OMB/OIRA has determined that this rule is not an ''economically significant regulatory action'' under Section 3(f)(1) of E.O. 12866. This final rule is not subject to the requirements of E.O. 13771 because this rule is related to agency organization, management, or personnel.

Regulatory Flexibility Act

USAID certifies that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, the Agency has not prepared a regulatory flexibility analysis.

Small Business Regulatory Enforcement Fairness Act

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required.

List of Subjects in 48 CFR Part 701

Government procurement.

For the reasons stated in the preamble, USAID amends 48 CFR Chapter 7 as set forth below:

■ 1. The authority citation for 48 CFR part 701 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.6—Career Development, Contracting Authority, and Responsibilities

■ 2. Revise 701.603–70 to read as follows:

701.603–70 Designation of contracting officers.

A contracting officer represents the U.S. Government through the exercise of his/her delegated authority to negotiate, sign, and administer contracts on behalf of the U.S. Government. The contracting officer's duties are sensitive, specialized, and responsible. To ensure proper accountability, and to preclude possible security, conflict of interest, or jurisdiction problems, USAID contracting officers must be U.S. citizen direct-hire employees of the U.S. Government. However, Director, Bureau for Management, Office of Acquisition and Assistance (M/OAA Director) may also designate a U.S. Personal Services Contractor (USPSC) or a Cooperating Country National Personal Services Contractor (CCNPSC) as a contracting officer with a specific level of warrant authority. To qualify for a designation as a contracting officer, an individual must meet the requirements in FAR subpart 1.6 and the Agency's applicable warrant program.

■ 3. In appendix D to chapter 7, in section 4 ''Policy'', revise paragraph (b)(3)b. and add paragraph (b)(4) and revise the authority citation at the end of the appendix to read as follows:

Appendix D to Chapter 7—Direct USAID Contracts With a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

* * * * *

4. *Policy*

* * * * *

(b) * * *

(3) * * *

b. They may not be delegated authority to sign obligating or subobligating documents except when specifically designated as a contracting officer or an agreement officer in accordance with FAR subpart 1.6 and the Agency's applicable warrant program.

* * * * *

(4) *Exceptions.* The Assistant Administrator, Bureau for Management (AA/M) must approve exceptions to the limitations in (b)(3). Approval of an exception by the AA/M is not required when the Director, Bureau for Management, Office of Acquisition and Assistance (M/OAA Director) designates a USPSC as a contracting officer or an agreement officer.

* * * * *

Authority: (Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435)

■ 4. In appendix J to chapter 7, in section 4 ''Policy'', revise paragraphs (b)(3)b. and (b)(4) and the authority citation at the end of the appendix to read as follows:

Appendix J to Chapter 7—Direct USAID Contracts With a Cooperating Country National and With a Third Country National for Personal Services Abroad

* * * * *

4. Policy

* * * * *

(b) * * *

(3) * * *

b. They may not be delegated authority to sign obligating or subobligating documents except when a cooperating country national personal services contractor is specifically designated as a contracting officer or an agreement officer in accordance with FAR subpart 1.6 and the Agency's applicable warrant program.

* * * * *

(4) *Exceptions.* The Assistant Administrator, Bureau for Management (AA/M) must approve exceptions to the limitations in (b)(3). Approval of an exception by the AA/M is not required when the Director, Bureau for Management, Office of Acquisition and Assistance (M/OAA Director) designates a cooperating country national personal services contractor as a contracting officer or an agreement officer.

* * * * *

Authority: (Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435)

Mark Walther,

Acting Chief Acquisition Officer.

[FR Doc. 2020–03408 Filed 2–27–20; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160426363–7275–02]

RTID 0648–XS021

Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; 2019–2020 Closure of Commercial Run-Around Gillnet for King Mackerel

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) through this temporary rule for commercial harvest of king mackerel in the southern zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) using run-around gillnet gear. NMFS has determined that the commercial annual catch limit (ACL) (equivalent to the commercial quota) for king mackerel using run-around gillnet gear in the southern zone of the Gulf EEZ has been reached. Therefore, NMFS closes the southern zone to commercial king mackerel fishing using run-around gillnet gear in the Gulf EEZ on February 25, 2020. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective from 12 p.m. local time on February 25, 2020, until 6 a.m. local time on January 19, 2021.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *kelli.odonnell@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish in the Gulf includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights for Gulf migratory group king mackerel (Gulf king mackerel) apply as either round or gutted weight.

The commercial fishery for Gulf king mackerel is divided into western, northern, and southern zones. The southern zone for Gulf king mackerel encompasses an area of the Gulf EEZ off Collier and Monroe Counties in south Florida, which is the EEZ south of a line extending due west from the boundary of Lee and Collier Counties on the Florida west coast, and south of a line extending due east from the boundary of Monroe and Miami-Dade Counties on the Florida east coast (50 CFR 622.369(a)(1)(iii)).

The commercial ACL for Gulf king mackerel is divided into separate ACLs for hook-and-line and run-around gillnet gear. The use of run-around gillnets for king mackerel is restricted to the Gulf southern zone. On November 13, 2019, as a result of an overage of the 2018–2019 commercial gillnet ACL, NMFS reduced the 2019–2020 commercial quota (equivalent to the commercial ACL) for Gulf king mackerel in the southern zone for vessels using run-around gillnet gear to 530,043 lb (240,423 kg) for the 2019–2020 fishing year, which extends through June 30, 2020 (84 FR 61568, November 13, 2019; 50 CFR 622.388(a)(1)(iii)).

Regulations at 50 CFR 622.8(b) and 622.388(a)(1) require NMFS to close any component of the king mackerel commercial sector when its applicable quota has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that for the 2019–2020 fishing year, the adjusted Gulf king mackerel commercial quota for vessels using run-around gillnet gear in the southern zone has been reached. Accordingly, commercial fishing using such gear in the southern zone is closed at 12 p.m. local time on February 25, 2020, until 6 a.m. local time on January 19, 2021, the beginning of the next fishing season, *i.e.,* the day after the 2021 Martin Luther King, Jr. Federal holiday. Vessel operators that have been issued a Federal commercial permit to harvest Gulf king mackerel using run-around gillnet gear in the southern zone must have landed ashore and bartered, traded, or sold such king mackerel prior to 12 p.m. local time on February 25, 2020.

Persons aboard a vessel using hook-and-line gear in the southern zone for which a Federal commercial permit for Gulf king mackerel has been issued, except persons aboard such a vessel also issued a Federal commercial permit to harvest Gulf king mackerel using run-around gillnet gear, may fish for or retain Gulf king mackerel unless the southern zone commercial quota for hook-and-line gear has been met and the hook-and-line component of the commercial sector has been closed. In addition, as long as the recreational sector for Gulf king mackerel is open (50 CFR 622.384(e)(1)), a person aboard a vessel that has a valid Federal commercial gillnet permit for king mackerel may continue to retain king mackerel under the recreational bag and possession limits set forth in 50 CFR 622.382(a)(1)(ii) and (a)(2).

During the commercial closure, Gulf king mackerel harvested using run-around gillnet gear in the southern zone may not be purchased or sold. This prohibition does not apply to Gulf king mackerel harvested using run-around gillnet gear in the southern zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(2)).

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Gulf king mackerel and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws.

This action is taken under 50 CFR 622.8(b) and 622.388(a)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without prior notice and opportunity for public comment.

This action responds to the best scientific information available. The NOAA Assistant Administrator for Fisheries (AA) finds that the need to immediately implement this action to close the run-around gillnet component of the commercial sector in the Gulf southern zone constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because prior notice and opportunity for public comment on this temporary rule is unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the commercial quota and the associated AM has already been subject to notice and comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment is contrary to the public interest, because any delay in the closure of the commercial harvest could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the king mackerel resource, because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment on this action would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

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

Dated: February 25, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–04092 Filed 2–25–20; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200214–0057]

RIN 0648–BJ57

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Interim 2020 Recreational Measures

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

ACTION: Temporary rule; interim measures; request for comments.

SUMMARY: This temporary rule implements interim recreational management measures for the 2020 Atlantic Bluefish Fishery to prevent overfishing. This action is necessary to constrain recreational harvest at the start of the fishing year while final 2020 measures are developed and implemented. These measures are expected to help ensure the long-term recovery and sustainability of the bluefish stock.

DATES: Effective February 28, 2020, through August 26, 2020. Comments must be received on or before March 30, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0011, by either of the following methods:

Electronic submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0011,*
2. Click the ''Comment Now!'' icon, complete the required fields, and
3. Enter or attach your comments.

—OR—

Mail: Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, Greater Atlantic Region, 55 Great Republic Drive, Gloucester, MA 01930–2276. Mark the outside of the envelope: ''Comments on the Bluefish Interim Action.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, 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).

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Management Specialist, (978) 281–9180.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission jointly manage the bluefish fishery under the Atlantic Bluefish Fishery Management Plan (FMP). The August 2019 bluefish operational assessment incorporated revised Marine Recreational Information Program (MRIP) estimates and determined that the bluefish stock is overfished with overfishing not occurring. NMFS notified the Council of the stock status change on November 12, 2019, and the Council is developing a rebuilding plan. The final assessment results were not available until fall 2019 and additional analysis was required to respond to the new MRIP data and develop revised catch limits. As a result, it was not possible to implement new specifications and recreational management measures for the January 1, 2020, start of the fishing year. To ensure some measures were in place for the 2020 fishery, NMFS published status quo interim specifications for 2020 (84 FR 54041, October 9, 2019) with the expectation that they would be replaced once final measures informed by the assessment could be developed. However, in light of the assessment results and stock status change, the interim measures for 2020 are no longer appropriate and are substantially more liberal that what is necessary to sustainably manage the bluefish fishery and prevent overfishing for this overfished stock.

In September 2019, the Council's Scientific and Statistical Committee (SSC) recommended a substantially reduced 2020 and 2021 acceptable biological catch for bluefish. The Council and the Commission's Bluefish Board jointly approved catch specifications for fishing years 2020 and 2021 at a joint meeting in October 2019. The Council and Board delayed decision-making on the 2020 recreational management measures until the joint December 2019 meeting. This delay was necessary to address the later than normal specifications development timing, and to analyze options designed to reduce recreational catch. Recreational measures have not been adjusted in nearly a decade, so appropriate time was given to exploring alternatives, particularly in light of the magnitude of change necessary for 2020.

Based on projected recreational landings for the 2020 bluefish fishery (13.27 million lb; 6,020 mt), the Council's Monitoring Committee determined that a 28.65-percent reduction in recreational harvest is necessary to constrain catch to the Council-recommended revised 2020 recreational harvest limit (RHL) of 9.48 million lb (4,301 mt). The Council and Board took final action in December 2019, and recommended a mode-specific reduction in bag limit from 15 to 3 fish for private anglers and to 5 fish for for-hire vessels, with no changes to recreational seasons or size limits.

The 2020 bluefish fishing year began on January 1. Because of the previously mentioned timing issues associated with developing the revised 2020 bluefish specifications and recreational management measures, it was not possible for the Council to provide analysis supporting its recommendation for recreational measures in time for the start of the fishing year. The Council is finalizing this document, which it will submit to NMFS to complete formal notice-and-comment rulemaking to finalize 2020 specifications and recreational measures by late spring.

The action taken by the Board in December 2019 was final, and states are expected to put in place recreational management measures as expeditiously as possible. However, many states require a public hearing and/or legislative process to finalize measures. As a result, many states have indicated that they will not be able to implement their own measures quickly. Some have stated that their process will be accelerated if Federal measures are in place first. The recreational bluefish fishery is very active in a few southern states early in the year. Recent data shows that these states harvest a substantial portion of their annual bluefish catch between January and April, comprising up to 29 percent of the coast-wide recreational bluefish catch for the year. If immediate action is not taken with interim measures, the status quo Federal measures of a 15-fish bag limit will remain in place until final 2020 measures can be implemented. Harvest will be relatively unconstrained, which will greatly increase the risk of overfishing on the already overfished stock, potentially harming its long-term health and recovery.

Interim Management Measures

This action implements a reduction in the Federal bluefish recreational bag limit from 15 to 3 fish for private anglers and to 5 fish for for-hire vessels. All other management measures, including recreational season and minimum fish size, remain unchanged. This action is consistent with what the Council and Board approved at the joint meeting in December 2019 to constrain harvest to the reduced 2020 RHL and prevent overfishing. This bag limit reduction is expected to effectively constrain bluefish catch to prevent overfishing of the stock. Interim action is necessary to ensure these measures are in place as soon as possible in the fishing year while the proposed and final rulemaking of the Council-recommended measures is completed. This temporary rule has an effective period limited by the Magnuson-Stevens Act to 180 days, with a potential extension of an additional 186 days. The Council-recommended action containing revised 2020 specifications, and the same recreational measures implemented by this rule, is already in development and expected to be implemented in late spring. However, if the expected permanent rulemaking is not in place before the expiration of this rule (180 days following publication), an extension of the interim measures for 186 days will be considered.

Justification for Interim Measures

Section 305(c) of the Magnuson-Stevens Act (16 U.S.C. 1855(c)) authorizes the Secretary of Commerce to implement interim measures to address overfishing. This action meets the 305(c) requirements for interim measures because it is necessary to prevent overfishing on the bluefish stock which was recently declared overfished. As a fishery with a significant recreational component, the bluefish fishery was substantially affected by the revised MRIP data and the 2019 operational assessment results. This assessment found the stock to be overfished, and while it was not subject to overfishing in 2018 (the terminal year of the assessment), the new data suggests that this was the first year overfishing had not been occurring in several years. Without changes to the current management measures, expected recreational catch (17.3 million pounds; 7,849 metric tons) would exceed the Council-recommended acceptable biological catch recommendation for the entire fishery (16.28 million pounds; 7,385 metric tons), with no allowance for catch from the commercial sector.

While some changes resulting from the revised MRIP data were expected, the magnitude of the shift in stock status necessitating changes to the catch limits and recreational management measures was not. Because of unforeseen large management adjustments necessary to address this change, the Council and Board chose to separate development of catch specifications and recreational management measures. This delayed Council decision on recreational management measures until December 2019. Due to necessary analyses and process requirements for the Council to formally submit its recommendation to NMFS, the Council action will not be implemented until at least April 2020, while the fishing year began on January 1. Delayed implementation of these measures increases the risk of overfishing for the year. Higher harvest will occur under the substantially less restrictive status quo measures *(i.e.,* higher quotas, more liberal recreational management measures) that are in place now, which will also reduce the effectiveness of the Council-recommended measures, as they were calculated to apply to the entire fishing year.

These interim measures are intended to prevent overfishing in the Atlantic bluefish fishery and avoid serious damage to the already overfished fishery resource. Accelerating the implementation of the Council and Board-recommended measures through this expedited rulemaking is also expected to allow several states to rely on Federal measures, and accelerate the implementation of state management measures. Some states will be able to forego public meetings or the legislative process as their state provisions for bluefish management allow for instantaneous adoption of Federal management measures as soon as they become available. Therefore, avoiding the serious conservation and management problem of subjecting the overfished bluefish stock to potential overfishing conditions due to reasonably unforeseen circumstances justifies these interim measures, and outweighs the benefit of advance notice and comment.

Renewal of Interim Regulations

The Magnuson-Stevens Act limits NMFS' authority to implement interim measures for an initial period of 180 days, with a potential extension up to an additional 186 days, if warranted. The public has an opportunity to comment on the initial recreational management measures in this temporary rule (see **ADDRESSES**). After considering public comments on this rule, NMFS may extend the interim measures for one additional period of not more than 186 days to maintain Federal recreational measures until permanent rulemaking can be implemented. However, the 180-day period provided by this temporary rule should be sufficient as a stop gap until permanent 2020 recreational management measures are finalized and an extension is not anticipated.

Classification

The NMFS Assistant Administrator has determined that this temporary rule is consistent with the criteria and justifications for use of interim measures in section 305(c) of the Magnuson-Stevens Act. NMFS has also determined that this rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. Additionally, the need to implement these measures in a timely manner to reduce the risk of overfishing the depleted bluefish resource constitutes good cause under the authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule.

The bluefish fishing year began on January 1, 2020, and is operating under an unrestrictive recreational bag limit of 15 fish. Although the Council already took final action to implement measures intended to constrain recreational catch to a reduced RHL, it was not able to do so until December 2019 given delayed data available and time necessary to develop and analyze potential measures. These interim measures are necessary to implement a restrictive recreational bag limit as quickly as possible to prevent overfishing on the overfished bluefish stock. Recent data shows that the recreational bluefish fishery harvests up to 29 percent of the coast-wide recreational bluefish catch for the year between January and April. If immediate action is not taken with interim measures, the status quo Federal measures of a 15-fish bag limit will remain in place until final 2020 measures can be implemented. Further delaying implementation of these measures would increase the risk of overfishing and be potentially harmful to the long-term sustainability of the resource. Public comments will be accepted on this temporary rule (see **DATES** and **ADDRESSES**), and there will be opportunities for further comment and public participation through the notice-

and-comment rulemaking process as we work to implement the permanent management measures for 2020, already in development by the Council.

These interim measures are being issued at the earliest possible date to minimize the amount of time the 2020 recreational bluefish fishery is at risk of overfishing, and will only be effective until permanent measures can be implemented. Unlike actions that require an adjustment period to comply with new rules, charter/party operators will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this rule simply means adhering to a reduced bag limit. These measures were discussed at multiple public Council and Commission meetings throughout 2019 and are generally expected by the recreational fishing sector.

For all of the reasons outlined above, NMFS finds it impracticable and contrary to the public interest to provide prior opportunity to comment on these interim measures. Prior notice and opportunity for public comment, as well as a 30-day delayed effectiveness would prevent the positive benefit to the resource that this rule is intended to provide, and undermines the purpose of this interim action.

This action is being taken pursuant to the 305(c) emergency action and interim measures provision of the Magnuson-Stevens Act and is exempt from Office of Management and Budget review.

This temporary rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior notice and opportunity for public comment.

This rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action would not establish any new reporting or record-keeping requirements.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 18, 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 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.164, suspend paragraphs (a) and (b), and add paragraphs (c) and (d).

The additions read as follows:

§ 648.164 Bluefish possession restrictions.

* * * * *

(c) *Recreational possession limits.* Any person fishing from a vessel in the EEZ that is not fishing under a bluefish commercial permit shall observe the applicable recreational possession limit. The owner, operator, and crew of a charter or party boat issued a bluefish commercial permit are not subject to the recreational possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(1) *Private recreational vessels.* Any person fishing from a vessel that is not fishing under a bluefish commercial or charter/party vessel permit issued pursuant to § 648.4(a)(8), may land up to three bluefish per trip.

(2) *For-hire vessels.* Anglers fishing onboard a for-hire vessel under a bluefish charter/party vessel permit issued pursuant to § 648.4(a)(8), may land up to five bluefish per person per trip.

(d) *Pooling Catch.* Bluefish harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of bluefish on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

[FR Doc. 2020–03523 Filed 2–27–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 40
Friday, February 28, 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 JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003, 1103, 1208, 1216, 1235, 1240, 1244, and 1245

[EOIR Docket No. 18–0101; A.G. Order No. 4641–2020]

RIN 1125–AA90

Executive Office for Immigration Review; Fee Review

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice's Executive Office for Immigration Review (''EOIR'') imposes fees, also known as user charges, for the filing of certain EOIR forms for applications for relief, appeals filed with the Board of Immigration Appeals (''BIA''), and motions to reopen or reconsider. When applicable, the current fee for EOIR applications for relief is $100, and the fee for motions or appeals is $110. EOIR last reviewed and updated these fees 33 years ago, in 1986. This proposed rule (''proposed rule'' or ''rule'') would increase the fees for those EOIR applications, appeals, and motions that are subject to an EOIR-determined fee, based on a fee review conducted by EOIR. This proposed rule would not affect the fees that have been established by the Department of Homeland Security (''DHS'') with respect to DHS forms for applications that are filed or submitted in EOIR proceedings. This proposal does not affect the ability of aliens to submit fee waiver requests, nor does it add new fees. The proposed rule also updates cross-references to DHS regulations regarding fees and makes a technical change regarding requests under the Freedom of Information Act.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before March 30, 2020.

ADDRESSES: You may submit comments, identified by EOIR Docket No. 18–0101, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.
- *Mail:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041. To ensure proper handling, please reference EOIR Docket No. 18–0101 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. The Department of Justice (''Department'' or ''DOJ'') also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

All submissions received should include the agency name and EOIR Docket No. 18–0101 for this rulemaking. Please note that all comments received are considered part of the public record and made available for public inspection at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

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

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified as set forth above will be placed in the agency's public docket file, but not posted online. To inspect the agency's public docket file in person, you must make an appointment with agency counsel. Please see the **FOR FURTHER INFORMATION CONTACT** section above for agency counsel's contact information.

II. Purpose and Summary of This Proposed Rule

A. Legal Authority

In 1988, Congress established the Immigration Examinations Fee Account in the Treasury of the United States. *See* Public Law 100–459, sec. 209, 102 Stat. 2186 (Oct. 1, 1988) (codified as amended at 8 U.S.C. 1356(m), (n)). Section 286(m) of the Immigration and Nationality Act (''INA''), 8 U.S.C. 1356(m), authorizes DOJ to charge fees for immigration adjudication and naturalization services at a level to ''ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants.'' Prior to the enactment of section 286(m), EOIR had relied only on government-wide statutory authority under the Independent Offices Appropriations Act of 1952 (''IOAA''), 31 U.S.C. 9701, to

charge fees, also referred to as user charges, to individuals who receive special services from the agency.

EOIR's authority to charge user fees first derived from title V of the IOAA.[1] Under the IOAA, ''each service or thing of value provided by an agency . . . to a person. . . is to be self-sustaining to the extent possible.'' 31 U.S.C. 9701(a).[2] To that end, ''[t]he head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency.'' *Id.* at sec. 9701(b). Such fees must be ''fair'' and based on Government costs, the value of the service or thing provided to the recipient, the public policy or interest served, and other relevant facts. *Id.*

Circular No. A–25 Revised[3] sets Federal policy regarding user fees assessed for Government services and for the sale or use of Government goods or resources. *Cf. Fed. Power Comm'n* v. *New England Power Co.,* 415 U.S. 345, 349–51 (1974) (favorably citing Circular No. A–25 as a ''proper construction'' of the IOAA). The Circular provides guidance to executive branch agencies regarding the scope and type of activities subject to user fees and how to set such user fees. It applies to all Federal activities that convey special benefits to recipients beyond those accruing to the general public. OMB instructs agencies to ''[r]eview the user charges for agency programs biennially.'' Circular No. A–25 Revised at sec. 8(e); *see also* 31 U.S.C. 902(a)(8).

As noted above, the IOAA authorizes a Federal agency to charge user fees. 31 U.S.C. 9701. Section 286 of the INA, 8 U.S.C. 1356, contemplates the collection of certain fees and fines by the Attorney General and the Secretary of Homeland Security.[4] In particular, section 286(m) contemplates that the Attorney General and the Secretary may charge fees for adjudication and naturalization services at a rate that would ensure recovery of both the full cost of providing all such services, including similar services that may be provided without charge to certain categories of aliens, and any additional administrative costs associated with the fees collected. All adjudication fees that are designated in regulations are deposited in the Immigration Examinations Fee Account (''IEFA'') in the Treasury of the United States. *Id.* Deposits into the IEFA ''remain available until expended to the Attorney General [or the Secretary] to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the [IEFA].'' INA 286(n), 8 U.S.C. 1356(n). All other monies received in payment of fees and administrative fines and penalties are to be deposited into the Treasury as miscellaneous receipts, with exceptions not relevant here, such as for certain nonimmigrant visa payments by residents of the Virgin Islands and Guam. INA 286(c), 8 U.S.C. 1356(c). The Attorney General (and the Secretary under the Homeland Security Act of 2002 (HSA)) have the authority to promulgate regulations to carry out the provisions of section 286. INA 286(j), 8 U.S.C. 1356(j).

B. Current Practice

EOIR currently imposes a fee for eight distinct types of filings: Three applications for relief in proceedings before an immigration judge (all of whom serve within the Office of the Chief Immigration Judge (''OCIJ'')); three types of appeals to the BIA; and two motions that may be filed in proceedings before either an immigration judge or the BIA. 8 CFR 1103.7(b).

These filings represent important forms of relief and procedural tools for the parties in immigration proceedings before the OCIJ and the BIA.

- Aliens use the Forms EOIR–42A and EOIR–42B to apply for cancellation of removal, which is a statutorily provided relief from removal if they have relatively lengthy periods of residence in the United States, depending on the alien's status and whether the alien's removal would cause the alien's citizen or resident family members particularly severe hardships, in addition to other eligibility requirements. *See* INA 240A, 8 U.S.C. 1229b. The Form EOIR–40 allows eligible aliens to seek a similar form of relief under prior law.
- Aliens use the Forms EOIR–26, EOIR–29, and EOIR–45 for appeals to the BIA. Such forms, and other procedural mechanisms like motions to reconsider,[5] provide both aliens and the Government with a tool to obtain appellate review and reconsideration of decisions, in order to ensure the correctness of agency decisions in all cases. *See Ayuda, Inc.* v. *Attorney Gen.,* 848 F.2d 1297, 1301 (D.C. Cir. 1988) (describing the public interest in the ''correctness of administrative decisions'').
- Finally, motions to reopen are an ''important safeguard'' used ''to ensure a proper and lawful disposition'' of immigration proceedings. *Dada* v. *Mukasey,* 554 U.S. 1, 18 (2008).

For individuals seeking relevant relief before the immigration courts, the fees are as follows:

Form/motion	Title	Fee
EOIR–40	Application for Suspension of Deportation	$100
EOIR–42A	Application for Cancellation of Removal for Certain Permanent Residents	100
EOIR–42B	Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents.	100
Motion to Reopen		110
Motion to Reconsider		110

[1] Public Law 82–137, 65 Stat. 268, 290 (1951).

[2] Title 31 of the U.S. Code was codified by Public Law 97–258, 96 Stat. 877 (1982). Title V of the IOAA, as amended, is codified at 31 U.S.C. 9701.

[3] Circular No. A–25 was published in 1959. Circular No. A–25 Revised rescinded and replaced Circular No. A–25 and its accompanying Transmittal Memoranda 1 and 2. *See* 58 FR 38142, 38144 (July 15, 1993).

[4] Following the creation of DHS by the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, the Attorney General retained the same authorities and functions under the INA and all other laws relating to the immigration and naturalization of aliens as were exercised by EOIR, or by the Attorney General with respect to EOIR, prior to the effective date of the Homeland Security Act. INA 103(g)(1), 8 U.S.C. 1103(g)(1). The Attorney General also retained authority to promulgate regulations; prescribe bonds, reports, entries, and other papers; issue instructions; review administrative determinations in immigration proceedings; delegate authority; and perform other acts as the Attorney General determines are necessary to carry out the Attorney General's authorities under the immigration laws. INA 103(g)(2), 8 U.S.C. 1103(g)(2).

[5] There is no assigned form for parties who wish to file a motion to reopen or a motion to reconsider with either an immigration court or the BIA. The Forms EOIR–40, –42A, and –42B are only available in immigration court, while parties may file a motion to reopen or a motion to reconsider with either the immigration court or the BIA.

For individuals who wish to file an appeal or relevant motion with the BIA, the fees are as follows:

Form/motion	Title	Fee
EOIR–26	Notice of Appeal from a Decision of an Immigration Judge	$110
EOIR–29	Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer	110
EOIR–45	Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case	110
Motion to Reopen		110
Motion to Reconsider		110

EOIR does not require a fee in every circumstance when a party files one of the above-listed applications for relief, appeals to the BIA, or motions. There are certain circumstances when the normal filing fee explicitly does not apply. *See* 8 CFR 1003.8(a)(2), 1003.24(b)(2). For example, a filing party need not pay the $110 fee for a Form EOIR–26 if the appeal is from an immigration judge's custody bond decision. 8 CFR 1003.8(a)(2)(i). An alien in proceedings before an immigration court or the BIA may also apply for a fee waiver, and immigration judges and the BIA have the discretionary authority to waive a fee for an application for relief, appeal, or motion upon a showing that the filing party is unable to pay. *See* 8 CFR 1003.8(a)(3), 1003.24(d), 1103.7(c).[6]

These EOIR fees relate back to a final rule that the former Immigration and Naturalization Service (''INS'') and EOIR issued in 1986. 51 FR 39993 (Nov. 4, 1986) (codified at 8 CFR 103.7).[7] INS conducted a study in May 1984 of the ''policies and practices for user charges,'' reviewed the costs and fees, and evaluated the principle of user charges prescribed by Congress in 31 U.S.C. 9701 and the implementing guidelines in OMB Circular A–25. 51 FR 2895, 2895 (Jan. 22, 1986) (proposed rule). Following those analyses, INS and EOIR increased the fees for the applications, motions, and appeals for which EOIR currently levies a fee (or their precursors). 51 FR at 39993–94. EOIR and INS acted in accordance with the IOAA, 31 U.S.C. 9701, and OMB Circular No. A–25, which the components described as ''requir[ing] Federal agencies to establish a fee system in which a benefit or service provided to or for any person [is] self-sustaining to the fullest extent.'' *Id.* at 39993. The regulation predated the statutory authority regarding the collection of fees in the current version of section 286(m) of the INA.

In the 1986 rule, EOIR increased the fee for filing motions to reopen and motions to reconsider from $50 to the current $110; the fee for filing an appeal from any non-bond decision under the immigration laws in any type of proceedings over which the BIA had appellate jurisdiction, then a Form I–290A, from $50 to the current $110; and the fee for an application for suspension of deportation under section 244 of the INA, then a Form I–256A, from $75 to $100. *Id.* EOIR and INS explained that these fees were set in accordance with the cost of providing each specific benefit or service at that time. *Id.* However, EOIR and INS set the fees for administrative appeals processes ''at less than full cost recovery recognizing long-standing public policy and the interest served by these processes.'' *Id.*[8]

Since 1986, the former INS, and subsequently DHS, have promulgated multiple regulatory changes related to the fees for applications that are controlled by DHS, as currently codified in 8 CFR 103.7 and proposed to be revised in 8 CFR 103.7 and a newly added 8 CFR part 106. *See, e.g.,* 81 FR 73292, 73328–31 (Oct. 24, 2016) (final rule revising the United States Citizenship and Immigration Services (''USCIS'') fee schedule); 84 FR 62280 (Nov. 14, 2019) (proposed rule that would revise and reorganize regulations in 8 CFR chapter I related to fees). EOIR, however, has rarely taken any actions related to its fees in the intervening 33 years, even as its caseload and the costs of adjudication have increased. After Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,[9] EOIR and the former INS jointly updated the fee schedule to account for the new Form EOIR–42, Application for Cancellation of Removal. 62 FR 10312 (Mar. 6, 1997) (interim rule). EOIR set the fee at $100, the same as the application for suspension of deportation, which is a closely related form of relief that cancellation of removal replaced. *Id.* at 10336; *see also Matter of Monreal-Aguinaga,* 23 I&N Dec. 56, 58 (BIA 2001) (en banc) (explaining that Congress replaced suspension of deportation with cancellation of removal). In 2004, EOIR published a rule reorganizing 8 CFR 1103.7 to list EOIR forms separately from DHS forms and to otherwise make the regulation clearer for the public, including by listing separately the $100 fee for Forms EOIR–42A and EOIR–42B. 69 FR 44903 (July 28, 2004). The rule did not change the required fee amounts for filing any EOIR forms, appeals, or motions. *Id.* at 44904.

C. Review of EOIR Fees

EOIR determined that it was necessary to conduct an updated assessment of the costs for processing the forms and motions for which EOIR sets the applicable fees. *See* Circular No. A–25 Revised at sec. 8 (instructing agencies to conduct biennial reviews).

[6] DHS recently proposed assessing a fee for Form I–589, Application for Asylum and for Withholding of Removal. *See* 84 FR 62280, 62318–20 (Nov. 14, 2019). If a filing party uses Form I–589 only for a request for withholding of removal under section 241(b)(3) of the INA or protection from removal under the regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), then no fee will be assessed.

[7] Following the passage of the HSA, which transferred the functions of the INS to the newly created DHS, the Attorney General reorganized the regulations codified in title 8 of the Code of Federal Regulations and transferred those parts involving EOIR's administrative review functions to a new chapter V. *See* 68 FR 9824 (Feb. 28, 2003). The current DHS regulation on fees remains at 8 CFR 103.7, but the relevant regulation for EOIR on fees was moved to 8 CFR 1103.7. *Id.* at 9833. Note that DHS has proposed adjusting and reorganizing its regulations on fees at proposed 8 CFR 103.7 and proposed 8 CFR part 106. *See* 84 FR 62280.

[8] At the time, the U.S. Court of Appeals for the D.C. Circuit affirmed that the Attorney General had the authority under the IOAA to impose fees for these immigration services because the fees were imposed for a ''service or thing of value.'' *Ayuda,* 848 F.2d at 1299–1301. The court explained that the appeals to the BIA and motions to reopen or reconsider were ''procedural devices that redound to the obvious, substantial, and direct benefit of specific, identifiable individuals, individuals who have themselves invoked those procedures,'' *id.* at 1301, and cited with approval the district court's finding that the fees imposed were reasonable, *id.* at 1299 n.5; *see also Ayuda, Inc.* v. *Attorney Gen.,* 661 F. Supp. 33, 35–36 (D.D.C. 1987). The district court had noted that the fees were the product of an ''extensive agency-wide review, utilizing careful cost accounting and full public notice and comment'' and were no greater than the actual cost of providing services or, in the case of appeals to the BIA and motions to reopen or reconsider BIA decisions, were set to an amount lower than cost recovery. *Ayuda,* 661 F. Supp. at 36 & n.9.

[9] Public Law 104–208, div. C, 110 Stat. 3009–546 (1996).

Despite the instruction in the Chief Financial Officers Act, 31 U.S.C. 902(a)(8), for agencies' Chief Financial Officers to review user fees biennially, it has been 35 years since EOIR last conducted a thorough review of the costs and appropriateness of the fees for the applications, appeals, and motions for which EOIR levies a fee. The fees have remained static, not accounting for inflation or any other intervening changes in EOIR's processing costs. EOIR is now proposing this rule to remedy the failure to update the fees in past years. The mismatch between fees and the underlying costs of review has become more of a burden on the immigration adjudication system as aliens overall have begun filing more of these fee-based forms and motions. In just FY 2018, the U.S. taxpayer subsidization for these filings was $44,379,247.[10]

Form	Receipts FY 2009	Receipts FY 2018	FY 2018 cost to agency	FY 2018 fees charged [11]	FY 2018 U.S. taxpayer subsidization
EOIR–26	19,052	31,956	$31,158,697	$3,515,160	$27,643,537
EOIR–29	4,314	2,075	1,462,481	228,250	1,234,231
EOIR–40	206	158	48,566	15,800	32,766
EOIR–42A	5,272	3,426	1,053,084	342,600	710,484
EOIR–42B	16,327	30,421	10,954,602	3,042,100	7,912,502
Motion to Reconsider (OCIJ)	747	2,442	339,975	268,620	71,355
Motion to Reopen (OCIJ)	11,324	17,741	2,710,293	1,951,510	758,783
MTRs (BIA) [12]	10,071	7,662	6,858,409	842,820	6,015,589
Total	67,313	95,881	54,586,107	10,206,860	44,379,247

In the spring of 2018, EOIR conducted a comprehensive study using activity-based costing to determine the cost to EOIR for each type of application, appeal, and motion for which EOIR levies a fee under 8 CFR 1103.7(b).[13] The study proceeded in three phases: (1) Data collection, (2) process mapping, and (3) activity-based costing. First, EOIR gathered survey data and consulted with staff in the OCIJ and the BIA to determine the appropriate staff levels and time required to process and adjudicate each application, appeal, or motion and studied data from the Office of Personnel Management (''OPM'') and the General Services Administration (''GSA'') to determine the average salary rates for applicable staff levels, including both Federal employees and EOIR contractors. Second, EOIR developed step-by-step process maps, with assigned times and staff levels, for how each application, appeal, or motion is processed in the OCIJ and the BIA. These estimates were validated by staff in the OCIJ and the BIA. Finally, EOIR allocated the salary costs from the GSA and OPM data to each step in the process, based on the time the step takes, the average salary of the responsible staff, and the percentage of total cases in which the step occurs.

OMB Circular A–25 Revised encourages Federal agencies to recover the full cost of providing specific services to users, as well as associated costs. OMB Circular A–25 Revised at secs. 5–6. Full costs include, but are not limited to, an appropriate share of the following:

- Direct and indirect personnel costs, including salaries and fringe benefits, such as medical insurance and retirement;
- Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;
- Management and supervisory costs; and
- Costs of enforcement, collection, research, establishment of standards, and regulation. *Id.* at sec. 6(d)(1).

Congress has provided that DOJ may set EOIR fees for providing adjudication and naturalization services at a level that will ensure recovery of the full costs of providing all such services. *See* INA 286(m), 8 U.S.C. 1356(m).

In this fee study, however, for a variety of reasons, EOIR included only direct salary costs and did not include the overhead costs, cost of non-salary benefits, or costs that stem from processing corresponding applications or documents that may be filed in conjunction with those items for which EOIR charges a fee. With regard to overhead costs, many of these costs occur without respect to the number of applications, appeals, or motions (for which EOIR levies a fee) processed by the agency and are therefore very difficult to quantify in a calculation of cost for individual filings. With respect to non-salary benefits, EOIR excluded such benefits because not every employee is eligible for, or takes advantage of, these benefits; the non-salary costs to the Government and to the employee also vary drastically depending on which combination of benefits an employee selects. As such, to avoid potential inaccuracies in the calculation of overhead and non-salary benefits, EOIR has decided to include only the currently known, quantified costs in determining what is a sufficient fee level under section 286(m) of the INA. EOIR's decision not to include overhead and non-salary benefits in the calculation of actual costs also accounts for the public interest in having non-parties bear some of the cost burden for filing documents associated with proper application of the law as it pertains to the statutory right to appeal or apply for certain forms of relief. Further, EOIR did not include in the cost evaluation the many applications and associated documents commonly appended to, or associated with, the forms (*e.g.,* asylum applications requiring processing and adjudication following the processing and granting of a motion to reopen).

[10] This cost to taxpayers was calculated by comparing the actual processing costs, *see infra,* to the current filing fees. Form EOIR–45 is omitted from the following table because no such forms were filed in FY 2018.

[11] Approximately 36% of these fees were not received due to fee waiver approvals. The impact of the waivers themselves is to provide a Government subsidy because the Government absorbs required costs on behalf of an individual who is subject to the fee. The taxpayer subsidization, therefore, is greater than the number provided in this chart.

[12] These numbers include both motions to reopen and motions to reconsider filed at the Board level.

[13] Activity-based costing is the Federal Accounting Standards Advisory Board's preferred costing methodology. *See* Federal Accounting Standards Advisory Board, *Statement of Federal Financial Accounting Standards 4,* at 41 (July 31, 1995) (specifically noting that activity-based costing has ''gained broad acceptance'' and encouraging Federal agencies to study its potential for their operations), *reprinted in FASAB Handbook of Federal Accounting Standards and Other Pronouncements, as Amended* (June 30, 2017), *http://files.fasab.gov/pdffiles/2018_fasab_handbook.pdf.*

The study demonstrated that the applications, appeals, and motions under 8 CFR 1103.7(b) currently have the following processing costs for EOIR:

1. OCIJ Applications and Motions

Form	Current fee	Average processing cost (to nearest $)	Current fee percentage of processing cost
EOIR–40	$100	$307	33
EOIR–42A	100	307	33
EOIR–42B	100	360	28
Motion to Reopen	110	153	72
Motion to Reconsider	110	140	79

2. BIA Appeals and Motions

Form	Current fee	Average processing cost (to nearest $)	Current fee percentage of processing cost
EOIR–26	$110	$975	11
EOIR–29	110	705	16
EOIR–45	110	677	16
Motion to Reopen	110	895	12
Motion to Reconsider	110	895	12

III. Provisions of the Proposed Rule

The activity-based cost analysis demonstrates that EOIR's processing costs consistently exceed the assessed fees for these EOIR applications for relief, appeals, and motions. Although EOIR is an appropriated agency, EOIR has determined that it is necessary to update the fees charged for these EOIR forms and motions to more accurately reflect the costs for EOIR's adjudications of these matters. At the same time, however, EOIR recognizes that these applications for relief, appeals, and motions represent statutorily provided relief and important procedural tools that serve the public interest and provide value to those who are parties to the proceedings by ensuring accurate administrative proceedings. *See Ayuda,* 848 F.2d at 1301. As DHS is the party opposite the alien in these proceedings, EOIR's hearings provide value to both aliens seeking relief and the Federal interests that DHS represents. Given that EOIR's cost assessment did not include overhead costs or costs of non-salary benefits (*e.g.,* insurance), recovery of the processing costs reported herein is appropriate to serve the objectives of the IOAA and the public interest. The proposed fees would help the Government recoup some of its costs when possible and would also protect the public policy interests involved.[14] EOIR's calculation of fees accordingly factors in both the public interest in ensuring that the immigration courts are accessible to aliens seeking relief and the public interest in ensuring that U.S. taxpayers do not bear a disproportionate burden in funding the immigration system.[15] Consistent with past practice of this and other agencies,[16] EOIR has rounded the proposed fees to the nearest five-dollar increment for all but the motions to reopen and reconsider before the immigration courts. For those two motion types, the fee is a rounded average of actual costs, as the actual costs of $153 and $140 were close enough to provide one standard fee to prevent rejection of filings due to confusion over the differing amounts. This is especially important because the fee amounts for these motions before the BIA are exactly the same based on actual costs.

Accordingly, EOIR proposes the following fee changes:

1. Increase the fee for Form EOIR–26 from $110 to $975.
2. Increase the fee for Form EOIR–29 from $110 to $705.
3. Increase the fee for Form EOIR–40 from $100 to $305.
4. Increase the fee for Form EOIR–42A from $100 to $305.
5. Increase the fee for Form EOIR–42B from $100 to $360.
6. Increase the fee for Form EOIR–45 from $110 to $675.
7. Increase the fee for filing a motion to reopen or reconsider from 110 before both the OCIJ and the BIA to 145 if either motion is filed before the OCIJ, and 895 if either motion is filed before the BIA.

The table below includes, for each form, the current fee, the proposed fee, and the fee collection difference between the current and proposed fees based on FY 2018 form receipts. We also include a column that notes what today's fee is in 1986 dollars. It is more meaningful to compare inflation-adjusted figures because the fees have not been adjusted for inflation since they were initially set in 1986.

Form/motion	Current fee	Current fee (in 1986 dollars)	Proposed fee	FY 2018 receipts	Current fee assessments	Proposed fee assessments	Fee assessment difference
EOIR–26	$110	$252.63	$975	$31,956	$3,515,160	$31,157,100	$27,641,940

[14] While ability to pay is considered in justifying taxes, it is generally of ''very limited value when assessing a fee which is supposedly related as closely as reasonably possible to the cost of servicing each individual recipient.'' *Nat'l Cable Television Ass'n* v. *FCC,* 554 F.2d 1094, 1109 (D.C. Cir. 1976). An agency may, however, take such into consideration if it is in the public interest.

[15] In making that calculation, EOIR determined that fees that DHS has proposed for Form I–589, Application for Asylum and for Withholding of Removal, will not be assessed if only withholding of removal or relief under CAT are requested, without a request for asylum relief.

[16] EOIR's and USCIS's current fees are all multiples of 5. *See* 8 CFR 103.7, 1103.7. DHS has proposed a rule on fees that would likewise set fees in multiples of 5. *See* 84 FR 62280.

Form/motion	Current fee	Current fee (in 1986 dollars)	Proposed fee	FY 2018 receipts	Current fee assessments	Proposed fee assessments	Fee assessment difference
EOIR–29	110	252.63	705	2,075	228,250	1,462,875	1,234,625
EOIR–40	100	229.66	305	158	15,800	48,190	32,390
EOIR–42A	100	229.66	305	3,426	342,600	1,044,930	702,330
EOIR–42B	100	229.66	360	30,421	3,042,100	10,951,560	7,909,460
MTR OCIJ [17]	110	252.63	145	20,183	2,220,130	2,926,535	706,405
MTR BIA [18]	110	252.63	895	7,662	842,820	6,857,490	6,014,670
EOIR–45	110	252.63	675	0	0	0	0

These proposed fee changes are reflected in the following charts:

1. OCIJ Proposed Fees

Form/motion	Title	Fee (current)	Fee (proposed)
EOIR–40	Application for Suspension of Deportation	$100	$305
EOIR–42A	Application for Cancellation of Removal for Certain Permanent Residents.	100	305
EOIR–42B	Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents.	100	360
Motion to Reopen		110	145
Motion to Reconsider		110	145

2. BIA Proposed Fees

Form/motion	Title	Fee (current)	Fee (proposed)
EOIR–26	Notice of Appeal from a Decision of an Immigration Judge	$110	$975
EOIR–29	Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer.	110	705
EOIR–45	Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case.	110	675
Motion to Reopen		110	895
Motion to Reconsider		110	895

These proposed changes would assign a different fee for a motion to reopen or a motion to reconsider that is filed with the immigration court in the OCIJ than for a motion to reopen or a motion to reconsider that is filed with the BIA. Due to differences in the processing steps for these motions between the OCIJ and the BIA, and different staff costs across the components, these fee differences more accurately reflect the substantially higher processing costs of a motion to reopen or a motion to reconsider before the BIA while not assigning an unduly high fee as a matter of public policy on parties who wish to file a motion to reopen or a motion to reconsider with the immigration courts.

Consistent with current practice, the OCIJ and the BIA would continue to entertain requests for fee waivers and have the discretionary authority to waive a fee for an application or motion upon a showing that the filing party is unable to pay. *See* 8 CFR 1003.8(a)(3), 1003.24(d), 1103.7(c).

The proposed rule also proposes technical edits. First, it proposes updates to EOIR's cross-references throughout 8 CFR chapter V to conform with DHS's proposed revisions to 8 CFR 103.7 and proposed addition of 8 CFR part 106, both regarding fees. *See* 84 FR 62280. DOJ uses forms for applications published by DHS in immigration proceedings, and per DOJ regulations, the fees for those forms are governed by 8 CFR 103.7. *See* 8 CFR 1103.7(b)(4)(ii). DHS currently lists fees for all of its applications in 8 CFR 103.7, including DHS applications that EOIR may also adjudicate—*e.g.,* Forms I–191, I–485, Supplement A to Form I–485, I–601, I–821, and I–881. DHS is proposing to move most of those provisions to a new 8 CFR part 106 and specifically to a new 8 CFR 106.2. *See* 84 FR at 62359–63. DOJ is not proposing any revisions to 8 CFR 1103.7(b)(4)(ii) in this rule that would change its longstanding use of DHS forms and fees. Rather, EOIR is proposing to revise its regulations regarding fees that currently cross-reference 8 CFR 103.7—*e.g.,* 8 CFR 1003.8, 1003.24, and 1103.7—to make changes conforming to DHS's proposed rulemaking.

Second, the proposed rule provides that, although DHS is proposing a 50 fee for asylum applications, which are submitted on DHS Form I–589, no fee would apply where an applicant submits a Form I–589 for the sole purpose of seeking withholding of removal under section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) or protection from removal under the regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)—or both—in a removal proceeding. *See* 84 FR at 62360–61 (proposed 8 CFR 106.2(a)(20)). The fees for applications published by DHS and used in immigration proceedings are governed by DHS regulations, and DOJ is not proposing any revisions to 8 CFR 1103.7(b)(4)(ii) that would change its longstanding use of DHS forms. *See* 8 CFR 1103.7(b)(4)(ii); 8 CFR 103.7;

[17] These numbers include both motions to reopen and motions to reconsider filed at the immigration court level.

[18] These numbers include both motions to reopen and motions to reconsider filed at the Board level.

proposed 8 CFR 106.2. DHS does not adjudicate applications for withholding of removal under the INA or protection under the CAT regulations, and DHS has not proposed to charge a fee for such applications. Rather, DHS proposed to set a fee that applies to the extent an applicant files a Form I–589 for the purpose of seeking asylum. *See* 84 FR at 62360–61 (proposed 8 CFR 106.2(a)(20)). Thus, in proceedings before an immigration judge, a 50 fee would apply to a Form I–589 if the applicant seeks asylum. The fee would not apply if the applicant filed the Form I–589 for the sole purpose of applying for withholding of removal under the INA or protection under the CAT.

Third, the proposed rule would change 8 CFR 1103.7(d) to reflect the proper regulation regarding requests under the Freedom of Information Act. The section, as currently drafted, incorrectly refers to 28 CFR 16.11.

Finally, the proposed rule would make technical corrections to fee-related citations to EOIR's own regulations.

IV. Regulatory Requirements

A. Regulatory Flexibility Act

The Department has reviewed this proposed regulation in accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, tit. II, 110 Stat. 847, and has determined that this rule would not have a significant economic impact on a substantial number of small entities. The rule would not regulate ''small entities'' as that term is defined in 5 U.S.C. 601(6). Only individuals, rather than entities, are responsible for paying the fees affected by this proposed rule, though they may pay the fee through a representative.

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act. 5 U.S.C. 804(2). This rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of using the best available methods to quantify costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and, for all qualifying regulations, to identify at least two existing regulations for elimination.

This rule has been drafted in accordance with the principles of Executive Order 12866, section 1(b), and Executive Order 13563. The Department considers the proposed rule to be a ''significant regulatory action'' under section 3(f)(3) of Executive Order 12866 because it materially alters user fees, but it is not an economically significant action because the annual effect on the economy is less than $100 million annually. Accordingly, the proposed regulation has been submitted to OMB for review. This proposed rule would impose transfer payments between the public and the Government and is not expected to impose any new cost burdens that will need to be offset under Executive Order 13771. Thus, this proposed rule is not expected to be subject to the requirements of Executive Order 13771.

In the spring of 2018, EOIR conducted a comprehensive study using activity-based costing to determine the cost to EOIR for each type of application, appeal, and motion for which EOIR levies a fee under 8 CFR 1103.7(b). EOIR's methodology for conducting this comprehensive study was as follows:

First, in the survey-data phase, EOIR gathered survey data and consulted with OCIJ and BIA experts to determine the appropriate staff positions involved and the average time required to process and adjudicate each fee-based form or motion. EOIR also researched data from OPM and the GSA to determine the average salary rates for the applicable staff positions, including both Federal employees and EOIR contractors.

Second, in the process-mapping phase, EOIR developed step-by-step process maps, with assigned times and staff positions, for each fee-based form or motion processed in the OCIJ and the BIA. OCIJ and BIA experts validated any assumptions made during the process-mapping phase.

Third, in the activity-based-costing phase, EOIR allocated the salary costs from the GSA and OPM data to each step in the process, based on the amount of time the step takes, the average salary of the responsible staff, and the percentage of total cases in which the step occurs. As discussed above, EOIR did not include other costs, such as the overhead costs for EOIR space that is used for processing applications, fringe benefits received by EOIR staff and contractors, interpreter costs, Federal Records Center costs, non-EOIR government agency costs, or the costs and time to process any non-fee-based application that is submitted in conjunction with a motion to reopen or reconsider. *See* 8 CFR 1003.23(b)(3) (''Any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents.''). These costs were not included in the analysis because they represent costs that are incurred regardless of processing fee-based motions or forms or because they are not applicable in every adjudication of a fee-based motion or form, and DOJ did not employ a methodology to assign such costs equitably to various motion or form types.

EOIR used this methodology to calculate an estimated cost for processing each form or motion for which EOIR levies a fee. The results of the activity-based-costing analysis are as follows:

1. EOIR–40, Application for Suspension of Deportation

Staff level	Total cost, by staff level
Immigration Judge	$277.51
Judicial Law Clerk	17.78
Legal Assistant	12.08
Interpreter	0.00
Total	307.38

Process category	Total cost, by process category
Administrative	$12.08

Process category	Total cost, by process category
IJ Prep Time	77.66
In-Court Time	149.58
Written Decisions	68.06
Total	307.38

2. EOIR–42A, Application for Cancellation of Removal for Certain Permanent Residents

Staff level	Total cost, by staff level
Immigration Judge	$277.51
Judicial Law Clerk	17.78
Legal Assistant	12.07
Interpreter	0.00
Total	307.38

Process category	Total cost, by process category
Administrative	$12.08
IJ Prep Time	77.66
In-Court Time	149.58
Written Decisions	68.06
Total	307.38

3. EOIR–42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents

Staff level	Total cost, by staff level
Immigration Judge	$315.74
Judicial Law Clerk	32.27
Legal Assistant	12.08
Interpreter	0.00
Total	360.10

Process category	Total cost, by process category
Administrative	$12.08
IJ Prep Time	74.91
In-Court Time	149.58
Written Decisions	123.52
Total	360.10

4. Motion To Reopen (OCIJ)

Staff level	Total cost, by staff level
Immigration Judge	$103.61
Judicial Law Clerk	41.17
Legal Assistant	7.99
Total	152.77

Process category	Total cost, by process category
Administrative	$7.99
IJ Prep Time	38.95
Written Decisions	105.83
Total	152.77

5. Motion To Reconsider (OCIJ)

Staff level	Total cost, by staff level
Immigration Judge	$90.76
Judicial Law Clerk	41.17
Legal Assistant	7.99
Total	139.92

Process category	Total cost, by process category
Administrative	$7.99
IJ Prep Time	38.95
In-Court Time	0.00
Written Decisions	93.97
Total	139.92

6. EOIR–26, Notice of Appeal From a Decision of an Immigration Judge

Staff level	Total cost, by staff level
Legal Assistant (GS–05/06/07)	$5.42
Legal Assistant (GS–08/09)	66.64
Admin Staff (GS–08/09)	198.23
Paralegal	83.12
Attorney	537.52
Board Member	76.38
Digital Image Processor	7.75
Total	975.05

Process category	Total cost, by process category
Initial Processing	$140.68
Case Screening/Preparation	116.44
Decision and Adjudication	647.22
Final Processing	70.71
Total	975.05

7. EOIR–29, Notice of Appeal to the Board of Immigration Appeals From a Decision of a DHS Officer

Staff level	Total cost, by staff level
Legal Assistant (GS–05/06/07)	$5.42
Legal Assistant (GS–08/09)	66.64
Admin Staff (GS–08/09)	121.49
Paralegal	83.12
Attorney	344.01
Board Member	76.38
Digital Image Processor	7.75
Total	704.81

Process category	Total cost, by process category
Initial Processing	$63.94
Case Screening/Preparation	116.44
Decision and Adjudication	453.71
Final Processing	70.71
Total	704.81

8. EOIR–45, Notice of Appeal From a Decision of an Adjudicating Official in a Practitioner Disciplinary Case

Staff level	Total cost, by staff level
Legal Assistant (GS–08/09)	$33.32
Admin Staff (LIE, LA, or SA; GS–08/09)	172.65
Attorney	387.02
Board Member	76.38
Digital Image Processor	7.75
Total	677.11

Process category	Total cost, by process category
Initial Processing	$115.10
Decision and Adjudication	496.72
Final Processing	65.30
Total	677.11

9. Motion To Reopen/Reconsider (BIA)

Staff level	Total cost, by staff level
Legal Assistant (GS–05/06/07)	$5.42
Legal Assistant (GS–08/09)	66.64
Admin Staff (LIE, LA, or SA; GS–08/09)	118.30
Paralegal	83.12
Attorney	537.52
Board Member	76.38
Digital Image Processor	7.75
Total	895.12

Process category	Total cost, by process category
Initial Processing	$60.75
Case Screening/Preparation	116.44
Decision and Adjudication	647.22
Final Processing	70.71
Total	895.12

As discussed above, these estimated costs calculated from the study

demonstrate that EOIR's processing costs exceed the currently assessed fees for every fee-based form or motion processed by EOIR. Accordingly, the proposed rule would raise fees for these filings.

To determine the economic impact of the proposed rule, EOIR then compared current fee collection levels and the fee collections that would have been generated by the proposed fees, as applied to filings from FY 2018.[19] In FY 2018, EOIR received more than 95,000 applications, appeals, and motions for which EOIR levies a fee. If fees had been collected for each of those filings at the current fee levels, EOIR would have collected $6.7 million in revenue. If, instead, the aforementioned FY 2018 filings had been charged the fees proposed by this rule, fee revenue for that fiscal year would have been approximately $53.7 million. In sum, the proposed rule would cause applicants to pay approximately $47 million in fee revenue beyond that which would be expected if the filing fees were not changed. Comparing current fee collection levels with fee collections that would have been generated by the proposed fees in inflation-adjusted dollars[20] show that the total revenue would have been approximately $15.7 million, or a difference of approximately $9 million. EOIR, however, does not require a fee in every circumstance when a party files one of the affected forms or motions. Instead, there are certain circumstances when the normal filing fee does not apply, and the proposed rule would not impact immigration judges' and the BIA's discretionary authority to waive a fee upon a showing that the filing party is unable to pay. *See* 8 CFR 1003.8(a)(2)–(3), 1003.24(b)(2), (d), 1103.7(c). Therefore, the actual fee collection that results from this proposed rule may in fact be lower than stated above, which would result in a lower cost to applicants than the collection projections outlined in this cost analysis.

Though the proposed fees may seem high as compared to the current fees, the agency has not increased its fees since 1986. Taken over the 33-year timespan from 1986 to 2019, the proposed fee increases would represent compound annual growth rates ranging from 0.82 percent to 6.84 percent. As demonstrated in the chart above, these increases are marginal in terms of inflation-adjusted dollars. While EOIR recognizes that the new fees will be more burdensome, fee waivers are still possible for those who seek them.[21]

Form/motion	Current fee	Proposed fee	Percent increase	Compound annual growth rate since 1986 (percent)
EOIR–40	$100	$305	205	3.33
EOIR–42A	100	305	205	3.33
EOIR–42B	100	360	260	3.84
MTR OCIJ	110	145	32	0.82
EOIR–26	110	975	886	6.84
EOIR–29	110	705	641	5.79
EOIR–45	110	675	614	5.65
MTR BIA	110	895	814	6.56

E. Executive Order 13132: Federalism

This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

This rule does not propose new ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (codified at 44 U.S.C. 3501–3521) (PRA), and its implementing regulations, 5 CFR part 1320. There are no substantive changes to the forms as a result of this rulemaking; the only changes being proposed are revisions to the fee amounts for the existing forms for which EOIR sets the fees. The Department will be coordinating separately regarding updates to the existing forms under the PRA.

List of Subjects

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and functions (Government agencies).

8 CFR Part 1103

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1216

Administrative practice and procedure, Aliens.

[19] Data documenting the FY 2018 filings were obtained from the EOIR Database (EOIRDB) on August 7, 2019.

[20] This calculation was made by applying the consumer price index from 1986 (109.6) to the real dollars calculation as compared to 2019 (252.9). Bureau of Labor Statistics, Historical Consumer Price Index for All Urban Consumers, *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-201901.pdf* (last accessed August 5, 2019).

[21] Aliens can request fee waivers by filing Form EOIR–26A with the BIA. The form requires the alien's signature and reporting of assets and expenses, all of which the BIA will evaluate in its discretion. If the fee waiver request does not support the waiving of the fee, and a payment does not accompany the filing, the filing will not be deemed properly filed. 8 CFR 1003.8(a)(3). When the case is before the immigration court, aliens may file a fee waiver request via motion that substantiates the filing party's inability to pay the fee. If such motion is not granted, the filing will not be deemed properly filed. 8 CFR 1003.24(d). While the immigration judge has discretion as to whether to grant the motion, no such grant will occur if the underlying application for relief is a DHS form and DHS regulations prohibit such waiver. 8 CFR 1103.7(c).

8 CFR Part 1235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1240

Administrative practice and procedure, Aliens.

8 CFR Part 1244

Administrative practice and procedure, Immigration.

8 CFR Part 1245

Aliens, Immigration, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, for the reasons set forth in the preamble, the Attorney General is proposing to amend title 8, chapter V of the Code of Federal Regulations as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 1. The authority for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

§ 1003.8 [Amended]

■ 2. Section 1003.8 is amended by removing the citation ''8 CFR 103.7(a)'' and adding, in its place, the citation ''§ 1103.7(b)'' in paragraph (a)(4)(ii).

§ 1003.24 [Amended]

■ 3. Section 1003.24 is amended by removing the citation ''8 CFR 103.7'' and adding, in its place, the words ''8 CFR 103.7 and 8 CFR part 106'' in paragraphs (a) and (c).

PART 1103—APPEALS, RECORDS, AND FEES

■ 4. The authority for part 1103 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 28 U.S.C. 509, 510.

■ 5. Section 1103.7 is amended by:

■ a. Removing the citation ''8 CFR 103.7(a)(1)'' and adding, in its place, the citation ''8 CFR 103.7(a)'' in paragraph (a)(3);

■ b. Removing the citation ''8 CFR 103.7(a)(2)'' and adding, in its place, the words ''8 CFR 103.7(c) and 8 CFR 106.1'' in paragraph (a)(3);

■ c. Removing the citation ''8 CFR 103.7'' and adding, in its place, the words ''8 CFR 103.7 and 8 CFR part 106'' in paragraph (b)(4)(ii); and

■ d. Revising paragraphs (b)(1) and (2), (b)(4)(i), and (d) to read as follows:

§ 1103.7 Fees.

* * * * *

(b) *Amounts of Fees*—(1) *Appeals.* For filing an appeal to the Board of Immigration Appeals, when a fee is required pursuant to 8 CFR 1003.8, as follows:

Form EOIR–26. For filing an appeal from a decision of an immigration judge—$975.

Form EOIR–29. For filing an appeal from a decision of an officer of the Department of Homeland Security—$705.

Form EOIR–45. For filing an appeal from a decision of an adjudicating official in a practitioner disciplinary case—$675.

(2) *Motions.* For filing a motion to reopen or a motion to reconsider, when a fee is required pursuant to 8 CFR 1003.8 or 1003.24, as follows:

Motion to reopen or motion to reconsider before the immigration court—$145.

Motion to reopen or motion to reconsider before the Board of Immigration Appeals—$895.

* * * * *

(4) *Applications for Relief*—(i) *Forms published by the Executive Office for Immigration Review.* Fees for applications for relief shall be paid in accordance with 8 CFR 1003.8(b) and 1003.24(c) as follows:

Form EOIR–40. Application for Suspension of Deportation—$305.

Form EOIR–42A. Application for Cancellation of Removal for Certain Permanent Residents—$305.

Form EOIR–42B. Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents—$360.

(ii) *Forms published by the Department of Homeland Security.* The fees for applications published by the Department of Homeland Security and used in immigration proceedings are governed by 8 CFR 106.2. Consistent with 8 CFR 106.2, no fee shall apply to a Form I–589 filed with an immigration judge for the sole purpose of seeking withholding of removal under section 241(b)(3) of the Act or protection under the Convention Against Torture regulations.

* * * * *

(d) *Requests for records under the Freedom of Information Act.* Fees for production or disclosure of records under 5 U.S.C. 552 may be waived or reduced in accordance with 28 CFR 16.10.

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 6. The authority for part 1208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229.

§ 1208.7 [Amended]

■ 7. Section 1208.7 is amended by removing the citation ''§ 103.7(c)'' and adding, in its place, the citation ''8 CFR 106.3'' in paragraph (c).

PART 1216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

■ 8. The authority for part 1216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

§ 1216.4 [Amended]

■ 9. Section 1216.4 is amended by removing the citation ''§ 103.7(b)'' and adding, in its place, the citation ''§ 106.2'' in paragraph (a)(1).

§ 1216.5 [Amended]

■ 10. Section 1216.5 is amended by removing the citation ''§ 103.7(b)'' and adding, in its place, the citation ''§ 106.2'' in paragraph (b).

§ 1216.6 [Amended]

■ 11. Section 1216.6 is amended by removing the citation ''§ 103.7(b)(1)'' and adding, in its place, the citation ''§ 106.2'' in paragraph (a)(1).

PART 1235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 12. The authority for part 1235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32; Title VII of Public Law 110–229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458).

§ 1235.1 [Amended]

■ 13. Section 1235.1 is amended by:

■ a. Removing the citation ''§ 103.7(b)(1)'' and adding, in its place, the citation ''§ 103.7(d)'' in paragraphs (e)(1)(iii) and (e)(2); and

■ b. Removing the citation ''§ 103.7(b)(1)'' and adding, in its place, the citation ''§ 103.7(d)'' in paragraph (f)(1).

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

■ 14. The authority for part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1182, 1186a, 1186b, 1225, 1226, 1227, 1228, 1229a, 1229b, 1229c, 1252 note, 1361, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681).

§ 1240.11 [Amended]

■ 15. Section 1240.11 is amended by:

■ a. Removing the words ''§ 103.7(b)(1) of 8 CFR chapter I'' and adding, in their place, the words ''§ 1103.7(b)(1) of this chapter'' in paragraph (f); and

■ b. Removing the citation ''8 CFR 103.7(b)(1)'' and adding, in its place, the words ''§ 1103.7(b)(4) of this chapter'' in paragraph (f).

§ 1240.20 [Amended]

■ 16. Section 1240.20 is amended by removing the words ''§ 103.7(b) of 8 CFR chapter I'' and adding, in their place, the words ''§ 1103.7(b) of this chapter'' in paragraph (a).

PART 1244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

■ 17. The authority for part 1244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

§ 1244.6 [Amended]

■ 18. Section 1244.6 is amended by removing the words ''§ 103.7 of this chapter'' and adding, in their place, the citation ''8 CFR 106.2''.

§ 1244.20 [Amended]

■ 19. Section 1244.20 is amended by removing the citation ''8 CFR 103.7(b)'' and adding, in its place, the citation ''8 CFR 106.2'' in paragraph (a).

PART 1245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 20. The authority for part 1245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; section 202, Public Law 105–100, 111 Stat. 2160, 2193; section 902, Public Law 105–277, 112 Stat. 2681; Title VII of Public Law 110–229.

§ 1245.7 [Amended]

■ 21. Section 1245.7 is amended by removing the words ''§ 103.7 of this chapter'' and adding, in their place, the words ''8 CFR 103.7 and 8 CFR 103.17'' in paragraph (a).

§ 1245.10 [Amended]

■ 22. Section 1245.10 is amended by removing the words ''§ 103.7(b)(1) of this chapter'' and adding, in their place, the citation ''8 CFR 106.2'' in paragraph (c).

§ 1245.13 [Amended]

■ 23. Section 1245.13 is amended by:

■ a. Removing the citation ''§ 103.7(b)(1)'' and adding, in its place, the citation ''§ 106.2'' in paragraph (e)(1);

■ b. Removing the citation ''§ 103.7(b)(1)'' and adding, in its place, the citation ''§ 103.7(a)(2)'' in paragraph (e)(2); and

■ c. Removing the citation ''§ 103.7(b)(1)'' and adding, in its place, the citation ''§ 106.2'' in paragraphs (g), (j)(1), and (k)(1).

§ 1245.15 [Amended]

■ 24. Section 1245.15 is amended by:

■ a. Removing the words ''§ 103.7(b)(1) of this chapter'' and adding, in their place, the citation ''8 CFR 106.2'' in paragraph (c)(2)(iv)(A);

■ b. Removing the citation ''§ 103.7(c)'' and adding, in its place, the citation ''§ 106.3'' in paragraph (c)(2)(iv)(B);

■ c. Removing the citation ''§ 103.7(b)(1)'' and adding, in its place, the citation ''§ 106.2'' in paragraph (h)(1);

■ d. Removing the citation ''§ 103.7(b)(1)'' and adding, in its place, the citation ''§ 103.2(a)(2)'' in paragraph (h)(2); and

■ e. Removing the citation ''§ 103.7(b)(1)'' and adding, in its place, the citation ''§ 106.2'' in paragraphs (n)(1), and (t)(1).

§ 1245.20 [Amended]

■ 25. Section 1245.20 is amended by removing the citation ''§ 103.7(b)(1)'' and adding, in its place, the citation ''§ 106.2'' in paragraphs (d)(1), (f), and (g).

§ 1245.21 [Amended]

■ 26. Section 1245.21 is amended by:

■ a. Removing the words ''§ 103.7(b)(1) of this chapter'' and adding, in their place, the citation ''8 CFR 106.2'' in paragraph (b)(2); and

■ b. Removing the citation ''8 CFR 103.7(b)(1)'' and adding, in its place, the citation ''8 CFR 106.2'' in paragraphs (h) and (i).

Dated: February 19, 2020.

William P. Barr,

Attorney General.

[FR Doc. 2020–03784 Filed 2–27–20; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0102; Product Identifier 2019–NM–184–AD]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2000–17–09, AD 2008–04–19 R1, and AD 2015–26–09; and to terminate all requirements of AD 2018–18–05, which applies to ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. AD 2018–18–05 requires updating the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations and terminates the relevant requirements of AD 2000–17–09, AD 2008–04–19 R1, and AD 2015–26–09. Since AD 2018–18–05 was issued, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 13, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0102.

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–2020–0102; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0102; Product Identifier 2019–NM–184–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

The FAA will post all comments 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 NPRM.

Discussion

The FAA issued AD 2018–18–05, Amendment 39–19384 (83 FR 44463, August 31, 2018) (''AD 2018–18–05''), which applies to ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes.

AD 2018–18–05 requires updating the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations. The FAA issued AD 2018–18–05 to address reduced structural integrity of the airplane.

AD 2018–18–05 specifies that accomplishing the revision required by paragraph (g) of that AD terminates all requirements of AD 2000–17–09, Amendment 39–11883 (65 FR 53897, September 6, 2000); AD 2008–04–19 R1, Amendment 39–16069 (74 FR 56713, November 3, 2009) (''AD 2008–04–19 R1''); and AD 2015–26–09, Amendment 39–18357 (81 FR 1483, January 13, 2016) (''AD 2015–26–09''); for ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes only.

AD 2008–04–19 R1 also applies to ATR—GIE Avions de Transport Régional Model ATR42–500 airplanes and Model ATR72 airplanes. The actions required by AD 2018–20–14, Amendment 39–19448 (83 FR 52123, October 16, 2018) (''AD 2018–20–14'') terminate all requirements of AD 2008–14–19 R1 for Model ATR42–500 airplanes. The actions required by AD 2019–13–04, Amendment 39–19677 (84 FR 35028, July 22, 2019) terminate all requirements of AD 2008–04–19 R1 for Model ATR72 airplanes.

AD 2015–26–09 also applies to ATR—GIE Avions de Transport Régional Model ATR42–500 airplanes. The actions required by AD 2018–20–14 terminate all requirements of AD 2015–26–09 for Model ATR42–500 airplanes.

This AD therefore proposes to supersede AD 2000–17–09, AD 2008–04–19 R1, and AD 2015–26–09; and to terminate all requirements of AD 2018–18–05.

Actions Since AD 2018–18–05 Was Issued

Since AD 2018–18–05 was issued, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0256, dated October 17, 2019 (''EASA AD 2019–0256'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. EASA AD 2019–0256 supersedes EASA AD 2017–0221R1 (which corresponds to FAA AD 2018–18–05).

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address reduced structural integrity of the airplane. See the MCAI for additional background information.

Relationship Between Proposed AD and AD 2018–18–05

This NPRM does not propose to supersede AD 2018–18–05. Rather, we have determined that it is more appropriate to address the changes in the MCAI by proposing to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Accomplishment of the proposed actions would then terminate all of the requirements of AD 2018–18–05.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0256 describes new and more restrictive airworthiness limitations for airplane structure and systems.

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

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2019–0256 described previously, as incorporated by reference. Any differences with EASA AD 2019–0256 are identified as

exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0256 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0256 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD.

Service information specified in EASA AD 2019–0256 that is required for compliance with EASA AD 2019–0256 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0102 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's new process, which uses MCAI ADs as the primary source of information for compliance with corresponding FAA ADs, has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that specify the incorporation of airworthiness limitation documents.

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections), intervals, or critical design configuration control limitations (CDCCLs) may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in the AMOCs paragraph under ''Other FAA Provisions.'' This new format includes a ''New Provisions for Alternative Actions, Intervals, and CDCCLs'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action, interval, or CDCCL.

Costs of Compliance

The FAA estimates that this proposed AD affects 33 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2018–18–05 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past, the agency has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

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 removing Airworthiness Directive (AD) 2000–17–09, Amendment 39–11883 (65 FR 53897, September 6, 2000); AD 2008–04–19 R1, Amendment 39–16069 (74 FR 56713, November 3, 2009); and AD 2015–26–09, Amendment 39–18357 (81 FR 1483, January 13, 2016); and adding the following new AD:

ATR—GIE Avions de Transport Régional: Docket No. FAA–2020–0102; Product Identifier 2019–NM–184–AD.

(a) Comments Due Date

The FAA must receive comments by April 13, 2020.

(b) Affected ADs

(1) This AD replaces the ADs identified in paragraphs (b)(1)(i) through (iii) of this AD.

(i) AD 2000–17–09, Amendment 39–11883 (65 FR 53897, September 6, 2000).

(ii) AD 2008–04–19 R1, Amendment 39–16069 (74 FR 56713, November 3, 2009).

(iii) AD 2015–26–09, Amendment 39–18357 (81 FR 1483, January 13, 2016).

(2) This AD affects AD 2018–18–05, Amendment 39–19384 (83 FR 44463, August 31, 2018) (''AD 2018–18–05'').

(c) Applicability

This AD applies to all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address reduced structural integrity of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0256, dated October 17, 2019 (''EASA AD 2019–0256'').

(h) Exceptions to EASA AD 2019–0256

(1) The requirements specified in paragraphs (1) and (3) of EASA AD 2019–0256 do not apply to this AD.

(2) Where paragraph (2) of EASA AD 2019–0256 refers to its effective date, this AD requires using the effective date of this AD.

(3) Paragraph (4) of EASA AD 2019–0256 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable to incorporate the ''limitations, tasks and associated thresholds and intervals'' specified in paragraph (4) of EASA AD 2019–0256 within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (4) of EASA AD 2019–0256 is at the applicable ''associated thresholds'' specified in paragraph (4) of EASA AD 2019–0256, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (5) and (6) of EASA AD 2019–0256 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2019–0256 does not apply to this AD.

(i) Provisions for Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs)

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs are allowed except as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2019–0256.

(j) Terminating Action for AD 2018–18–05

Accomplishing the maintenance or inspection program revision required by paragraph (g) of this AD terminates the requirements of AD 2018–18–05.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0256 that contains RC procedures and tests: Except as required by paragraph (k)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

(1) For information about EASA AD 2019–0256, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*. You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0102.

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

Issued on February 18, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–03547 Filed 2–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1099; Product Identifier 2018–SW–026–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Airbus Helicopters Model EC 155B and EC155B1 helicopters. This proposed AD would require modifying the wiring of the attitude and heading reference system (AHRS) connector. This proposed AD is prompted by a report of wiring of the AHRS contrary to approved design specifications. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 28, 2020.

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

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

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1099; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: George Schwab, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *george.schwab@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2018–0069, dated March 26, 2018 (EASA AD 2018–0069), to correct an unsafe condition for Airbus Helicopters Model EC 155 B and EC 155 B1 helicopters. EASA advises that the AHRS1 and AHRS2 on Model EC 155-series helicopters use the same flight/ground signal contrary to the approved design specification, which requires the AHRS1 and AHRS2 to use independent signals to ensure redundancy. EASA states that if AHRS1 and AHRS2 both receive an incorrect ''ground'' status due to a single failure while in flight, it will generate an error in the computation of the attitude and vertical speed and, as a result, an incorrect display of these indications to the flight crew. EASA advises that this condition, if not corrected, could lead to erroneous attitude and vertical speed indications, resulting in increased workload for the flight crew and reduced control of the helicopter during flight in instrument meteorological conditions (IMC).

Accordingly, EASA AD 2018–0069 requires modifying the connection of connector 11 ALPHA, and based on the helicopter configuration, also modifying the wiring to connector 11 ALPHA.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. EC155–34A033, Revision 2, dated January 30, 2018. This service information specifies re-allocating the electronic board output connections by modifying the wiring of connector 11 ALPHA for helicopters with modification (MOD) 0722B51 installed and modifying the wiring to connector 11 ALPHA for those helicopters that also have a combined voice and flight data recording system (MOD 0731B89) installed.

The FAA also reviewed Airbus Helicopters ASB No. EC155–34A037, Revision 0, dated February 19, 2018. This service information specifies installing MOD 0722B51 by modifying the wiring of connector 11 ALPHA to separate the flight/ground information so the left-hand landing gear flight information is also used by the automatic pilot system as well as but separately from the right-hand landing gear flight information. This service information also specifies re-allocating the electronic board output connections by modifying the wiring of connector 11 ALPHA.

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

Other Related Service Information

The FAA also reviewed Airbus Helicopters ASB No. EC155–34A033, Revision 0, dated July 19, 2017, and Airbus Helicopters ASB No. EC155–34A033, Revision 1, dated October 9, 2017. Revisions 0 and 1 of this service information contain the same procedures for modifying the wiring as Revision 2. However, Revision 1 clarifies the applicable helicopter configurations and updates the post-modification testing procedures, and Revision 2 clarifies the post-modification test procedures and updates a figure.

Proposed AD Requirements

This proposed AD would require, before further flight in IMC or within 660 hours time-in-service (TIS), whichever occurs first, modifying the wiring at connector 11 ALPHA based on the helicopter configuration and in accordance with specified portions of the applicable ASB.

Differences Between This Proposed AD and the EASA AD

The compliance time for the EASA AD is within 7 or 12 months depending on helicopter configuration. The compliance time for this proposed AD would be before further flight in IMC or within 660 hours TIS, whichever occurs first.

Costs of Compliance

The FAA estimates that this proposed AD affects 17 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this proposed AD. Labor costs are estimated at $85 per work-hour.

Modifying the wiring would take about 4 work-hours and parts would cost about $20 for an estimated cost of

$360 per helicopter and $6,120 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2019–1099; Product Identifier 2018–SW–026–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model EC 155B and EC155B1 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as incorrect wiring of an attitude and heading reference system (AHRS). This condition could result in the display of misleading attitude and vertical speed information, and subsequent loss of control of the helicopter in instrument meteorological conditions (IMC).

(c) Comments Due Date

The FAA must receive comments by April 28, 2020.

(d) Compliance

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

(e) Required Actions

Before further flight in IMC or within 660 hours time-in-service, whichever occurs first:

(1) For helicopters with wiring change modification (MOD) 0722B51 installed, modify the wiring of connector 11 ALPHA as depicted in Figure 1 of Airbus Helicopters Alert Service Bulletin (ASB) No. EC155–34A033, Revision 2, dated January 30, 2018 (ASB EC155–34A033). If a combined voice and flight data recording system (MOD 0731B89) is installed, also modify the wiring to connector 11 ALPHA as depicted in Figure 2 of ASB EC155–34A033.

(2) For helicopters without wiring change MOD 0722B51 installed, modify the wiring of connector 11 ALPHA as depicted in Figure 1 and Figure 2 of Airbus Helicopters ASB No. EC155–34A037, Revision 0, dated February 19, 2018.

(f) Special Flight Permits

A special flight permit may be issued for operation under visual flight rules only.

(g) Alternative Methods of Compliance (AMOCs)

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

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

(1) Airbus Helicopters Alert Service Bulletin (ASB) No. EC155–34A033, Revision 0, dated July 19, 2017, and Airbus Helicopters ASB No. EC155–34A033, Revision 1, dated October 9, 2017, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2018–0069, dated March 26, 2018. You may view the EASA AD on the internet at *https://www.regulations.gov* in the AD Docket.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 3420, Attitude and Direction Data System.

Issued in Fort Worth, Texas, on February 14, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–04043 Filed 2–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. DOT–OST–2019–0182]

RIN 2105–AE72

Defining Unfair or Deceptive Practices

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Transportation (Department or DOT) is seeking comment in this Notice of Proposed Rulemaking (NPRM) on a proposal that would codify definitions for the terms ''unfair'' and ''deceptive'' in the Department's regulations implementing its aviation consumer protection statute. While codifying these definitions into the Department's regulations would be new, the proposed definitions of ''unfair'' and ''deceptive'' reflect the Department's longstanding interpretation of the terms. This proposal would also require the

Department to articulate in future enforcement orders the basis for concluding that a practice is unfair or deceptive where no existing regulation governs the practice in question, state the basis for its conclusion that a practice is unfair or deceptive when it issues discretionary aviation consumer protection regulations, and apply formal hearing procedures for discretionary aviation consumer protection rulemakings. In addition, this proposal would codify the longstanding practice of the Department's Office of Aviation Enforcement and Proceedings to offer airlines and ticket agents the opportunity to be heard and present relevant evidence before any determination is made on how to resolve a matter involving a potential unfair or deceptive practice. The proposal is intended to provide regulated entities and other stakeholders with greater clarity and certainty about the Department's interpretation of unfair or deceptive practice in the context of aviation consumer protection rulemaking and enforcement actions.

DATES: Comments should be filed by April 28, 2020. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may file comments identified by docket number DOT–OST–2019–0182 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. 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 Ave. SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2019–0182 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone can search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *www.dot.gov/privacy.*

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FOR FURTHER INFORMATION CONTACT: Robert Gorman, Senior Trial Attorney, or Kimberly Graber, Deputy Assistant General Counsel, or Blane Workie, Assistant General Counsel, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202–366–9342, 202–366–7152 (fax); *robert.gorman@dot.gov; kimberly.graber@dot.gov; blane.workie@dot.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. The Department's Unfair and Deceptive Practices Statute

The Department's authority to regulate unfair and deceptive practices in air transportation or the sale of air transportation is found at 49 U.S.C. 41712 (''Section 41712'') in conjunction with its rulemaking authority under 49 U.S.C. 40113, which states that the Department may take action that it considers necessary to carry out this part, including prescribing regulations. Section 41712 gives the Department the authority to investigate and decide whether an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice in air transportation or the sale of air transportation. Under Section 41712, after notice and an opportunity for a hearing, the Department has the authority to issue orders to stop an unfair or deceptive practice. A different statute, 49 U.S.C. 46301, gives the Department the authority to issue civil penalties for violations of Section 41712 or for any regulation issued under the authority of Section 41712.

B. Request for Regulatory Reform

On February 24, 2017, President Trump signed Executive Order 13777, Enforcing the Regulatory Reform Agenda, which requires each agency to establish a Regulatory Reform Task Force to evaluate existing regulations, and make recommendations for their repeal, replacement, or modification. As part of this process, the Department is directed to seek input and assistance from entities significantly affected by its regulations. On October 1, 2017, the Department issued a Notice of Regulatory Reform seeking written input from the public on existing regulations and other agency actions that are good candidates for repeal, replacement, or modification.[1] In response to the Notice, Airlines for America (A4A), an airline trade association, urged the Department to adopt policies defining unfairness and deception consistent with principles articulated in Federal Trade Commission (FTC) and Federal court precedent interpreting those terms.[2]

A4A stated that the Department has relied on the phrase ''unfair and deceptive practice'' to issue detailed regulations and to take enforcement action without sufficient evidence that the practice at issue was actually unfair or deceptive. With respect to rulemaking, A4A stated that many of the Department's past consumer protection rulemakings were not based on evidence that the benefits of the rules outweighed their cost. More specifically, they recommended that DOT issue new regulations only where objective evidence shows that: (1) The regulation is necessary to prevent deceptive practices that are occurring or are reasonably likely to occur; (2) the practice is causing or would cause significant consumer harm if it did occur; and (3) market forces are unlikely to provide a remedy to such consumer harm.

With respect to enforcement, A4A similarly claimed that the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) has aggressively pursued enforcement action in cases involving minor infractions, inadvertent errors, or isolated incidents with little evidence of a ''practice'' or of significant consumer harm. A4A recommended that the Department should align its policies on unfairness and deception with the policies of the FTC, use evidence for its determinations, and not merely speculate or assume that actual consumer harm took place.

C. Clarification of Department Interpretation of Statutory Terms in Aviation Consumer Protection Rules and Enforcement

The Department has considered the issues raised by A4A. In addition, the Department recently issued updated procedural requirements for its rulemaking and enforcement actions. The Department's recently issued updated policies and procedures governing the development and issuance of regulations are set forth in

[1] See Notice of Regulatory Review, available at 82 FR 45750.

[2] See Comment of A4A, Docket DOT–OST–2017–0069–2753, available at *www.regulations.gov.*

Subpart B of 49 CFR part 5 on Administrative Rulemaking, Guidance, and Enforcement Procedures.[3] Rules issued under the authority of Section 41712 must be consistent with the Department's recently updated rulemaking procedures, including the policy that rules should be straightforward and clear, incorporate best practices for economic analyses, and provide for appropriate public participation.

Further, enforcement actions taken pursuant to Section 41712 should be consistent with Subpart D of 49 CFR part 5, which includes the Department's procedural requirements for enforcement actions.[4] As stated in the preamble to the Department's final rule codifying these procedures, all Department enforcement actions should satisfy principles of due process and remain lawful, reasonable, and consistent with Administration policy.[5] Consistent with the Department's enforcement policies and procedures, enforcement orders finding violations of Section 41712 should explain the specific factors considered and the basis for concluding that a practice either does or does not violate Section 41712. Similarly, the standards for unfairness and deception should be specified and an explanation of how any prohibited or required actions meet those standards should be provided for clarity and to ensure consistency with the statute.

II. Background

A. The FTC and the Department's Statutes Regulating Unfair and Deceptive Practices

The Department's unfair and deceptive practices statute, Section 41712, is closely modeled after Section 5 of the FTC Act, 15 U.S.C. 45 (''Section 5''). As originally enacted in 1914, Section 5 granted the FTC authority to prohibit ''unfair methods of competition'' but did not address unfair or deceptive practices. Some early Supreme Court cases held that Section 5's prohibition on unfair methods of competition required a showing of harm to competitors and competition, but was not focused on addressing harm to consumers.[6] In response, Congress amended Section 5 of the FTC Act in 1938 to proscribe ''unfair or deceptive acts or practices'' in order to better protect consumers.[7]

Section 5 grants the FTC broad enforcement authority to address unfair or deceptive acts or practices across a wide range of industries, but excludes the common carrier activities of air carriers and foreign air carriers from the FTC's jurisdiction. In 1938, the same year that Congress amended the FTC Act to proscribe unfair and deceptive practices, Congress passed the Civil Aeronautics Act. Section 411 of the Civil Aeronautics Act granted to the Civil Aeronautics Authority (CAA) the exclusive power to prohibit unfair and deceptive practices in air transportation. Section 41712 was previously codified as Section 411 but in 1994, as part of a comprehensive non-substantive reorganization of the Transportation Code, Section 411 was re-codified as Section 41712. Neither Section 5 of the FTC Act, nor Section 41712 (formerly Section 411), specifically defines ''unfair or deceptive practices.'' In 1940, the CAA's authority was transferred to the Civil Aeronautics Board (CAB). In 1952, Congress expanded the CAB's authority to include unfair or deceptive practices in the *sale* of air transportation, not just air transportation itself.

The Federal Aviation Act of 1958 created the Federal Aviation Administration (FAA). This statute transferred safety authority to the FAA, but the CAB's authority over unfair or deceptive practices remained intact. In 1978, the Airline Deregulation Act (ADA) substantially deregulated the U.S. airline industry by prohibiting regulation of rates, routes, and services. The ADA did not alter the CAB's authority to prohibit unfair or deceptive practices, however.

Effective January 1, 1985, the CAB was abolished, and the CAB's authority to regulate unfair and deceptive practices was transferred to the Department.

1. Jurisdiction of FTC and DOT

Section 41712 grants the Department the authority to prohibit unfair or deceptive practices, and jurisdiction over air carriers and foreign air carriers lies exclusively with the Department because those entities were carved out of FTC jurisdiction in Section 5. However, the FTC's general Section 5 authority to prohibit unfair and deceptive practices applies to ticket agents in the sale of air transportation. As a result, the Department and the FTC have concurrent authority over ticket agents in the sale of air transportation.

2. FTC's Definitions of Unfair and Deceptive Practices

The FTC Act does not specifically define ''unfair or deceptive acts or practices,'' but authorizes the FTC to define such acts and practices through enforcement and rulemaking. 15 U.S.C. 45; 15 U.S.C. 57a.

i. Unfairness

In December 1980, the FTC issued a Policy Statement to Congress, which articulated general principles drawn from FTC decisions and rulemakings that the Commission applies in enforcing its mandate to address unfairness under the FTC Act.[8] These principles were applied in FTC enforcement cases and rulemaking and approved by reviewing Federal courts.[9] The FTC explained that unjustified consumer injury is the primary focus of the FTC Act. This concept contains three basic elements. An act or practice is unfair where it (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers; and (3) is not outweighed by countervailing benefits to consumers or to competition. The FTC also considers public policy, as established by statute, regulation, or judicial decisions along with other evidence in determining whether an act or practice is unfair.

ii. Congress Codifies FTC's Approach to Unfairness

In 1994, Congress codified existing case law defining the elements of unfairness. Specifically, Congress enacted 15 U.S.C. 45(n), which states that the FTC shall have no enforcement authority or rulemaking authority to declare an act or practice unfair unless it is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. Congress further provided in section 45(n) that the FTC could rely on public policy, along with other evidence, for making a determination of unfairness,

[3] See Subpart B, ''Rulemaking Procedures,'' 49 CFR part 5, which was recently updated in a final rule published at 84 FR 71714 (December 27, 2019).

[4] See Subpart D, ''Enforcement Procedures,'' 49 CFR part 5, which was recently updated in a final rule published at 84 FR 71714 (December 27, 2019).

[5] See 84 FR 71715.

[6] *See, e.g., FTC* v. *Raladam Co.,* 283 U.S. 643, 649 (1931).

[7] Wheeler-Lea Act, Public Law 75–447, 3, 52 Stat. 111, 114 (1938), amending FTC Act § 5, 52 Stat. 111, 114.

[8] Letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Committee on Commerce, Science and Transportation, United States Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction (December 17, 1980), *Appended to International Harvester Co.,* 104 F.T.C. 949, 1070, 1073 (1984).

[9] *See, e.g., International Harvester,* 104 F.T.C. 949 (1984); Credit Practices Rule, Statement of Basis and Purpose, 49 FR 7740 (1984) (''Credit Practices Rule SBP''); *Orkin Exterminating Co.,* Inc., 108 F.T.C. 263 (1986); aff'd, *FTC* v. *Orkin,* 849 F.2d 1354 (11th Cir. 1988).

but public policy may not be the primary basis of its decision.

iii. FTC's Definition of Deception

In 1983, the FTC issued a Policy Statement on Deception.[10] Like the 1980 Policy Statement on Unfairness, the 1983 Policy Statement clarified the general principles that the FTC applies in enforcing its mandate to address deception under the FTC Act. As explained in the policy statement, an act or practice is deceptive where: (1) A representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances; and (3) the misleading representation, omission, or practice is material. Practices that have been found misleading or deceptive in specific cases include false oral or written representations, misleading price claims, sales of hazardous or systematically defective products or services without adequate disclosures, failure to disclose information regarding pyramid sales, use of bait and switch techniques, failure to perform promised services, and failure to meet warranty obligations.

Congress has not enacted the FTC's 1983 Policy Statement on Deception into law, unlike the FTC's 1980 Policy Statement on Unfairness, but the Policy Statement was adopted by the FTC in formal adjudication, *see In the Matter of Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 174 (1984), and has been regularly cited by Federal courts.[11]

3. Rulemaking Authority of FTC and DOT

The FTC enforces a broad range of consumer protection laws affecting most of the country's commercial entities, with some exceptions such as airlines. The FTC Act prescribes several specific statutory requirements for issuing rules prohibiting an act or practice as unfair or deceptive. As described above, to issue a rule defining an act or practice as unfair, FTC must first determine that the act or practice is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.[12] The FTC may consider public policy as evidence to be considered with all other evidence, but public policy considerations may not serve as a primary basis for its determination. Moreover, Section 18 of the FTC Act, 15 U.S.C. 57a, specifies particular procedures for the promulgation of FTC rules that define with specificity acts or practices which are unfair or deceptive.[13] Before issuing binding regulations defining specific acts or practices to be unfair or deceptive, the FTC must provide an opportunity for an informal hearing, and provide in the rule's statement of basis and purpose: (1) A statement as to the prevalence of the acts or practices treated by the rule; (2) a statement as to the manner and context in which such acts or practices are unfair or deceptive; and (3) a statement as to the economic effects of the rule, taking into account the effect on small business and consumers.[14]

There are no comparable statutory requirements for rulemaking by the Department finding a practice to be unfair or deceptive. Under 49 U.S.C. 40113, Congress granted the Secretary of Transportation the authority to take action that he or she considers necessary to carry out his or her statutory duties, including prescribing regulations and issuing orders. Like other Federal agencies, the Department is subject to the general provisions of the Administrative Procedure Act when issuing regulations. The Department is also subject to the rulemaking procedures found in Subpart B of 49 CFR part 5.

III. Proposal for New Procedural Requirements

This rulemaking would codify the Department's definitions of ''unfair'' and ''deceptive'' when engaging in aviation consumer protection rulemaking or enforcement action under the authority of Section 41712. This rulemaking would also require the Department to follow certain procedures when engaging in aviation consumer protection rulemaking and enforcement. For example, this rulemaking would require the Department to provide an explanation of how specific conduct meets the standard for an ''unfair'' or ''deceptive'' practice when engaging in an aviation consumer protection rulemaking or enforcement action, as further described below.

A. Defining Unfairness and Deception in Rulemaking and Enforcement Proceedings

When the Department issued its existing aviation consumer protection rules, the Department followed the Administrative Procedure Act and related statutory and administrative requirements to ensure that these rules are authorized by law and justified on a benefit-cost basis. However, more can be done to better inform the public and regulated entities how the Department determines what constitutes an unfair and deceptive practice when issuing discretionary aviation consumer protection rulemakings under the authority of Section 41712 and when issuing enforcement orders based on Section 41712 where there has not been a regulation that already specifies required or prohibited conduct.

This proposed rule would define the terms ''unfair'' and ''deceptive'' for aviation consumer protection enforcement or rulemaking actions brought pursuant to Section 41712. First, it would define a practice as ''unfair'' if it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition. Second, the proposed rule would define a practice as ''deceptive'' if it is likely to mislead a consumer acting reasonably under the circumstances with respect to a material issue. Under the proposal, an issue is ''material'' if it is likely to have affected the consumer's conduct or decision with respect to a product or service. These definitions mirror the definitions used by the FTC.

The Department has used its general authority to prohibit unfair or deceptive practices of air carriers, foreign air carriers, and ticket agents to conduct oversight in the area of airline privacy[15] and frequent flyer programs.[16] Also, in the FAA Reauthorization Act of 2018, Congress specified that the Department's authority to prohibit unfair or deceptive practices covers air ambulance providers and authorized the Department to investigate air ambulance

[10] FTC Policy Statement on Deception (Oct. 14, 1983), 103 F.T.C. 174, 175 (1984) (*appended to Cliffdale Assocs., Inc.,* 103 F.T.C. 110 (1984)).

[11] *See, e.g., FTC* v. *Pantron I Corp.,* 33 F.3d 1088 (9th Cir. 1994), *cert. denied,* 514 U.S. 1083 (1995); *Novartis Corp.* v. *FTC,* 223 F.3d 783, 786 (D.C. Cir. 2000).

[12] 15 U.S.C. 45(n).

[13] Section 18 rulemaking procedures apply to FTC rules to define ''unfair or deceptive acts or practices'' prohibited under Section 5 of the FTC Act unless Congress grants the agency authority to issue rules under the Administrative Procedure Act in a specific context. *See, e.g.,* Children's Online Privacy Protection Act, 15 U.S.C. 6501–6508; Fairness to Contact Lens Consumers Act, 15 U.S.C. 7601–7610.

[14] 15 U.S.C. 57a.

[15] The Department considers the mishandling of private consumer information by airlines or ticket agents to be an unfair or deceptive practice. See *https://www.transportation.gov/individuals/aviation-consumer-protection/privacy.*

[16] Section 408 of the FAA Modernization and Reform Act of 2012 authorized the Department to investigate complaints relating to frequent flyer programs. Public Law 112–95; 126 Stat. 87 (2012). See also *https://www.transportation.gov/individuals/aviation-consumer-protection/frequent-flyer-programs.*

complaints.[17] Because the Department has not issued specific regulations with respect to complex and specialized issues, including privacy, frequent flyer programs, and air ambulances, it relies on the general provisions of section 41712. Are the general definitions of unfairness and deception proposed in this NPRM sufficient to provide the regulated entities, consumers and other stakeholders sufficient notice of what constitutes an unfair or deceptive practice in these or other specialized subject areas?

The proposal makes clear that proof of intent is not necessary to establish unfairness or deception. In other words, the Department is not required to find that an air carrier or ticket agent acted with the intent to cause harm before finding a practice to be unfair to a consumer. Likewise, it is not necessary for the Department to find that an air carrier, foreign air carrier, or ticket agent acted with the intent to deceive before finding such a practice is deceptive. These principles are reflected in Federal case law applying Section 5 of the FTC Act. In addition, under the FTC Act, disseminating false advertisements, or causing false advertisements to be disseminated, is an unfair or deceptive act or practice. 15 U.S.C. 52. The FTC Act, and its definition of ''false advertisement,'' make no reference to intent to deceive.

Section 5 of the FTC Act prohibits unfair ''*acts or practices*'' in or affecting commerce, while Section 41712 grants the Department authority over unfair or deceptive *practices* in air transportation or the sale of air transportation. The FTC Act and FTC regulations do not define ''practice.'' It is possible that a definition is not necessary in the FTC context because the FTC's authority applies to specific acts, even if they do not rise to the level of a practice. At present, the Department does not believe that it is necessary to define ''practice.'' The Department's rules with respect to unfairness or deception in air transportation or the sale of air transportation are always directed to practices of air carriers, foreign air carriers, and ticket agents, rather than to individual acts. In the aviation consumer protection enforcement context, when analyzing complaints, the Department regularly seeks to determine the extent to which one or more unfair or deceptive acts actually reflects a broader ''practice'' (for example, by investigating to determine whether multiple consumers have been harmed at different times by the same repetitive conduct, or by finding that a single act reflects company policy and therefore concluding that the policy is likely to have affected more consumers than just the individual complainant). In general, the Department is of the view that proof of a practice in the aviation consumer protection context requires more than a single isolated incident. On the other hand, even a single incident may be indicative of a practice if it reflects company policy, training, or lack of training. The Department solicits comment on the question of whether a definition of ''practice'' is necessary, and if so, what the proposed definition should be.

This proposed rule would add a new section 399.75 to 14 CFR 399 Subpart F (Policies Relating to Rulemaking Proceedings). The proposed rule would state that when the Department issues a new discretionary aviation consumer protection rulemaking declaring that a specific practice in air transportation or the sale of air transportation is unfair or deceptive within the meaning of Section 41712, the Department shall employ the definitions of ''unfair'' and ''deceptive'' that are set forth in new Section 399.79. These definitions are consistent with the Department's past practice and are based on FTC case precedent and policy.

B. Establishing Procedures for Aviation Consumer Protection Rulemaking Proceedings

1. Formal Hearing Procedures

In this NPRM, the Department proposes to apply formal hearing procedures for discretionary aviation consumer protection rulemakings issued under the authority of Section 41712 that are not defined as high-impact or economically significant within the meaning of the Department's regulatory procedures found in 49 CFR 5.17(a). Any such high-impact or economically significant rulemakings are subject to the special procedures outlined in 49 CFR 5.17.

The Department proposes to adopt formal hearing procedures for discretionary aviation consumer protection rulemakings similar to the formal hearing procedures that apply to high-impact and economically significant rulemakings. These procedures would allow interested parties to request a formal hearing before the Department issues a final aviation consumer protection rule. These formal hearing procedures would not apply to rulemakings specifically mandated by Congress. Rather, they would apply to discretionary aviation consumer protection rulemakings, where the Department proposes to declare specific practices to be unfair or deceptive. The addition of formal hearing procedures is also consistent with Section 41712(a), which requires notice and an opportunity for a hearing before a finding that an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice or unfair method of competition.

The purpose of the formal hearing would be to address disputed issues of fact through the presentation of testimony and written submissions in front of a neutral administrative hearing officer. The Department is proposing to allow interested parties to request a formal hearing if one or more scientific, technical, economic or other factual issues are in dispute. Interested parties would be permitted to make such a request to the Department's General Counsel after the notice of proposed rulemaking is filed, but before the end of the comment period. In general, the purpose of the formal hearing is to ensure that rules are based on facts and not unfounded assumptions. The formal hearing would provide an opportunity to explore complex or disputed factual issues before proceeding beyond the proposed rule stage. The Department would use the developed factual record of the formal hearing to determine whether the rulemaking should proceed as originally proposed, be modified, or be terminated entirely.

Under this proposal, for a formal hearing to be granted, the interested party would be required to make a plausible initial showing that the rulemaking concerns one or more specific scientific, technical, economic, or other factual issues that are in dispute, that the ordinary notice and comment process is insufficient to provide an adequately informed judgment on the issue, and that resolution of the issue would have a material effect on the costs and benefits of the rule. Under the delegation of authority to the General Counsel to conduct rulemakings on these matters found in 49 CFR 1.27(n), the General Counsel would be authorized to deny a hearing, even if the interested party makes the plausible initial showing described above, so long as the General Counsel determines that the requested hearing would not in fact advance the consideration of the proposed rule, or that the hearing would unreasonably delay completion of the rulemaking. The General Counsel would explain in writing the basis of that decision.

Under this proposal, if the Department grants the request for a hearing, the Department would publish

[17] Public Law 115–254, 132 Stat. 3186, section 419 (2018).

a notice, specifying the proposed rule at issue and the specific factual issues to be considered in the hearing. The Department proposes that the rules for conducting the formal hearing itself would be adopted from relevant sections of the Administrative Procedure Act relating to hearings, or similar rules adopted by the Secretary.

Also, the NPRM specifies that after the formal hearing and after the record is closed, the presiding hearing officer would render a report containing findings and conclusions addressing the disputed issues of fact identified in the hearing notice. Interested participants in the formal hearing would have the opportunity to file statements of agreement or objection in response to the hearing officer's report. The Department would then consider the record of the formal hearing and determine whether to terminate the rulemaking, proceed with it as proposed, or modify the proposed rule. If the Department decides either to proceed with the rule as originally proposed, or to terminate the rulemaking, the Department would explain those decisions in writing. If the Department decides to modify the proposed rule in light of the formal hearing, then the Department would issue a new or supplemental NPRM, and explain its decision in the preamble to that modified proposal. Finally, this NPRM clarifies that the formal hearing procedures shall not impede or interfere with the interagency rulemaking review process of the Office of Information and Regulatory Affairs. The Department solicits input on whether the public and regulated entities find the Department's utilization of this type of process for the promulgation of unfair and deceptive regulations to be helpful and, if so, how. Further, if this process would not be helpful, the Department solicits comment on what elements of these proposed procedures should be modified, and why.

2. Explaining Findings of Unfairness and Deception

This proposal states that when the Department issues a discretionary aviation consumer protection rulemaking declaring a practice to be unfair or deceptive, it shall explain the basis for its conclusion that the practice is unfair or deceptive. The intent is to ensure that when issuing new aviation consumer protection regulations under the authority of Section 41712, the Department provides greater transparency to the public and to regulated entities about the reasons supporting the Department's finding that a practice is unfair or deceptive. For example, if the Department proposes a final rule determining that a particular practice is unfair, the Department would be required to explain how the practice is likely to cause substantial injury, which is not reasonably avoidable, and that the harm is not outweighed by benefits to consumers or to competition. The Department's explanation would provide its basis for reaching that conclusion. Similarly, when proposing a rulemaking finding a particular practice deceptive, the Department would follow the same practice of outlining the factors of deception and the basis for its conclusion.

The Department solicits comment on the support needed for rulemakings finding a practice unfair or deceptive. The proposed rule does not specifically indicate the type or extent of evidence that would be necessary to support a finding of unfairness or deception. In many instances, the Department identifies issues that may be problematic and addresses them in an aviation consumer protection rulemaking as an unfair or deceptive practice based on information in the Department's consumer complaint database. In other instances, aviation consumer protection rulemaking is instituted in response to recommendations from entities such as consumer advocates or advisory committees. The Department envisions that the formal hearing procedures described above will provide another means of gathering information, data, and evidence that may be helpful in making these determinations. What type of evidence should be necessary to demonstrate that a practice is unfair or deceptive to support the Department issuing a rule prohibiting that practice? How should the Department gather that information? During the rulemaking process, consumers may comment that a practice is harmful while regulated entities may disagree. In those instances, how should the Department determine whether a practice is harmful?

C. Establishing Procedures for Aviation Consumer Protection Enforcement Proceedings

1. Providing Opportunity To Present Evidence

The Department is proposing to codify a longstanding practice of the Department with regard to aviation consumer protection enforcement proceedings. Specifically, proposed paragraph 399.79(e) states that, before issuing an order finding that an air carrier, foreign air carrier, or ticket agent violated any regulation issued under the authority of Section 41712, or Section 41712 itself, the Department shall afford the party the opportunity to present evidence in support of its position. For example, under current practice, the party is permitted to present evidence tending to establish that: (1) The regulation at issue was not violated; (2) the violation took place, but mitigating circumstances apply; (3) the conduct at issue was not unfair or deceptive (in cases where a consumer protection regulation does not already apply to the conduct at issue); and (4) consumer harm was limited, or that the party has taken steps to mitigate past or future consumer harm (for example, by issuing compensation and/or refunds to affected passengers, or by implementing innovative practices and procedures to ensure that the violations will not recur). This list is intended to provide examples, but not to be complete or exhaustive. The Enforcement Office considers all information provided when determining whether a violation of aviation consumer rights took place and, if a violation took place, the appropriate civil penalty to seek for the violations at issue. The Department has incorporated the opportunity to present relevant evidence and mitigating circumstances into its proposal.

Paragraph 399.79(e) applies to informal nonpublic investigations of potential violations of aviation consumer rights, which represent the overwhelming majority of the Enforcement Office's enforcement efforts.[18] These investigations typically conclude with the Enforcement Office issuing a consent order, a warning letter, or other appropriate disposition that does not involve the filing of a complaint with an Administrative Law Judge (ALJ). The Department is aware that paragraph 399.79(e) does not propose a formal ''hearing'' for the regulated entity to present evidence. The Department is also aware that Section 41712(a) requires the Department to provide air carriers, foreign air carriers, and ticket agents with the opportunity for a ''hearing'' before declaring that a practice is unfair or deceptive. The Department is of the view that a hearing is not required in the course of informal nonpublic investigations, because full hearings are already available at a later stage.

[18] 14 CFR part 305 sets forth additional rules of practice in informal nonpublic investigations. Part 305 does not explicitly state that regulated entities have the opportunity to present mitigating evidence, but the opportunity to present such evidence traditionally has been available to regulated entities during investigations by the Enforcement Office and prior to any determination to take enforcement action.

Specifically, where the Department and the regulated entity cannot agree on a disposition of a dispute regarding a potential aviation consumer rights violation, the Enforcement Office has the option of filing a formal complaint with an ALJ.[19] These procedures are set forth in 14 CFR part 302, subpart D (14 CFR 302.407–302.420), and they include the opportunity for a hearing before an ALJ. See 14 CFR 302.415. The Department seeks comment on all aspects of this proposal.

2. Explaining Findings of Unfairness and Deception

i. Current Practice for Enforcement of Regulations Issued Under Section 41712

Many of the Department's aviation consumer protection regulations that are issued under the authority of Section 41712 state that a violation of the rule amounts to an unfair and deceptive practice. For example, the tarmac delay rule states that covered carriers must adopt and adhere to contingency plans providing various assurances to consumers in the event of a lengthy tarmac delay.[20] The rule explicitly states that failure to comply with the required assurances is considered an unfair and deceptive practice within the meaning of Section 41712.[21] Similarly, the Department has issued regulations explicitly declaring that it is an unfair or deceptive practice within the meaning of Section 41712 to engage in certain types of post-purchase price increases.[22] Other regulations issued under the authority of Section 41712 (*e.g.,* the oversales/denied boarding compensation rule and the requirement that carriers issue and comply with a Customer Service Plan) do not specifically declare that a violation of the regulation also constitutes a violation of Section 41712.[23]

In instances where an enforcement action is based on regulations issued under the authority of Section 41712, the Department's enforcement orders set forth the relevant regulation or regulations, describe the facts of the case, including the problematic conduct, and identify the manner in which the regulation has been violated. In such orders, there is typically a statement that a violation of the regulation is also considered an unfair and deceptive practice in violation of Section 41712. In such cases, the orders have not explained in detail how the practice is unfair and deceptive, because the underlying regulation was issued under the authority of Section 41712.

ii. Current Practice for Enforcement of ''Standalone'' Violations of Section 41712

The Department also has the authority to investigate and enforce where an air carrier, foreign air carrier, or ticket agent may be engaging in conduct that does not violate a specific consumer protection regulation, but which may nevertheless be unfair or deceptive to consumers. These are potential ''standalone'' violations of Section 41712 and such cases are infrequent. When deciding whether to take enforcement action in these matters, the Department has relied on the FTC's approach to both unfairness and deception. Departmental orders issued in cases where the Department declined to take action have explicitly recited FTC precedent in the course of explaining why the acts were not unfair or deceptive. For example, in a case against a large airline, DOT Order 2016–12–11 (2016), a passenger filed a formal complaint alleging that the airline improperly penalized him 60,000 frequent flyer miles when it wrongly accused him of manipulating the airline's website to gain favorable seating upgrades. The passenger was flagged by the airline's security department for engaging in suspicious activity on its website. While no regulation covered the airline's behavior, the Department applied the standard articulated in the FTC's Policy Statement on Unfairness and relevant precedent and found that the harm of losing miles, while substantial, could have been reasonably avoided by not logging into the airline's website in suspicious and unusual ways.[24] The Department also found that it was not deceptive for the airline to fail to warn the passenger that he was subject to a penalty before imposing that penalty. Applying the standard articulated in the FTC's Policy Statement on Deception and relevant precedent, the Department reasoned that the passenger was not acting as a reasonable consumer would. The Department dismissed the formal complaint. Similarly, in another case, DOT Order 2018–2–18 (2018), a passenger missed the check-in deadline for a multi-city itinerary and was informed his reservations for the remaining flights would be cancelled if he did not change his reservation and pay the applicable fees. After outlining the relevant facts, the Department applied the standard for unfairness and found that the alleged practices were not unfair. In addition, using the FTC standard for deception, and noting that the consumer was not actually deceived, the Department also found that the airline's practice at issue was not deceptive and the complaint was dismissed.

The Department has also issued orders finding that violations of civil rights laws constitute violations of Section 41712, without explaining in detail how the violations were either unfair or deceptive, *e.g.,* DOT Order 2012–5–2 (2012); DOT Order 2011–11–2 (2011). The resulting consent orders reflect the unfair/deceptive determination of the Department but do not provide the underlying description of how the relevant standard was met. Department aviation consumer protection enforcement orders should provide valuable information for regulated entities; accordingly, this rulemaking proposes that going forward, such orders would contain a more detailed statement of the relevant standard and how the particular facts of the case met the standard.

iii. Explaining Findings of Unfairness and Deception in Aviation Consumer Protection Enforcement Proceedings

In this NPRM, we propose that when the Department issues an enforcement order relying on Section 41712, and where no existing regulation governs the practice in question (where the Department relies solely on the phrase ''unfair or deceptive'' in Section 41712), then the enforcement order must articulate the Department's basis for concluding that the practice is unfair or deceptive, as defined in this rule. For example, if the Department issues an order declaring that a particular practice is unfair, the Department would be required to explain that the practice is likely to cause substantial injury, which is not reasonably avoidable, and that the harm is not outweighed by benefits to consumers or competition. The Department would be required not only to recite these conclusions, but also to recite the basis for how it arrived at those conclusions. The proposed rule makes clear that when the conduct of an air carrier, foreign air carrier, or ticket agent also violates a regulation that was

[19] Since 2014, the Enforcement Office has filed one formal complaint with an ALJ. See Docket DOT–OST–2014–0229.

[20] 14 CFR 259.4(a).

[21] 14 CFR 259.4(f).

[22] 14 CFR 399.88(a).

[23] 14 CFR part 250; 14 CFR 259.5.

[24] The airline presented evidence that in the 96 hours prior to the flight, the passenger created 28 bookings using fictitious names, while omitting the passenger's frequent flyer number. This laborious process created temporary passenger name records that took upgraded seats out of inventory. While the passenger contended that he simply wanted to view the available seating to see if upgraded seats were available, the airline presented evidence that its website had a simple method to view available seating that did not take seating out of inventory; he could have also simply called the airline.

issued under the authority of Section 41712, then the explanation of unfairness or deception is not required. Instead, by establishing a violation of the regulation, the Enforcement Office has necessarily established a violation of Section 41712. Nevertheless, the Department seeks comment on whether such an order should reiterate the explanation of unfairness or deception as well.

The Department is undertaking this rulemaking because it is appropriate to provide an explanation, in enforcement orders, of the basis for concluding that a practice either does or does not violate Section 41712. Specifically, this rulemaking proposes that enforcement orders will identify the factors used to determine whether a practice is unfair or deceptive and will identify the facts and conduct relevant to each factor, so that the rationale for the determination is clear in the order. This is particularly important in orders based on Section 41712 alone, where there has not been a regulation that already specifies required or prohibited conduct. In cases involving conduct that violates a regulation that was issued under the authority of Section 41712, enforcement orders should continue to identify the relevant facts and conduct that violates the regulation at issue. For example, in a case involving a violation of the Department's oversales rule, the specific facts and conduct at issue should be stated and the rationale for a determination that the oversales rule has been violated should be clear. However, this rulemaking is not proposing changes to enforcement orders regarding violations of existing regulations. The new proposed requirement regarding explaining the standards for unfairness and deception that are stated in this rulemaking and rely on FTC precedent are reflected in new proposed Section 399.79.

The proposed rule does not specifically indicate the type or extent of evidence that would be necessary to support a finding of unfairness or deceptiveness for standalone violations of Section 41712. The Department solicits comment on this question.

Finally, the Department seeks comment on the benefits and costs of this rule. The Department's description of the benefits and costs are described immediately below in Section A of the Regulatory Analyses and Notices section.

Regulatory Analyses and Notices

A. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

This proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under that Order. It is also not significant within the meaning of DOT regulatory policies and procedures. This NPRM is issued in accordance with the Department's rulemaking procedures found in 49 CFR part 5 and DOT Order 2100.6.

The Department does not anticipate that this rulemaking will have an economic impact on regulated entities. This is primarily a rule of agency procedure and interpretation. The NPRM would clarify how the Department interprets the terms ''unfair'' and ''deceptive,'' and potentially require enhanced departmental procedures in analyzing, enforcing, and regulating in this area. This rulemaking could impose a social cost on the public if increased procedural requirements are adopted, as the opportunity cost of these enhanced procedural requirements could translate into the Department performing fewer enforcement and rulemaking actions. In addition, enhanced procedures would likely lengthen the time needed to complete these actions. However, the Department anticipates that these social costs would be outweighed by the benefits associated with improved and more transparent departmental decision making, informed by enhanced analyses and public participation. The Department seeks comment on the costs, benefits, and cost savings associated with this rulemaking.

This proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. A direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft (*i.e.,* aircraft with up to 60 seats/18,000-pound payload capacity). See 14 CFR 399.73. The Department does not expect this rule to have a significant economic impact on a substantial number of small entities. However, we invite comment on the potential impact of this rulemaking on small entities.

C. Executive Order 13132 (Federalism)

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This NPRM does not include any provision that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this NPRM does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. The DOT has determined there are no new information collection requirements associated with this NPRM.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. Id. Paragraph 10.c.16.h of DOT Order 5610.1D categorically excludes ''[a]ctions relating to consumer protection, including regulations.'' Since this rulemaking relates the definition of unfair and deceptive practices under Section 41712, the Department's central consumer protection statute, this is a consumer protection rulemaking. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

List of Subjects in 14 CFR Part 399

Consumer protection, Policies, Rulemaking proceedings, Enforcement, Unfair or deceptive practices.

For the reasons discussed in the preamble, the Department proposes to amend 14 CFR part 399 as follows:

PART 399—STATEMENTS OF GENERAL POLICY

■ 1. The authority citation for Part 399 is revised to read as follows:

Authority: 49 U.S.C. 41712, 40113(a).

■ 2. Add § 399.75 to Subpart F to read as follows:

Subpart F—Policies Relating to Rulemaking Proceedings

§ 399.75 Rulemakings relating to unfair and deceptive practices.

(a) *General.* When issuing a proposed or final regulation declaring a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers under the authority of 49 U.S.C. 41712(a), unless the regulation is specifically required by statute, the Department shall employ the definitions of ''unfair'' and ''deceptive'' set forth in § 399.79.

(b) *Procedural requirements.* When issuing a proposed regulation under paragraph (a) of this section that is defined as high impact or economically significant within the meaning of 49 CFR 5.17(a), the Department shall follow the procedural requirements set forth in 49 CFR 5.17. When issuing a proposed regulation under paragraph (a) of this section that is not defined as high impact or economically significant within the meaning of 49 CFR 5.17(a), unless the regulation is specifically required by statute, the Department shall follow the following procedural requirements:

(1) *Request for a hearing.* Following publication of a proposed regulation, and before the close of the comment period, any interested party may file in the rulemaking docket a petition, directed to the General Counsel, to hold a formal hearing on the proposed regulation.

(2) *Grant of petition for hearing.* Except as provided in paragraph (b)(3) of this section, the petition shall be granted if the petitioner makes a plausible prima facie showing that:

(i) The proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute or that may not satisfy the requirements of the Information Quality Act;

(ii) The ordinary public comment process is unlikely to provide an adequate examination of the issues to permit a fully informed judgment; and

(iii) The resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule.

(3) *Denial of petition for hearing.* A petition meeting the requirements of paragraph (b)(2) of this section may be denied if the General Counsel determines that:

(i) The requested hearing would not advance the consideration of the proposed rule and the General Counsel's ability to make the rulemaking determinations required by this section; or

(ii) The hearing would unreasonably delay completion of the rulemaking.

(4) *Explanation of denial.* If a petition is denied in whole or in part, the General Counsel shall include a detailed explanation of the factual basis for the denial including findings on each of the relevant factors identified in paragraphs (b)(2) or (b)(3) of this section.

(5) *Hearing notice.* If the General Counsel grants the petition, the General Counsel shall publish a notice of the hearing in the **Federal Register**. The notice shall specify the proposed rule at issue and the specific factual issues to be considered at the hearing. The scope of the hearing shall be limited to the factual issues specified in the notice.

(6) *Hearing process.* (i) A formal hearing under this section shall be conducted using procedures set forth in sections 556 and 557 of Title 5, United States Code, or similar procedures as approved by the Secretary, and interested parties shall have a reasonable opportunity to participate in the hearing through the presentation of testimony and written submissions.

(ii) The General Counsel shall arrange for an administrative judge or other neutral administrative hearing officer to preside over the hearing and shall provide a reasonable opportunity to question the presenters.

(iii) After the formal hearing and after the record of the hearing is closed, the hearing officer shall render a report containing findings and conclusions addressing the disputed issues of fact identified in the hearing notice.

(iv) Interested parties who participated in the hearing shall be given an opportunity to file statements of agreement or objection in response to the hearing officer's report. The complete record of the hearing shall be made part of the rulemaking record.

(7) *Actions following hearing.* (i) Following the completion of the formal hearing process, the General Counsel shall consider the record of the hearing and shall make a reasoned determination whether to terminate the rulemaking; to proceed with the rulemaking as proposed; or to modify the proposed rule.

(ii) If the General Counsel decides to terminate the rulemaking, the General Counsel shall publish a notice in the **Federal Register** announcing the decision and explaining the reasons for the decision.

(iii) If the General Counsel decides to finalize the proposed rule without material modifications, the General Counsel shall explain the reasons for the decision and its responses to the hearing record in the preamble to the final rule.

(iv) If the General Counsel decides to modify the proposed rule in material respects, the General Counsel shall publish a new or supplemental Notice of Proposed Rulemaking in the **Federal Register** explaining the General Counsel's responses to and analysis of the hearing record, setting forth the modifications to the proposed rule, and providing additional reasonable opportunity for public comment on the proposed modified rule.

(8) The formal hearing procedures under this paragraph shall not impede or interfere with the interagency review process of the Office of Information and Regulatory Affairs for the proposed rulemaking.

(c) *Basis for rulemaking.* When issuing a proposed or final regulation declaring a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers under the authority of 49 U.S.C. 41712(a), unless the regulation is specifically required by statute, the Department shall articulate the basis for concluding that the practice is unfair or deceptive to consumers as defined in § 399.79.

■ 3. Add § 399.79 to Subpart G to read as follows:

Subpart G—Policies Relating to Enforcement

§ 399.79 Policies relating to unfair and deceptive practices.

(a) *Applicability.* This policy shall apply to the Department's aviation consumer protection actions pursuant to 49 U.S.C. 41712(a).

(b) *Definitions.* (1) A practice is ''unfair'' to consumers if it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.

(2) A practice is ''deceptive'' to consumers if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter. A matter is material if it is likely to have affected the consumer's conduct or decision with respect to a product or service.

(c) *Intent.* Proof of intent is not necessary to establish unfairness or deception for purposes of 49 U.S.C. 41712(a).

(d) *Specific regulations prevail.* Where an existing regulation applies to the practice of an air carrier, foreign air carrier, or ticket agent, the terms of that regulation apply rather than the general definitions set forth in this section.

(e) *Informal Enforcement Proceedings.* (1) Before any determination is made on how to resolve a matter involving a potential unfair or deceptive practice, the U.S Department of Transportation's Office of Aviation Enforcement and Proceedings will provide an opportunity for the alleged violator to be heard and present relevant evidence, including but not limited to:

(i) In cases where a specific regulation applies, evidence tending to establish that the regulation at issue was not violated and, if applicable, that mitigating circumstances apply;

(ii) In cases where a specific regulation does not apply, evidence tending to establish that the conduct at issue was not unfair or deceptive as defined in paragraph (b); and

(iii) Evidence tending to establish that consumer harm was limited, or that the air carrier, foreign air carrier, or ticket agent has taken steps to mitigate consumer harm.

(2) During this informal process, if the Office of Aviation Enforcement and Proceedings reaches agreement with the alleged violator to resolve the matter with the issuance of an order declaring a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers under the authority of 49 U.S.C. 41712(a), and when a regulation issued under the authority of section 41712 does not apply to the practice at issue, then the Department shall articulate in the order the basis for concluding that the practice is unfair or deceptive to consumers as defined in this section.

(f) *Formal Enforcement Proceedings.* When there are reasonable grounds to believe that an airline or ticket agent has violated 49 U.S.C. 41712, and efforts to settle the matter have failed, the Office of Aviation Enforcement and Proceedings may issue a notice instituting an enforcement proceeding before an administrative law judge. After the issues have been formulated, if the matter has not been resolved through pleadings or otherwise, the administrative law judge will give the parties reasonable written notice of the time and place of the hearing as set forth in 14 CFR 302.415.

Authority: 49 U.S.C. 41712; 49 U.S.C. 40113(a).

Issued this 19h day of February 2020, in Washington, DC, under authority delegated in 49 CFR 1.27(n).

Steven G. Bradbury,

General Counsel.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 342, 343, and 357

[Docket No. RM17–1–000; Docket No. RM15–19–000]

Petition for a Rulemaking of the Liquids Shippers Group, Airlines for America, and the National Propane Gas Association; Revisions to Indexing Policies and Page 700 of FERC Form No. 6

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Withdrawal of advance notice of proposed rulemaking; denial of petition for rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is withdrawing its advance notice of proposed rulemaking (ANOPR) considering potential modifications to the Commission's policies for evaluating oil pipeline indexed rate changes and certain additions to the annual reporting requirements in FERC Form No. 6, page 700. Additionally, the Commission denies the petition for rulemaking filed by certain shippers seeking changes to page 700 reporting requirements.

DATES: The ANOPR published on November 2, 2016, at 81 FR 76315 (2016) is withdrawn as of February 28, 2020.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

1. On October 20, 2016, the Commission issued an advance notice of proposed rulemaking (ANOPR) in Docket No. RM17–1 seeking comment regarding potential modifications to the Commission's policies for evaluating oil pipeline indexed rate changes and certain additions to the FERC Form No. 6, page 700 (page 700) annual reporting requirements.[1] Prior to the ANOPR, on April 20, 2015, certain shippers filed a petition for rulemaking in Docket No. RM15–19 requesting that the Commission require oil pipelines to provide additional information on page 700.

2. For the reasons set forth below, we exercise our discretion to withdraw the ANOPR and to terminate the proceeding in Docket No. RM17–1. We also deny the shippers' petition for rulemaking.

[1] *Revisions to Indexing Policies and Page 700 of FERC Form No. 6,* 81 FR 76315 (Nov. 2, 2016), 157 FERC ¶ 61,047 (2016) (ANOPR).

I. Background

3. In 2015, the Liquids Shippers Group,[2] Airlines for America,[3] and the National Propane Gas Association[4] (collectively, the Joint Shippers) filed a petition for rulemaking in Docket No. RM15–19 seeking to expand certain annual filing requirements related to the summary cost of service contained on page 700. Specifically, the Joint Shippers requested that the Commission require oil pipelines to disaggregate the total company data currently reported on page 700 and to file supplemental page 700s containing summary cost of service for (a) crude and product systems and (b) each ''rate design'' segment. The Joint Shippers' proposal also requested that all interested parties be given access to the workpapers used to prepare page 700. Staff held a technical conference on July 30, 2015, to discuss the Joint Shippers' petition with the petitioners, pipelines, and interested parties. The Commission received subsequent comments in September 2015 and October 2015.[5]

4. The October 2016 ANOPR resulted from the Commission's ongoing assessment of its oil pipeline policies, including evaluation of page 700 reporting requirements following the Joint Shippers' petition. In the ANOPR, the Commission sought comment regarding potential modifications to its policies for reviewing protests and complaints against oil pipeline index rate filings. In addition, the Commission sought comment regarding potential modifications to the data reporting requirements reflected on page 700. Initial comments were filed in January 2017[6] and reply comments were filed in March 2017.[7]

II. Discussion

5. Upon review of the record developed in this proceeding, we are not persuaded to proceed with the changes considered in either the ANOPR or the Joint Shippers' petition.

6. Regarding the Joint Shippers' petition, the Commission previously identified concerns with the petition's proposal for (a) requiring supplemental page 700s for different rate design segments[8] and (b) requiring pipelines to provide page 700 workpapers to shippers.[9] We continue to believe that this information—which would effectively require every oil pipeline regulated by the Commission to file a detailed cost of service every year—is unnecessary and inconsistent with the purposes of the page 700 preliminary screen[10] in the Commission's simplified and streamlined indexing regime.[11]

Whereas this proposal would provide some minimal benefit to shippers, under our simplified indexing regime, it would impose considerable industry-wide cost upon pipelines.[12] After carefully weighing these factors, and considering other avenues available to shippers, as discussed below, we reaffirm our earlier rejection of this proposal.

7. We also deny the Joint Shippers' request for supplemental page 700s that separately report crude oil and product pipeline system cost-of-service data. After further consideration of this proposal as part of the ANOPR proceeding, we conclude that imposing such an annual cost-of-service reporting obligation is unnecessary for the purposes of a preliminary screen in the Commission's simplified indexing regime. Segmentation of page 700 by crude and product would apply to a limited number of pipeline filers.[13] Furthermore, shippers can use the data already on Form No. 6[14] and their

[2] Liquids Shippers Group consists of the following crude oil or natural gas liquids producers: Anadarko Energy Services Company, Apache Corporation, Cenovus Energy Marketing Services Ltd., ConocoPhillips Company, Devon Gas Services, L.P., Encana Marketing (USA) Inc., Marathon Oil Company, Murphy Exploration and Production Company-USA, Noble Energy Inc., Pioneer Natural Resources USA, Inc., and Statoil Marketing & Trading (US) Inc.

[3] Airlines for America is a trade association representing cargo and passenger airlines, including Alaska Airlines, Inc., American Airlines Group (American Airlines and US Airways), Atlas Air, Inc., Delta Air Lines, Inc., Federal Express Corporation, Hawaiian Airlines, JetBlue Airways Corp., Southwest Airlines Co., United Continental Holdings, Inc., and United Parcel Service Co.

[4] The National Propane Gas Association is a national trade association of the propane industry with a membership of approximately 3,000 companies, including 38 affiliated state and regional associations representing members in all 50 states.

[5] Comments and reply comments were filed by the Association of Oil Pipe Lines (AOPL); Joint Shippers (National Propane Gas Association, Airlines for America, a consortium of major air carriers, and Valero Energy and Supply); the Liquids Shippers (Anadarko Energy Services Company, Apache Corporation, Cenovus Energy Marketing Services Ltd., ConocoPhillips Company, Devon Gas Services LP, Encana Marketing (USA) Inc., Marathon Oil Company, Murphy Exploration and Production Company USA, Noble Energy Inc., Pioneer Natural Resources USA Inc., and Statoil Marketing and Trading (US) Inc); Explorer Pipeline Company; Magellan Midstream Partners LP; Marathon Pipe Line LLC; Shell Pipeline Company LP; Plains Pipeline LP; SFPP L.P. (SFPP); NuStar Logistics LP; Enterprise Products Partners LP; and Buckeye Pipe Line Company, LP (Buckeye).

[6] Initial comments were filed by R. Gordon Gooch, Delek Logistics Partners, LP, Kinder Morgan, Inc., Buckeye Partners, L.P., Suncor Energy Marketing Inc., NuStar Logistics, L.P. and NuStar Pipeline Operating Partnership L.P., Shell Pipeline Company, LP, Enterprise Products Partners L.P., Magellan Midstream Partners L.P., The Texas Pipeline Association, Indicated Shippers, Marathon Pipe Line LLC, Plains All American, L.P., Colonial Pipeline Company, Enbridge Inc., Sinclair Oil Corporation, the Liquids Shippers Group, AOPL, APV Shippers (Airlines for America, National Propane Gas Association, and Valero Marketing and Supply Company), and the Canadian Association of Petroleum Producers (CAPP).

[7] Reply comments were filed by Magellan Midstream Partners L.P., APV Shippers, Indicated Shippers, the Liquid Shippers Group, the Canadian Association of Petroleum Producers, AOPL Enbridge, Inc, Colonial Pipeline Company, and R. Gordon Gooch.

[8] ANOPR, 157 FERC ¶ 61,047 at PP 31–33.

[9] *Id.* P 48. In the ANOPR, the Commission also explained: ''The current data on page 700 allows a shipper to compare (a) a pipeline's revenues to its total cost of service and (b) changes to a pipeline's total cost of service.'' *Id.* This is the data needed to challenge an index rate as well as for a cost-of-service challenge. The Commission also noted that requiring workpapers raised potential confidentiality concerns, including ''(a) shipper information protected by section 15(13) of the ICA, which prohibits disclosure of an individual shipper's movements and (b) the pipeline's competitive business information.'' *Id.* P 49. Although we decline to require workpapers, we note that page 700 includes additional data on lines 1–8 that provide significant detail regarding the pipeline's cost of service.

[10] The Commission has stated that the total company data on page 700 merely serves as a preliminary screening tool to evaluate pipeline rates and that ''[p]age 700 information alone is not intended to show what a just and reasonable rate should be.'' *Revisions to Page 700 of FERC Form No. 6,* Order No. 783, 144 FERC ¶ 61,049, at P 4 (2013) (internal citations omitted). The level of the just and reasonable rate can be determined upon a subsequent investigation, most likely at hearing before an administrative law judge.

[11] Indexing simplifies and streamlines ratemaking procedures by allowing a particular pipeline's rates to deviate from its particular costs and by using a broad industry-wide inflationary measure as opposed to costly individual cost-of-service proceedings. *Revisions to Oil Pipeline Regulations Pursuant to Energy Policy Act of 1992,* Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,948 (1993), *order on reh'g and clarification,* Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 (1994), *aff'd sub nom. Ass'n of Oil Pipe Lines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996) (*AOPL I*). As the United States Court of Appeals for the District of Columbia Circuit has explained, requiring an individualized cost-of-service evaluation for each pipeline would be inconsistent with the simplification mandated by the Energy Policy Act of 1992. *Ass'n of Oil Pipe Lines* v. *FERC,* 281 F.3d 239, 244 (D.C. Cir. 2002) (*AOPL II*).

[12] Moreover, the burden associated with segmentation is not a one-time burden. In addition to the annual record-keeping requirements, as pipelines add capacity, spin-off assets, and otherwise evolve, the pipelines would need to re-evaluate their rate design segments.

[13] Our decision to deny the Joint Shippers' request is supported by the fact that there are only a limited number of page 700 filers (6.9 percent or 15 total filers) that transport significant quantities (greater than 10 percent of total pipeline capacity) of both crude oil and petroleum products as reflected on Form No. 6, page 601.

[14] Regarding cost-of-service complaints, Form No. 6 already provides separate crude and product data for several costs, transportation revenues, and throughput. Pages 302–303 of Form No. 6 include separate crude and product cost data for salary and

Continued

knowledge of the pipeline system to support any cost-of-service complaints. The record does not support imposing this additional annual reporting requirement on pipelines.

8. We also decline to adopt the proposal contemplated in the ANOPR that pipelines file supplemental page 700s for non-contiguous and major rate design systems.[15] As a general matter, such filings would not provide shippers with the information needed to evaluate each pipeline system on a cost-of-service basis.[16] However, despite providing limited benefits, these filings would involve some of the same complexity as full rate design segmentation, requiring the pipeline to allocate costs to different parts of its system either by direct assignment or via some other allocation method.[17] Given this additional complexity, we conclude that requiring these supplemental page 700s filings would not be appropriate for the purposes of a preliminary screen in the Commission's simplified indexing ratemaking regime that relies upon industry-wide costs and not the pipeline's individual cost of service.

9. Finally, regarding the ANOPR's proposal to disaggregate revenue and throughput data between cost and non-cost based-rates,[18] we find that this proposal would be overly complex, and therefore, not consistent the Commission's simplified and streamlined indexing regime. Furthermore, the ANOPR's proposal to disaggregate revenue and throughput data between cost and non-cost based rates could lead to misleading comparisons of the pipeline's indexed rates on one portion of the pipeline system to the costs of the entire pipeline.[19] Although the ANOPR sought to propose ways in which the data could nonetheless be useful,[20] we conclude that the potential distortion caused by such an ''apples to oranges'' comparison supports not imposing this disaggregation of revenue and throughput data as an annual, industry-wide reporting requirement. These issues are better addressed in individual cost-of-service complaint proceedings.

10. In declining to adopt these additional reporting obligations on page 700, we seek to preserve the intent of the Energy Policy Act of 1992 to ensure a simplified ratemaking regime. While these changes to page 700 would require pipelines to provide more cost-of-service information in their annual filings, the Commission's primary oil pipeline ratemaking regime is indexing, not cost of service.[21] Since the Energy Policy Act of 1992, the Commission has periodically expanded the information that pipelines must report on page 700,[22] and we are concerned about further expanding this reporting requirement in circumstances where, as here, we believe that it would provide minimal benefits to shippers while expanding the burden and complexity under our indexing regime. Rather than imposing another additional annual industry-wide reporting requirement, we prefer less burdensome and less complex options that are consistent with the Energy Policy Act of 1992's mandate for simplified rate regulation. For example, as an alternative to establishing an industry-wide reporting requirement, under the Commission's current policies, shippers are able to file cost-of-service complaints and, once such a complaint is filed, an oil pipeline may be required to provide more specific data than the contents of page 700 upon a shipper's complaint against the pipeline's rates.[23] Furthermore, in responding to a cost-of-service complaint, the Commission will consider arguments beyond the total company cost-of-service data on page 700, and this more expansive evaluation could include claims by shippers that the pipeline's segments are obscuring over-recoveries. In such circumstances, the Commission will set such issues of material fact for hearing.[24] We believe this approach more appropriately balances pipeline and shipper interests under our simplified indexing regime.

11. We also decline to adopt the proposals in the ANOPR for modifying the Commission's policies for addressing protests and complaints against index rate increases. However, the Commission discusses some potential changes to these policies in our concurrent order in *HollyFrontier*.[25]

12. Accordingly, we exercise our discretion to withdraw the ANOPR and to terminate the proceeding in Docket No. RM17–1. Similarly, we also deny the Joint Shippers' petition for rulemaking. We continue to monitor and evaluate the Commission's oil pipeline policies, and value the comments filed by participants in these proceedings. This input will be considered in our ongoing effort to identify potential enhancements to our regulatory policies and processes.

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wages, fuel and power, outside services, rentals, insurance, taxes, and depreciation. Pages 300–301 of Form No. 6 separate revenues associated with crude transportation from revenues associated with product transportation.

[15] ANOPR, 157 FERC ¶ 61,047 at P 28 (defining major pipeline systems as ''large pipeline systems (at least over 250 miles) that serve markets (either origin or destination) different from the remainder of the pipeline's system'' and ''separate pipeline systems (even those below the 250-mile threshold) established by a final Commission order in a litigated rate case'').

[16] Much like the total company data, the partial segmentation proposals may commingle costs from multiple rate design systems or from parts of the system using different rate methodologies (such as indexed, market-based, and settlement rates).

[17] *See id.* PP 35–42 (explaining how these proposals would require additional data on page 700 to address allocation issues); AOPL Initial Comments, Docket No. RM17–1, Van Hoecke Decl. at 25 (Jan. 18, 2017) (explaining allocation of costs).

[18] ANOPR, 157 FERC ¶ 61,047 at PP 43–46.

[19] For example, a contractual committed rate could apply to the newer part of the pipeline system for which the rate base has not depreciated. In contrast, the cost-based rates may apply to older, legacy parts of the system in which the rate base has depreciated. *Id.* at n.65. In acknowledging this mismatch, the Commission specifically stated that it did not intend to use the disaggregated revenues under the Commission's indexing regime, which is the primary regime for setting pipeline rates. *Id.* P 46.

[20] *Id.*

[21] *AOPL II,* 281 F.3d at 244.

[22] As promulgated in 1994, page 700 included only *four* lines: (1) Total costs, (2) revenues, (3) barrels, and (4) barrel-miles. *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines,* Order No. 571, FERC Stats. & Regs. ¶ 31,006, at 31,168–69 (1994), *aff'd, AOPL I,* 83 F.3d 1424 (D.C. Cir. 1996). Page 700 subsequently expanded to include depreciation expense, amortization of deferred earnings, rate base, rate of return, return on rate base, income tax allowance, and total cost of service. *Revisions to and Electronic Filing of the FERC Form No. 6 and Related Uniform Systems of Account,* Order No. 620, FERC Stats. & Regs. ¶ 31,115 (2000), *reh'g denied,* Order No. 620–A, 94 FERC ¶ 61,130 (2001). The third iteration of page 700 added additional information regarding rate base, rate of return, return on trended original cost rate base, and income tax allowance. *Revisions to Page 700 of FERC Form No. 6,* Order No. 783, 144 FERC ¶ 61,049, at PP 29–40 (2013), *reh'g denied,* Order No. 783–A, 148 FERC ¶ 61,235 (2014).

[23] *See ConocoPhillips Co.* v. *SFPP, L.P.,* 137 FERC ¶ 61,005 (2011) (upon a cost-of-service complaint, requiring the pipeline to provide system-specific data prior to further investigation at hearing). Furthermore, if not available prior to the Commission's investigation at hearing, the additional information sought by the Joint Shippers' petition becomes available at an investigatory hearing as part of the discovery process.

[24] The Commission applies a flexible standard when deciding whether to set a cost-of-service complaint for hearing. *See, e.g., Epsilon Trading LLC* v. *Colonial Pipeline Co.,* 164 FERC ¶ 61,202, at PP 5, 50–51 (2018) (setting for hearing a cost-of-service complaint where pipeline's page 700 showed revenues exceeding costs by 2.5 percent, but the complainants alleged reasonable grounds to suggest that the cost components embedded in page 700 were not accurate).

[25] *See HollyFrontier Ref. & Mktg. LLC* v. *SFPP, L.P.,* v 170 FERC ¶ 61,133 (2020). Among other things, that order, explains that the substantially exacerbate test (which was one of the issues discussed in the ANOPR) is arguably inconsistent with the objectives of indexing, and proposes to eliminate the substantially exacerbate test and replace it with the percentage comparison test. We also plan to initiate a separate, generic proceeding in which we will be requesting briefing from industry participants on (a) the proposal to process complaints against index rate increases using the percentage comparison test and to eliminate the substantially exacerbate test and (b) the use of the 10 percent threshold level when applying the percentage comparison test to complaints.

By direction of the Commission. Commissioner Glick is dissenting with a separate statement attached.

Issued: February 20, 2020.

Kimberly D. Bose,

Secretary.

United States of America Federal Energy Regulatory Commission

	Docket No.
Revisions to Indexing Policies and Page 700 of FERC Form No. 6	RM17–1–000
Petition for a Rulemaking of the Liquids Shippers Group, Airlines for America, and the National Propane Gas Association	RM15–19–000

GLICK, Commissioner, *dissenting:*

I am dissenting from today's order withdrawing the Advance Notice of Proposed Rulemaking (ANOPR) and denying shippers' petition for rulemaking, because the Commission must do more to ensure shippers and the Commission have the information necessary to protect against unjust and reasonable oil pipeline rates.[26] It is especially critical to provide shippers with adequate transparency into pipeline costs, given that the Commission has chosen to rely solely on shippers to ensure that pipeline rates are just and reasonable, as required by the Interstate Commerce Act (ICA).[27] The Commission has the statutory authority to initiate its own cost-of-service investigations into pipeline rates but has for decades chosen not to do so.[28] Instead of summarily terminating this proceeding, the Commission should have proceeded with a Notice of Proposed Rulemaking aimed at enhancing pipelines' data reporting requirements, so that the information available to shippers and the public is useful both in the evaluation of index filings and for cost-of-service rate challenges.

The Commission is responsible for ensuring that the rates oil pipelines charge are just and reasonable. Through the ANOPR, the Commission sought to enhance the transparency of information reported on FERC Form No. 6, page 700, to ensure the public can effectively assess the reasonableness of oil pipeline rates and so that the Commission can ''better fulfill its statutory obligations under the ICA.'' [29] As the Commission explained, a pipeline's costs associated with providing one service may be ''fundamentally different'' from the costs of providing another service.[30] Because the Commission's regulations only require pipelines to report company-wide data, the information currently available to shippers is at best, a rough approximation of the costs underlying a particular shipper's rates.

In the ANOPR, the Commission proposed to require pipelines to report more granular data, so that shippers could use the information to compare the rate they are being charged ''with costs that are more closely associated with that particular rate.'' [31] The Commission stated that this information ''would be useful both in the evaluation of index filings . . . and for cost-of-service rate challenges to oil pipeline rates.'' [32] However, in today's order, the Commission does a complete about-face, withdrawing its proposal on grounds that it is ''unnecessary and inconsistent'' with the purposes of a ''preliminary screen.'' [33] The Commission fails to explain how the information currently available to shippers is adequate for purposes of monitoring and challenging the justness and reasonableness of oil pipeline rates, except to say that shippers can use ''their knowledge of the pipeline system to support any cost-of-service complaints.'' [34] Moreover, while the Commission notes the potential cost impact this ANOPR proposal may have on oil pipeline companies, it appears to give scant consideration to the benefit this additional information would have for ratepayers and the public. Absent greater transparency into the costs underlying a specific rate, shippers are left with no more than a pitiable choice between the rate charged and a costly fishing expedition to obtain the information they need to challenge the rate in the first place.

In light of the Commission's historic practice of relying on shippers to challenge rates rather than initiate its own investigations where the rates charged may no longer be just and reasonable, it is imperative that the Commission ensure shippers have access to the information they need to carry out this essential check. In today's order, the Commission fails to fulfill its last remaining responsibility to ensure oil pipeline rates remain just and reasonable.

For these reasons, I respectfully dissent.

Richard Glick.

Commissioner.

[FR Doc. 2020–04069 Filed 2–27–20; 8:45 am]

BILLING CODE 6717–01–P

[26] *Revisions to Indexing Policies and Page 700 of FERC Form No. 6,* 170 FERC ¶ 61,134 (2020) (Withdrawal Order).

[27] 49 App. U.S.C. 1(5) (1988).

[28] As the Commission explained in Order No. 561, the Commission retains the responsibility to ensure rates are just and reasonable under the ICA, and for this reason it ''will not promulgate an explicit bar to Commission-initiated rate investigations.'' *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992,* Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,967 (1993). Nonetheless, the Commission explained that, while it ''believes it is advisable to retain the authority to investigate a rate on its own motion, it should make clear that it does not contemplate invoking such authority except in the most unusual circumstances.'' *Id.*

[29] *Revisions to Indexing Policies and Page 700 of FERC Form No. 6,* 157 FERC ¶ 61,047, at P 5 (2016) (ANOPR Order).

[30] *Id.* P 27.

[31] *Id.*

[32] *Id.*

[33] Withdrawal Order, 170 FERC ¶ 61,134 at P 6.

[34] *Id.* P 7.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 11, 16, and 129

[Docket No. FDA–2019–N–3325]

RIN 0910–AH31

Laboratory Accreditation for Analyses of Foods; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period for the proposed rule and for its information collection provisions.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the proposed rule, and for the information collection related to the proposed rule, entitled ''Laboratory Accreditation for Analyses of Foods'' that appeared in the **Federal Register** of November 4, 2019. We are taking this action in response to a request for an extension to allow interested persons additional time to consider the proposal. We also are taking this action to keep the comment period for the information collection provisions associated with the rule consistent with the comment period for the proposed rule.

DATES: FDA is extending the comment period on the proposed rule published November 4, 2019 (84 FR 59452). Submit either electronic or written comments on the proposed rule by April 6, 2020. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 (PRA) by April 6, 2020 (see the ''Paperwork Reduction Act of 1995'' section).

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 6, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 6, 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–3325 for ''Laboratory Accreditation for Analyses of Foods.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Timothy McGrath, Staff Director, Food and Feed Laboratory Operations, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rm. 3142, Rockville, MD 20857, 301–796–6591, email: *timothy.mcgrath@fda.hhs.gov.*

With regard to the information collection: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, email: *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 4, 2019 (84 FR 59452), we published a proposed rule entitled ''Laboratory Accreditation for Analyses of Foods'' with a 120-day comment period on the provisions of the proposed rule and on the information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the PRA (44 U.S.C. 3501–3521).

FDA has received a request for a 30-day extension of the comment period on the proposed rule to allow interested persons additional time to consider the proposal. FDA has considered the request and is granting the extension of the comment period to allow interested persons additional opportunity to consider the proposal. We also are extending the comment period for the information collection provisions to make the comment period for the information collection provisions the same as the comment period for the provisions of the proposed rule. To clarify, FDA is requesting comment on all issues raised by the proposed rule. The Agency believes that this extension allows adequate time for any interested persons to fully consider the proposal and submit comments.

Dated: February 21, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–03944 Filed 2–27–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2020–0002; Notice No. 187]

RIN 1513–AC54

Proposed Establishment of the Verde Valley Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 200 square-mile ''Verde Valley'' viticultural area in Yavapai County, Arizona. The proposed viticultural area is not located within, nor does it contain, any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: Comments must be received by April 28, 2020.

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this

document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2020–0002 as posted on *Regulations.gov* (*https://www.regulations.gov*), the Federal e-rulemaking portal. Please see the ''Public Participation'' section of this document below for full details on how to comment on this proposal via *Regulations.gov*, U.S. mail, or hand delivery, and for full details on how to view or obtain copies of this document, its supporting materials, and any comments related to this proposal.

FOR FURTHER INFORMATION CONTACT:

Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Verde Valley Petition

TTB received a petition from the Verde Valley Wine Consortium, on behalf of the local grape growers and winemakers, proposing to establish the approximately 200 square-mile ''Verde Valley'' AVA in Yavapai County, Arizona. The petition notes that the entire geological feature known as ''Verde Valley'' encompasses approximately 714 square miles, most of which is National Forest land. The proposed AVA, however, encompasses a much smaller area and excludes much of the public lands that are unavailable for viticulture. Although an effort was made to exclude as many public lands from the proposed AVA as possible, including Montezuma's Castle and Montezuma's Well National Monuments and the Prescott and Coconino National Forests, approximately 33 percent of the land within the proposed Verde Valley AVA is still part of either the Prescott or Coconino National Forests. The petition states that it was not practical to draw a boundary that would exclude all Federal land because several of the vineyards within the proposed AVA are ''islands'' of private land surrounded on all sides by Federal land. The petition states that even with the amount of Federal land remaining within the proposed AVA, there is still plenty of privately owned land available for vineyards within the proposed boundaries.

The proposed AVA currently has 24 commercial vineyards, covering a total of approximately 125 acres. According to the petition, several existing vineyards are planning to expand by a total of an estimated 40 acres in the near future. In addition, there are 11 wineries located within the proposed AVA.

According to the petition, the distinguishing features of the proposed Verde Valley AVA are its climate, soils, and topography. The petition also included information about the geology of the proposed AVA. However, because the petition did not compare the geology of the proposed AVA to that of the surrounding regions and did not describe the effect geology has on viticulture, TTB does not consider geology to be a distinguishing feature of the proposed AVA. Unless otherwise noted, all information and data pertaining to the proposed AVA contained in this proposed rule come from the petition for the proposed Verde Valley AVA and its supporting exhibits.

Name Evidence

The proposed Verde Valley AVA is located within the larger valley of the Verde River in central Arizona. According to the petition, the region of the proposed AVA has been referred to as ''Verde Valley'' since 1583, when the Spanish explorer Antonio de Espejo recorded his travels in the area. With the passing of the Homestead Act in 1862, which granted land in the area to settlers who were willing make productive use of the land, pioneers began moving to the region and settled the town of Camp Verde. Later, Fort Verde was built to provide military protection for the residents.

The petition included several examples of written works that refer to the ''Verde Valley.'' An early geological study of the region, published in 1890,

was entitled, ''Thenardite, mirabilite, glauberite, halite, and associates, of the Verde Valley, Arizona Territory.'' [1] A 1963 publication by the U.S. Department of Interior was titled, ''Geology and Ground Water in the Verde Valley–The Mongollon Rim Region, Arizona.'' [2] In 2012, the Lonely Planet travel site included the Verde Valley region in its Top 10 list of U.S. travel destinations for 2013. The article notes, ''Between Phoenix and the Grand Canyon, the Verde Valley is taking off as Arizona's go-to destination, and not just among the spa and crystal Sedona fans of years past.'' [3] Finally, an article about the wine industry in Arizona, published in a 2013 edition of the *In Business* magazine, states that the majority of Arizona's wine grapes are grown in ''the greater Willcox area and the Verde Valley.'' [4]

The petition also included several photographs of local businesses and organizations that use the term ''Verde Valley'' in their names. For example, the Verde Valley Fire District, Verde Valley Medical Center, and Verde Valley Montessori School all serve the region of the proposed AVA. The local newspaper, the *Verde Independent,* is published by Verde Valley Newspapers, Inc. A local hotel is named the Verde Valley Inn, and a ballet studio is named Verde Valley Ballet. Finally, the petition included a page from the local telephone directory which lists several other businesses that use ''Verde Valley'' in their names, such as Verde Valley Plumbing, Verde Valley RV Resort and Campground, and Verde Valley Self Storage.

Boundary Evidence

The proposed Verde Valley AVA is located in Yavapai County, Arizona, approximately 100 miles north of the Phoenix metropolitan area. The Verde River flows through the center of the valley from northwest to southeast, and steep foothills rise up around the valley. The northern boundary separates the proposed AVA from the Coconino National Forest. The northern boundary primarily follows the 3,800-foot elevation contour because, according to the petition, the terrain becomes too steep for cultivation above that elevation. The proposed eastern boundary follows a series of elevation contours to separate the proposed AVA from extremely steep terrain, as well as from the public lands within the Coconino National Forest and Montezuma's Well and Montezuma's Castle National Monuments. The proposed southern boundary follows section lines on the U.S.G.S. topographic maps because, according to the petition, there were no other consistent features on the map to follow. The petition states that most of the land south of the proposed boundary is uninhabited and is part of the Coconino National Forest. The proposed western boundary primarily follows the 3,800-foot elevation contour, to exclude the steeper terrain of the Black Hills range and the public lands within the Prescott National Forest.

Distinguishing Features

The distinguishing features of the proposed Verde Valley AVA are its climate, soils, and topography.

Climate

The petition included information on the annual precipitation amounts, temperatures in degrees Fahrenheit (F), and growing degree day [5] (GDD) accumulations within the proposed Verde Valley AVA.

TABLE 1—AVERAGE ANNUAL PRECIPITATION AMOUNTS

[2012–2017]

Location (direction from proposed AVA)	Average annual precipitation amounts (inches)
Proposed AVA	13.83
Fry Lake (North)	29.40
Bar M Canyon (East)	26.86
Baker Butte (South)	27.88
Prescott (West)	18.10

Average annual rainfall amounts within the proposed Verde Valley AVA are significantly lower than in the surrounding regions. Due to the low rainfall amounts, vineyard owners within the proposed AVA must use irrigation to ensure adequate hydration for their vines. The petition states that there are sufficient sources of groundwater within the proposed AVA for irrigation, and vineyard owners also employ water conservation methods such as drip irrigation and the use of agriculturally approved reclaimed water.

TABLE 2—TEMPERATURES

[2012–2017]

Location (direction from proposed AVA)	Annual mean temperature (degrees F)	Maximum temperature (degrees F)	Minimum temperature (degrees F)	Annual growing degree days accumulations
Proposed AVA	64.1	117.0	12.0	5,580
Fry Lake (North)	49.0	94.0	−11.0	1,797
Bar M Canyon (East)	50.4	98.0	−10.0	1,727
Baker Butte (South)	53.3	94.0	6.0	2,668
Prescott (West)	57.7	104.0	2.0	3,544

Temperatures within the proposed Verde Valley AVA are warmer than in each of the surrounding regions and provide suitable heat and sunlight for photosynthesis. The warm daytime temperatures lead to high annual GDD accumulations. According to the petition, the temperatures and GDD accumulations within the proposed AVA are best suited for growing warm-climate grapes such as Syrah, Cabernet

[1] Blake, W.P. Thenardite, mirabilite, glauberite, halite, and associates, of the Verde Valley, Arizona Territory. (1890) *American Journal of Science,* vol. 39, number 229, pp. 43–45.

[2] Twenter, Floyd R., and Metzger, D.G. *Geology and Ground Water in the Verde Valley–The Mongollon Rim Region, Arizona.* Washington: Government Printing Office. 1963.

[3] Reid, Robert. Top 10 travel destinations for 2013. *Lonely Planet.* December 2012. *https://www.lonelyplanet.com/travel-tips-and-articles/77583.*

[4] Stanton, Alison. Arizona's Growing Wine Industry. *In Business.* October 2013, pp. 20–21. *http://inbusinessphx.com/in-business/arizonas-growing-wine-industry.*

[5] *See* Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 1974), pages 61–64. In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual GDDs, defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees F, the minimum temperature required for grapevine growth.

Sauvignon, Petite Sirah, Zinfandel, Malvasia Bianca, and Viognier.

Finally, the petition included a discussion of the difference between the daytime high temperatures and nighttime low temperatures within the proposed AVA and the surrounding regions. The petition referred to these temperature differences as ''diurnal temperature swings.'' Although temperatures in the proposed AVA are high during the daytime, cool nighttime air drains into the proposed AVA from the surrounding higher elevations and lowers the nighttime temperatures. As a result, the difference between daytime high temperatures and nighttime low temperatures within the proposed AVA can exceed 30 degrees F, which is a greater difference than found in any of the surrounding regions. According to the petition, such a significant drop in nighttime temperatures delays grape ripening, lessens the respiration of acids, and increases phenolic development in the grapes. The following tables show the mean diurnal temperature swings for each month during the growing season for the years 2014 to 2016.

TABLE 3—DIURNAL TEMPERATURE SWINGS FOR 2014

[Degrees F]

Location (direction from proposed AVA)	Month					
	April	May	June	July	August	September
Within proposed AVA	37.7	38.8	41.3	32.1	29.5	31.0
Fry Lake (North)	28.3	30.0	35.4	27.7	23.7	24.1
Bar M Canyon (East)	31.7	32.9	38.7	30.0	26.8	27.3
Baker Butte (South)	19.7	20.9	23.2	21.9	18.7	16.2
Prescott (West)	30.3	30.5	33.3	25.8	25.0	26.6

TABLE 4—DIURNAL TEMPERATURE SWINGS FOR 2015

[Degrees F]

Location (direction from proposed AVA)	Month					
	April	May	June	July	August	September
Within proposed AVA	37.3	33.0	38.0	32.2	34.4	33.9
Fry Lake (North)	26.6	22.7	30.4	25.1	26.5	26.3
Bar M Canyon (East)	33.0	30.6	35.7	28.0	29.4	30.4
Baker Butte (South)	19.9	18.7	20.8	19.6	20.5	18.4
Prescott (West)	30.2	26.1	31.2	24.6	26.1	28.7

TABLE 5—DIURNAL TEMPERATURE SWINGS FOR 2016

[Degrees F]

Location (direction from proposed AVA)	Month					
	April	May	June	July	August	September
Within proposed AVA	35.4	36.0	39.5	36.8	29.8	32.2
Fry Lake (North)	24.9	26.6	32.7	29.2	24.4	25.0
Bar M Canyon (East)	28.7	30.6	37.0	32.3	27.2	28.9
Baker Butte (South)	18.5	19.5	23.1	22.1	18.0	16.7
Prescott (West)	27.6	28.1	31.1	28.1	24.4	26.3

Soils

The soils within the proposed Verde Valley AVA are primarily alluvial soils. According to the petition, the majority of the soils within the proposed AVA are of the Altar, Mule, Cornville, Anthony, Retriever, House Mountain, Cowan, and Arizo soil series. The composition of these soils ranges from very fine sandy loam to gravelly loam with silt and limestone. Traces of the Supai, Verde, and Martin Limestone formations can also be found throughout the proposed AVA.

The petition states that the soils of the proposed AVA generally provide appropriate water drainage and have above-moderate levels of nutrients, although low calcium and magnesium levels are common. Additionally, the high bicarbonate levels in the groundwater of the proposed AVA have been found to increase soil pH and inhibit nutrient uptake in the vines. The petition states that these unfavorable vineyard conditions can be mitigated through rootstock, varietal, and clonal selections that can tolerate and even benefit from these nutrient deficiencies.

To the north and east of the proposed Verde Valley AVA, along the Mongollon Rim, the soils are described in the petition as ''stony.'' The most prominent soil series in these two regions are Brolliar stony loam and Siesta stony silt loam. According to the petition, the remainder of the soil to the north and east of the proposed AVA is comprised of approximately 22 other defined soil series, most of which have the terms ''stony'' or ''very stony'' in their names. To the west and southwest of the proposed AVA, in the Black Hills, the soils are also typically stony. Major soil series in these regions include Brolliar very stony clay loam, Soldier cobbly loam, Lonti-Wineg, and Lynx.

Topography

The proposed Verde Valley AVA is located within the basin of the Verde River. The petition describes the shape of this basin as a ''bowl with a crack in it to the south where the river flows out of the valley.'' The edges of the ''bowl'' gently slope down towards the valley

floor at angles of 2 to 15 percent. Elevations within the proposed AVA range from approximately 3,000 feet to 5,000 feet, although most of the proposed AVA is below 3,900 feet.

The proposed AVA is surrounded on all sides by higher elevations and steeper slopes. To the north and northeast of the proposed AVA, elevations rise up to 8,000 feet along the edge of the Mongollon Rim. To the west and southwest of the proposed AVA are the Black Mountains, which have steep slopes and elevations up to approximately 7,800 feet.

According to the petition, the proposed Verde Valley AVA's topography affects viticulture. Gentle slopes allow for easier vineyard management than steep slopes. Furthermore, because the proposed AVA is lower than the surrounding regions, cold air drains from the higher elevations into the proposed AVA during the spring and fall. As a result, the risk of frost damage increases in the proposed AVA, particularly in vineyards adjacent to the river. The petition states that vineyard owners attempt to mitigate the risk of frost by using inversion fans and protective sprays and by planting late-budding varietals of grapes.

Summary of Distinguishing Features

The evidence provided in the petition indicates that the climate, soil, and topography of the proposed Verde Valley AVA distinguish it from the surrounding regions in each direction. The following table summarizes the features of the proposed AVA and the surrounding regions.

SUMMARY OF DISTINGUISHING FEATURES

Region	Climate	Soils	Topography
Proposed Verde Valley AVA	Average of 13.83 inches of rain annually; average GDD accumulations of 5,580; hot summers and moderate winters; growing season diurnal temperature swings of 30 degrees or higher.	Alluvial soils composed of loams ranging from very fine sandy loams to gravelly loams with silt and limestone.	Gentle slopes with angles of 2 to 15 percent; elevations between 3,000 and 5,000 feet.
North	Higher annual rainfall amounts; lower GDD accumulations; cooler summers and colder winters; smaller diurnal temperature difference swings.	Stony soils primarily of the Brollar stony loam and Siesta stony silt series.	Steep slopes with elevations up to 8,000 feet.
East	Higher annual rainfall amounts; lower GDD accumulations; cooler summers and colder winters; smaller diurnal temperature difference swings.	Stony soils primarily of the Brolliar stony loam and Siesta stony silt series.	Steep slopes with elevations up to 8,000 feet.
South	Higher annual rainfall amounts; lower GDD accumulations; cooler summers and moderate winters; smaller diurnal temperature difference swings.	Stony soils primarily of the Brolliar very stony clay loam, Soldier cobbly loam, Lonti-Wineg, and Lynx series.	Steep slopes with elevations up to 7,800 feet.
West	Higher annual rainfall amounts; lower GDD accumulations; cooler summers and moderate winters; smaller diurnal temperature difference swings.	Stony soils primarily of the Brolliar very stony clay loam, Soldier cobbly loam, Lonti-Wineg, and Lynx series.	Steep slopes with elevations up to 7,800 feet.

TTB Determination

TTB concludes that the petition to establish the approximately 200-square mile Verde Valley AVA merits consideration and public comment, as invited in this proposed rule.

Boundary Description

See the narrative description of the boundary of the petitioned-for AVA in the proposed regulatory text published at the end of this proposed rule.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed Verde Valley AVA boundary on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, ''Verde Valley,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, if this proposed rule is adopted as a final rule, wine bottlers using the name ''Verde Valley'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed AVA. TTB is also interested in receiving comments on the sufficiency and accuracy of the name, boundary, soils, climate, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Verde Valley AVA on wine labels that include the term ''Verde Valley,'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the AVA.

Submitting Comments

You may submit comments on this proposed rule by using one of the following three methods (please note that TTB has a new address for comments submitted by U.S. Mail):

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this proposed rule within Docket No. TTB–2020–0002 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, at *http://www.regulations.gov.* A direct link to that docket is available under Notice No. 187 on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, visit the site and click on the ''Help'' tab.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this proposed rule. Your comments must reference Notice No. 187 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly indicate if you are commenting on your own behalf or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name, as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

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

Public Disclosure

TTB will post, and you may view, copies of this proposed rule, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2020–0002 on the Federal e-rulemaking portal, *Regulations.gov*, at *https://www.regulations.gov.* A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 187. You may also reach the relevant docket through the *Regulations.gov* search page at *https://www.regulations.gov.* For information on how to use *Regulations.gov*, click on the site's ''Help'' tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this proposed rule, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW, Suite 400, Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Please note that TTB is unable to provide copies of USGS maps or any similarly-sized documents that may be included as part of the AVA petition. Contact TTB's Regulations and Rulings Division at the above address, by email using the web form at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–1039, ext. 175, to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this proposed rule.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.____ to read as follows:

§ 9.____ Verde Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Verde Valley''. For purposes of part 4 of this chapter, ''Verde Valley'' is a term of viticultural significance.

(b) *Approved maps.* The 9 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Verde Valley viticultural area are titled:

(1) Camp Verde, Ariz., 1969;
(2) Clarkdale, Ariz., 1973;
(3) Cornville, Ariz., 1968;
(4) Cottonwood, Ariz., 1973;
(5) Lake Montezuma, Ariz., 1969;
(6) Middle Verde, Ariz., 1969;
(7) Munds Draw, Ariz., 1973;
(8) Page Springs, Ariz., 1969; and
(9) Sedona, Ariz., 1969.

(c) *Boundary.* The Verde Valley viticultural area is located in Yavapai County, Arizona. The boundary of the Verde Valley viticultural area is as described below:

(1) The beginning point of the boundary is at the intersection of the 3,800-foot elevation contour and the northern boundary of Section 32, T17N/R3E, on the Clarkdale Quadrangle. From the beginning point, proceed east along the northern boundary of Section 32 until its intersection with the Verde River; then

(2) Proceed north along the Verde River to its intersection with the western boundary of Section 21, T17N/R3E; then

(3) Proceed north along the western boundaries of Sections 21 and 16 to the intersection with the 3,800-foot elevation contour; then

(4) Proceed southerly then easterly along the 3,800-foot elevation contour, crossing onto the Page Springs Quadrangle, to its intersection with Bill Gray Road in Section 18, T16N/R4E; then

(5) Proceed north along Bill Gray Road to its intersection with an unnamed, unimproved road known locally as Forest 761B Road in Section 32, T17N/R4E; then

(6) Proceed east, then northeast, along Forest 761B Road to its intersection with Red Canyon Road in Section 26, T17N/R4E; then

(7) Proceed south along Red Canyon Road to its intersection with U.S. Highway 89 Alt. in Section 35, T17N/R4E; then

(8) Proceed east over U.S. Highway 89 Alt. in a straight line to and unnamed, unimproved road known locally as Angel Valley Road, and proceed southeasterly along Angel Valley Road as it becomes a light-duty road, crossing over Oak Creek, and continuing along the southernmost segment of Angel Valley Road to its terminus at a structure on Deer Pass Ranch in Section 12, T16N/R4E; then

(9) Proceed south in a straight line to the 3,800-foot elevation contour in Section 12, T16/NR4E; then

(10) Proceed south-southeasterly along the 3,800-foot elevation contour, crossing over the southwestern corner of the Sedona Quadrangle and onto the Lake Montezuma Quadrangle, to the intersection of the contour line with an unnamed creek in Section 6, T15N/R5E; then

(11) Proceed southwesterly along the unnamed creek until its intersection with the 3,600-foot elevation contour in Section 1, T15N/R4E; then

(12) Proceed southerly along the 3,600-foor elevation contour, crossing briefly onto the Cornville Quadrangle and then back onto the Lake Montezuma Quadrangle, to the intersection of the elevation contour with an unnamed secondary highway known locally as Cornville Road in Section 7, T15N/R5E; then

(13) Proceed southeast along Cornville Road to its intersection with the 3,600-foot elevation contour in Section 20, T15N/R5 E; then

(14) Proceed easterly, then southerly, along the elevation contour to its intersection with the boundary of the Montezuma Castle National Monument in Section 36, T15N/R5E; then

(15) Proceed west, southeast, southwest, and then east along the boundary of the Montezuma Castle National Monument to its intersection with range line separating R5E and R6E; then

(16) Proceed south along the R5E/R6E range line, crossing onto the Camp Verde Quadrangle, to the intersection of the range line and the southeastern corner of Section 12, T14N/R5E; then

(17) Proceed west along the southern boundaries of Sections 12, 11, 10, and 9 to the intersection of the southern boundary of Section 9 and the Montezuma Castle National Monument; then

(18) Proceed along the boundary of the Montezuma Castle National Monument in a counterclockwise direction to the intersection of the monument boundary and the 3,300-foot elevation contour in Section 16, T14N/R5E; then

(19) Proceed southerly, then southeasterly, along the 3,300-foot elevation contour to its intersection with the eastern boundary of Section 18, T13N/R6E; then

(20) Proceed south along the eastern boundary of Section 18 to its intersection with the southern boundary of Section 18; then

(21) Proceed west along the southern boundaries of Sections 19, 13, 14, 15, 16, 17, and 18, T13N/R53, and Section 13, T13N/R4E, to the intersection with the 3,800-foot elevation contour in Section 13, T13N/R4E; then

(22) Proceed northwesterly along the 3,800-foot elevation contour, crossing over the Middle Verde and Cornville Quadrangles and onto the Cottonwood Quadrangle, to the intersection of the elevation contour with an unnamed creek in Del Monte Gulch in Section 5, T15N/R3E; then

(23) Proceed westerly along the unnamed creek to its intersection with the 5,000-foot elevation contour in Section 26, T16N/R2E; then

(24) Proceed northerly along the 5,000-foot elevation contour, crossing over the Clarkdale Quadrangle and onto the Munds Draw Quadrangle, to the intersection of the elevation contour with a pipeline in Section 4, T16N/R2E; then

(25) Proceed southeasterly along the pipeline, crossing onto the Clarkdale Quadrangle, and continuing northeasterly along the pipeline to its intersection with the 3,800-foot elevation contour in Section 32, T17N/R3E; then

(26) Proceed northerly along the 3,800-foot contour, returning to the beginning point.

Signed: November 26, 2019.

Mary G. Ryan,

Acting Administrator.

Approved: February 4, 2020.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2020–04012 Filed 2–27–20; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0078]

RIN 1625–AA08

Special Local Regulation; Sail Grand Prix 2020 Race Event; San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation in the navigable waters of San Francisco Bay in San Francisco, CA in support of the San Francisco Sail

Grand Prix 2020 official practice and race periods between April 30, 2020 and May 3, 2020. This special local regulation is necessary to ensure the safety of mariners transiting the area from the dangers of high-speed sailing activities associated with the Sail Grand Prix 2020 race event. This proposed temporary special local regulation will temporarily restrict vessel traffic adjacent to the city of San Francisco waterfront in the vicinity of the Golden Gate Bridge and Alcatraz Island and prohibit vessels and persons not participating in the race event from entering the dedicated race and practice areas. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 30, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0078 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Jennae Cotton, Waterways Management, U.S. Coast Guard; telephone 415–399–3585, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port San Francisco
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Patrol Commander
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On June 3, 2019, F50 League, LLC notified the Coast Guard of an intention to conduct the ''Sail Grand Prix 2020'' event in the San Francisco Bay. F50 League, LLC is a sailing league featuring world-class sailors racing 50-foot foiling catamarans. The season starts in February 2020. The event will be held in six iconic cities throughout the world, traveling to the San Francisco Bay in May 2020. In San Francisco, they propose to take advantage of the natural amphitheater that the central bay and city waterfront provide.

F50 League, LLC has applied for a Marine Event Permit to hold the Sail Grand Prix 2020 race event on the waters of the San Francisco Bay in San Francisco, California. The Coast Guard has not approved the Marine Event Permit and is still evaluating the application. If the permit is approved, however, we anticipate that a special local regulation may be necessary to ensure public safety during the practice and race periods. To provide adequate time for public input, we are proposing this special local regulation prior to a decision on the Marine Event Permit.

Prior to drafting this notice of proposed rulemaking, the Coast Guard solicited input from maritime stakeholders to better understand the nature of commercial and recreational activities on the Bay and how the proposed Sail Grand Prix 2020 race event could impact such activities. The Coast Guard participated in both a navigation work group and monthly public meeting of the local Harbor Safety Committee (HSC) to meet with stakeholders to obtain information and gather feedback on notional approaches to enacting regulation in connection with the Sail Grand Prix 2020 race event. Additionally, the Coast Guard has taken feedback from the Sail Grand Prix 2019 race event into consideration for the plans associated with the Sail Grand Prix 2020 race event.

These regulations are needed to keep persons and vessels away from the sailing race vessels, which exhibit unpredictable maneuverability and have a demonstrated likelihood during the simulation of racing scenarios for capsizing. The special local regulation will help prevent injuries and property damage that may be caused upon impact by these fast-moving vessels. The provisions of this temporary special local regulation will not exempt racing vessels from any federal, state, or local laws or regulations, including Nautical Rules of the Road. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

Under 33 CFR 100.35, the Coast Guard District Commander has authority to promulgate certain special local regulations deemed necessary to ensure the safety of life on the navigable waters immediately before, during, and immediately after an approved regatta. Pursuant to 33 CFR 1.05–1(i), the Commander of Coast Guard District 11 has delegated to the COTP the responsibility of issuing such regulations.

III. Discussion of Proposed Rule

The COTP proposes to establish a special local regulation associated with the Sail Grand Prix 2020 race event from 11:30 a.m. to 5:30 p.m. on each of April 30, 2020, May 1, 2020, May 2, 2020, and May 3, 2020. The areas regulated by this special local regulation will be east of the Golden Gate Bridge, south of Alcatraz Island, west of Treasure Island, and in the vicinity of the city of San Francisco waterfront. The Coast Guard proposes to establish an official practice race area, an official race area, a spectator area, and a no-loitering area. Images of the four zones and enforcement dates and times of these proposed regulated areas may be found in the docket.

The proposed special local regulation would encompass all navigable waters of the San Francisco Bay, from surface to bottom, within the area formed by connecting the following latitude and longitude points in the following order: 37°48′18″ N, 122°27′44″ W; thence to 37°48′30″ N, 122°27′56″ W; thence to 37°49′18″ N, 122°27′59″ W; thence to 37°49′34″ N, 122°25′36″ W; thence to 37°49′10″ N, 122°25′10″ W; thence to 37°48′45″ N, 122°25′10″ W; thence to 37°48′42″ N, 122°25′13″ W and thence along the shore to the point of beginning. Located within this footprint, there would be four separate regulated areas: Zone ''A'', the Official Practice Box Area; Zone ''B'', the Official Race Box Area; Zone ''C'', the Spectator Area; and Zone ''D'', the No Spectating or Loitering Area.

Zone ''A'', the Official Practice Box Area, would encompass all navigable waters of the San Francisco Bay, from surface to bottom, within the area formed by connecting the following latitude and longitude points in the following order: 37°49′19″ N, 122°27′19″ W; thence to 37°49′28″ N, 122°25′52″ W; thence to 37°48′49″ N, 122°25′45″ W; thence to 37°48′42″ N, 122°27′00″ W; thence to 37°48′51″ N, 122°27′14″ W and thence to the point of beginning. Only designated Sail Grand Prix 2020 race and support vessels would be permitted to enter Zone ''A''. Zone ''A'' would be used by the race and support vessels during the official practice period on April 30th, 2020 and May 1st, 2020. Zone ''A'', the Official Practice Box Area, will be enforced during the official practices from 11:30 a.m. to 5:30 p.m. on April 30, 2020 and May 1, 2020. Excluding the public from entering Zone ''A'' is necessary to provide protection from the operation of the high-speed sailing vessels within this area.

Zone ''B'', the Official Race Box Area, would be marked by 12 or more colored visual markers. The position of these markers would be confirmed via Broadcast Notice to Mariners at least three days prior to the event. Only designated Sail Grand Prix 2020 race, support, and VIP vessels would be

permitted to enter Zone ''B''. Because of the hazards posed by the sailing competition, excluding non-race vessel traffic from Zone ''B'' is necessary to provide protection from the operation of the high-speed sailing vessels within this area.

Zone ''C'', the Spectator Area, will include specified parts of the waters immediately adjacent to racing Zone ''B'' and will be defined by latitude and longitude points as per Broadcast Notice to Mariners. Zone ''C'' will be further divided into three additional sub-areas: Zone ''C1 East'', Zone ''C1 West'', and Zone ''C2''. Zone ''C1 East'' and Zone ''C1 West'' would be the general spectator zones that are open to all vessel spectators. Zone ''C2'' will be a separate designated spectator area or areas marked by approximately four or more colored visual markers that will be managed by marine event sponsor officials. The designation of Zone ''C'', to include Zone ''C1 East'', Zone ''C1 West'', and Zone ''C2'', will allow spectators to observe the Sail Grand Prix 2020 race event in a regulated area at a safe distance from the sailing regatta occurring in Zone ''B''.

Zone ''D'' will be the No Spectating or Loitering Area. This zone will allow vessels to transit in and out of marinas, piers, and vessel launching locations along the San Francisco waterfront throughout the duration of the Sail Grand Prix event. Additionally, this zone keeps vessel traffic moving along the northern boundary of the regulated area, reducing any impact of recreational vessels on commercial shipping traffic. All vessels shall maintain headway and shall not loiter or anchor within the confines of Zone ''D''. Mariners can transit Zone ''D'' during the Sail Grand Prix, decreasing the impact to the San Francisco waterfront and vessel traffic lanes. All mariners must obey the direction of the COTP or the COTP's designated representative while transiting Zone ''D''.

Zones ''B'', ''C'', and ''D'' will be enforced at all times during the races, from 11:30 a.m. to 5:30 p.m. on May 2, 2020 and May 3, 2020.

The duration of the establishment of the proposed special local regulation is intended to ensure the safety of vessels in these navigable waters before, during, and after the scheduled practice and race periods. This proposed temporary special local regulation will temporarily restrict vessel traffic adjacent to the city of San Francisco waterfront in the vicinity of the Golden Gate Bridge and Alcatraz Island and prohibit vessels and persons not participating in the race event from entering the established race area. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the special local regulation. With this special local regulation, the Coast Guard intends to maintain commercial access to the ports through an alternate vessel traffic management scheme. The special local regulation is limited in duration, and is limited to a narrowly tailored geographic area with designated and adequate space for transiting vessels to pass when permitted by the COTP or a designated representative. In addition, although this rule restricts access to the waters encompassed by the special local regulation, the effect of this rule will not be significant because the local waterway users will be notified in advance via public Notice to Mariners to ensure the special local regulation will result in minimum impact. Therefore mariners will be able to plan ahead and transit outside of the periods of enforcement of the special local regulation, and if they choose not to do so, they will be able to transit around the northern side of the special local regulation. The entities most likely to be affected are commercial vessels and pleasure craft engaged in recreational activities.

B. Impact on Small Entities

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

This rule may affect owners and operators of commercial vessels and pleasure craft engaged in recreational activities and sightseeing. This special location regulation will not have a significant economic impact on a substantial number of small entities for the reasons stated in section IV.A. above. This special local regulation will be subject to enforcement for a limited duration. When the special local regulation is in effect, vessel traffic can pass safely around the regulated area. The maritime public will be advised in advance of this special local regulation via Notice to Mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a special local regulation that will create a regulated area, divided into four zones, of limited size and duration that includes areas for vessel traffic to pass. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating this docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

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

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

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for Part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.35.T11–018 to read as follows:

§ 100.35T11–018 Special Local Regulation; Sail Grand Prix 2020 Race Event, San Francisco, CA

(a) *Location.* The following area is subject to a temporary special local regulation: all navigable waters of the San Francisco Bay, from surface to bottom, encompassed by a line connecting the following latitude and longitude points in the following order: 37°48′18″ N, 122°27′44″ W; thence to 37°48′30″ N, 122°27′56″ W; thence to 37°49′18″ N, 122°27′59″ W; thence to 37°49′34″ N, 122°25′36″ W; thence to 37°49′10″ N, 122°25′10″ W; thence to 37°48′45″ N, 122°25′10″ W; thence to 37°48′42″ N, 122°25′13″ W and thence along the shore to the point of beginning.

(b) *Definitions.* As used in this section,

(i) ''Designated representative'' means a Coast Guard Patrol Commander or ''PATCOM'', including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the special local regulation.

(ii) Zone ''A'' means the Official Practice Box Area. This zone will encompass all navigable waters of the San Francisco Bay, from surface to bottom, within the area formed by connecting the following latitude and longitude points in the following order: 37°49′19″ N, 122°27′19″ W; thence to 37°49′28″ N, 122°25′52″ W; thence to 37°48′49″ N, 122°25′45″ W; thence to 37°48′42″ N, 122°27′00″ W; thence to 37°48′51″ N, 122°27′14″ W and thence to the point of beginning.

(iii) Zone ''B'' means the Official Race Box Area, which will be marked by 12 or more colored visual markers within the special regulation area designated in paragraph (a). The position of these markers will be specified via Broadcast Notice to Mariners at least three days prior to the event.

(iv) Zone ''C'' means the Spectator Area, which is within the special local regulation area designated in paragraph (a) and outside of Zone ''B'', the Official Race Box Area. Zone ''C'' will be defined by latitude and longitude points per Broadcast Notice to Mariners. Zone ''C'' will be further divided into three additional sub-areas: Zone ''C1 East'', Zone ''C1 West'', and Zone ''C2''. Zone ''C1 East'' and Zone ''C1 West'' will be the general spectator areas that are open to all vessel spectators. Zone ''C2''

means the separately designated spectator area or areas marked by approximately four or more colored buoys that will be managed by marine event sponsor officials. Vessels shall not anchor within the confines of Zone ''C''.

(v) Zone ''D'' means the No Spectating or Loitering Area. This zone will allow vessels to transit in and out of marinas, piers, and vessel launch areas throughout the duration of the Sail Grand Prix. All vessels shall maintain headway and shall not loiter or anchor within the confines of Zone ''D''. Mariners can transit Zone ''D'' during the Sail Grand Prix 2020 event, decreasing the impact of the special local regulation to the San Francisco waterfront.

(c) *Special Local Regulation.* The following regulations apply between 11:30 a.m. and 5:30 p.m. on the Sail Grand Prix 2020 official practice and race days.

(i) Only support and race vessels will be authorized by the COTP or designated representative to enter Zone ''A'' during the official practice days. Only support and race vessels will be authorized by the COTP or designated representative to enter Zone ''B'' during the race event. Vessel operators desiring to enter or operate within Zone ''B'' must contact the COTP or a designated representative to obtain permission to do so. Persons and vessels may request permission to transit Zone ''B'' on VHF–23A.

(ii) Spectator vessels in Zone ''C'' must maneuver as directed by the COTP or designated representative. When hailed or signaled by the COTP or designated representative by a succession of sharp, short signals by whistle or horn, the hailed vessel must come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in additional operating restrictions, citation for failure to comply, or both.

(iii) Spectator vessels in Zone ''C'' must operate at safe speeds which will create minimal wake.

(iv) Vessels in Zone ''D'' shall maintain headway and shall not loiter or anchor within the confines of Zone ''D''. Vessels in Zone ''D'' must maneuver as directed by the COTP or designated representative.

(v) Rafting and anchoring of vessels are prohibited within Zones ''A'', ''B'', ''C'', and ''D''.

(d) *Enforcement periods.* This special local regulation will be enforced for the official practices and race events from April 30, 2020 through May 3, 2020 from 11:30 a.m. until 5:30 p.m. each day. At least 24 hours in advance of the first race event, the COTP will notify the maritime community of periods during which these zones will be enforced via Notice to Mariners and via the Coast Guard Boating Public Safety Notice.

Dated: February 19, 2020.

Howard H. Wright,

Captain, U.S. Coast Guard, Alternate Captain of the Port, San Francisco.

[FR Doc. 2020–03993 Filed 2–27–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0088]

RIN 1625–AA00

Safety Zone; New Jersey Intracoastal Waterway, Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain navigable waters of the New Jersey Intracoastal Waterway. The safety zone is needed to protect participants of the Stockton University–AC Double Duel Regatta on these navigable waters near Atlantic City, NJ, during the rowing competition on April 4, 2020, and April 5, 2020. This proposed rulemaking would prohibit non-participant persons and vessels from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port (COTP) Delaware Bay or a designated representative. We invite your comments on the proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 16, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0088 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Thomas Welker, U.S. Coast Guard Sector Delaware Bay, Waterways Management Division; telephone 215–271–4814, email *Thomas.J.Welker@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

The Stockton University Athletic Department notified the Coast Guard that it will be conducting a rowing competition from noon to 6:30 p.m. on April 4, 2020, and from 7:30 a.m. to 1:30 p.m. on April 5, 2020. The competition will consist of rowing teams in 40′ to 60′ racing shells on a 2000-meter course in the New Jersey Intracoastal Waterways of Atlantic City, New Jersey. The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with this rowing event will be a safety concern for participants and for vessels operating within the specified waters of the New Jersey Intracoastal Waterway.

The purpose of this rulemaking is to protect participants, spectators, and transiting vessels on waters near the regatta on the New Jersey Intracoastal Waterway before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The Coast Guard is proposing to establish a temporary safety zone from noon on April 4, 2020, until 2 p.m. on April 5, 2020. The zone would be enforced from noon to 7 p.m. on April 4, 2020, and from 7 a.m. to 2 p.m. on April 5, 2020. The safety zone would cover all navigable waters of the New Jersey Intracoastal Waterway within the polygon bounded by the following: Originating on the southwest portion at approximate position latitude 39°20′57″ N, longitude 074°27′59″ W; thence northeasterly along the shoreline to latitude 39°21′35″ N, longitude 074°27′06″ W; thence east across the mouth of Beach Thorofare to the shoreline at latitude 39°21′41″ N, longitude 074°26′55″ W; thence east along the shoreline to latitude 39°21′42″N, longitude 074°26′51″ W; thence southeast across the New Jersey Intracoastal Waterway to the shoreline at latitude 39°21′43″ N, longitude 074°26′41″ W; thence southwest along the shoreline to approximate position latitude 39°20′55″ N, longitude 074°27′57″ W; thence north to the point of origin. The duration of the zone is

intended to ensure the safety of participants and vessels on these navigable waters before, during, and after the rowing event. No person or vessel will be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the COTP Delaware Bay or a designated representative. If the COTP Delaware Bay or a designated representative grants authorization to enter, transit through, anchor in, or remain within the safety zone, all persons and vessels receiving such authorization must comply with the instructions of the COTP Delaware Bay or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

The impact of this proposed rule is not significant for the following reasons: (1) The enforcement periods will last seven hours each day of the 2-day event at a time of year when vessel traffic is usually low; (2) although non-participant persons and vessels may not enter, transit through, anchor in, or remain with the safety zone without authorization from the COTP Delaware Bay or a designated representative, surrounding channels within the New Jersey Intracoastal Waterways will remain unaffected. Persons and vessels will be able to operate in the surrounding area during the enforcement period; (3) persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the COTP Delaware Bay or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene actual notice from designated representatives.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting seven hours per day for two days that would prohibit entry within certain navigable waters during a rowing event. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the

ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

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

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0088 to read as follows:

§ 165.T05–0088 Safety Zone; New Jersey Intracoastal Waterway, Atlantic City, NJ.

(a) *Location.* The following area is a safety zone: All navigable waters of the New Jersey Intracoastal Waterway in Atlantic City, NJ, within the polygon bounded by the following: Originating on the southwest portion at approximate position latitude 39°20′57″ N, longitude 074°27′59″ W; thence northeasterly along the shoreline to latitude 39°21′35″ N, longitude 074°27′06″ W; thence east across the mouth of Beach Thorofare to the shoreline at latitude 39°21′41″ N, longitude 074°26′55″ W; thence east along the shoreline to latitude 39°21′42″ N, longitude 074°26′51″ W; thence southeast across the New Jersey Intracoastal Waterway to the shoreline at latitude 39°21′43″ N, longitude 074°26′41″ W; thence southwest along the shoreline to approximate position latitude 39°20′55″ N, longitude 074°27′57″ W; thence north to the point of origin.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port (COTP), Delaware Bay in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone, contact the COTP or the COTP's representative via VHF–FM channel 16 or 215–271–4807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This zone will be enforced from noon to approximately 7 p.m. on April 4, 2020, and from approximately 7 a.m. to 2 p.m., or shortly before that, on April 5, 2020.

Dated: February 24, 2020.

Scott E. Anderson,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2020–04087 Filed 2–27–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AQ61

Elimination of On-the-Job Training and Apprenticeship Trainee Certification

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations that contain the requirements for certification of attendance at on-the-job training and apprenticeship programs under the Veterans Apprenticeship and Labor Opportunity Reform Act (VALOR Act). Section 3 of this law eliminated the requirement that trainees (veterans and other eligible persons who receive the training) certify attendance at on-the-job or apprentice training prior to disbursement of a training assistance allowance, thereby placing the responsibility solely on the employer to certify attendance in on-the-job and apprenticeship programs. Although it does not apply to chapter 30, we propose to eliminate the regulatory trainee certification requirement for chapter-30 trainees as well.

DATES: Comments must be received on or before April 28, 2020.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AQ61—Elimination of On-the-Job Training and Apprenticeship Trainee Certification.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and

Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Cheryl Amitay, Chief, Policy and Regulation Development Staff (225C), Education Service, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Prior to the enactment of Public Law 115–89, 131 Stat. 1279, ''Veterans Apprenticeship and Labor Opportunity Reform Act'' (VALOR Act), 38 U.S.C. 3680(c) required that veterans and other eligible persons pursuing approved programs of on-the-job training (OJT) or apprenticeship training (trainees) certify actual attendance and that training establishments certify that a trainee was enrolled in and pursuing a program of apprenticeship or other on-job training. VA implemented former section 3680(c) in 38 CFR 21.4138(e)(2), 21.5133(b), and 21.7640(a)(3). VA also required dual certification for chapter-30 apprenticeship and OJT programs in 38 CFR 21.7140(c)(2).

Section 3 of Public Law 115–89 amended sec. 3680(c) to eliminate the trainee's attendance certification requirement. Consequently, only the training establishment is required to certify the trainee's OJT or apprenticeship training. Congress eliminated the trainee certification requirement to ''reduce the administrative burden on veterans while maintaining attendance certification'' to ''ensure GI Bill benefits are only paid to individuals who are abiding by the benefit requirements.'' H.R. Rep. No. 115–398, at 4 (2017). VA therefore proposes to amend 38 CFR 21.4138(e)(2), 21.5133(b), and 21.7640(a)(3) by removing references to the requirement for a trainee's certification.

Section 3034 of title 38, U.S.C., sets forth general provisions regarding the administration of the chapter 30 Montgomery GI Bill program. Section 3034(a)(1) provides that the general administration of educational benefits provisions contained in chapter 36 apply to the chapter 30 program, except for sec. 3680(c), among other provisions. Although 38 U.S.C. 3034(a)(1) specifically excepts 38 U.S.C. 3680(c) from application to the provision of educational assistance under chapter 30, VA previously promulgated 38 CFR 21.7140(c)(2)(ii) to require employer and trainee certification for apprenticeship and OJT programs under chapter 30. (VA apparently interpreted sec. 3034(a)(1) as not necessarily prohibiting VA from requiring dual certifications but, rather, as not requiring VA to require dual certifications pursuant to sec. 3680(c).)

VA proposes to amend 38 CFR 21.7140(c)(2)(ii) to eliminate the trainee certification requirement for apprenticeship and OJT programs under chapter 30. We are proposing to amend section 21.7140(c)(2) so that the certification requirement would be consistent across all VA education and training programs and with Congress' intent to reduce the administrative burden for trainees enrolled in apprenticeship and OJT programs. H.R. Rep. No. 115–398, at 4.

VA also proposes to amend the authority citations for 38 CFR 21.4138(e) and 21.5133 to explain that 38 U.S.C. 3680(c) is an authority for these regulations. Also, VA would add an authority citation for § 21.7140(c)(2) to explain that 38 U.S.C. 3034 and 3680(g) are the authority for this regulation. Finally, VA would add the Office of Management and Budget (OMB) information-collection control number for 38 CFR 21.4138, 21.5133, 21.7140, and 21.7640.

These proposed amendments would necessitate revision of the current OMB approved collection of information, OMB Control No. 2900–0178, VA Form 22–6553d–1, ''Monthly Certification of On-The-Job and Apprenticeship Training.'' Both the trainee and the training establishment must currently complete and sign the form reporting the number of hours the trainee has worked and, if applicable, the date the trainee terminated training. Based on this form, VA either continues a trainee's education benefits without changes or amends or terminates benefits. We propose to revise this information collection to remove the trainee's certification based on Public Law 115–89.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www1.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.'' This proposed rule is expected to be an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This rulemaking does not change VA's policy or provisions involving any small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires at 2 U.S.C. 1532 that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. *See also* 5 CFR 1320.8(b)(3)(vi).

This proposed rule includes provisions involving a revised collection of information under the Paperwork Reduction Act of 1995 that requires approval by OMB. OMB assigns control numbers to collections of information it approves. VA 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 information collection requirement in §§ 21.4138(e)(2), 21.5133(b), 21.7140(c)(2), and 21.7640(a)(3) is currently approved by OMB and has been assigned OMB control number 2900–0178.

Title: Monthly Certification of On-The-Job and Apprenticeship Training (VA Form 22–6553d & 22–6553d–1).

Summary of collection of information: The amended collection of information in proposed §§ 21.4138(e)(2), 21.5133(b), 21.7140(c)(2), and 21.7640(a)(3) would require only the training establishment to complete and submit VA Form 22–6553d or 22–6553d–1 to certify a trainee's on-the-job training or apprenticeship training. This proposed rule would eliminate the requirement for the trainee to complete and submit this form to certify training. The proposed amendment to §§ 21.4138(e)(2), 21.5133(b), 21.7140(c)(2), and 21.7640(a)(3) would decrease the estimated annual number of respondents and consequently reduce the estimated total annual reporting and recordkeeping burden.

The estimated annual burden for the revised collection of information would be determined as follows:

Description of need for information and proposed use of information: There would be no change in the need for information and proposed use of information collected for OMB-approved Control Number 2900–0178 (VA Form 22–6553d or 22–6553d–1). VA Form 22–6553d or 22–6553d–1 is used to report the number of hours the trainee has worked and, if applicable, to report the date the trainee terminated training.

Description of likely respondents: The certifying officials at VA approved training establishments would be the sole respondents as a result of the proposed rule. They are the only parties that would complete and sign VA Form 22–6553d or 22–6553d–1 to certify a trainee's on-the-job training or apprenticeship training as the proposed rule, which would implement Public Law 115–89, would eliminate the requirement that trainees also complete and sign the form. This change, therefore, would reduce the number of respondents.

Estimated number of respondents per month/year: 3,795 annually.

Estimated frequency of responses per month/year: 9 responses per respondent.

Estimated number of responses per month/year: 34,155 annually.

Estimated average burden per response: The estimated average burden per response for OMB-approved Control Number 2900–0178 (VA Form 22–6553d or 22–6553d–1), would be 10 minutes, rather than 20 minutes when there were two respondents required for each form.

Estimated total annual reporting and recordkeeping burden: 5,693 hours.

Estimated total annual respondent burden cost: $142,211.

This proposed rule would reduce the current annual respondent burden costs from $283,348 to $142,211, resulting in an information collection burden costs savings of $141,137.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.027, Post-9/11 Veterans Educational Assistance; 64.028, Post-9/11 Veterans Educational Assistance; 64.032, Montgomery GI Bill Selected Reserve; Reserve Educational Assistance Program; 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance.

List of Subjects in 38 CFR—Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan Programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

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. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on February 20, 2020, for publication.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 21 as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

■ 1. The authority citation for part 21, Subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 33, 34, 35, 36, and as noted in specific sections.

■ 2. Amend § 21.4138 by:
■ a. Revisig paragraph (e)(2)(ii);
■ b. Revising the authority citation for paragraph (e); and
■ c. Revising the information collection approval at the end of the section.

The revisions read as follows:

§ 21.4138 Certifications and release of payments.

* * * * *

(e) * * *

(2) * * *

(ii) VA has received from the training establishment a certification of hours worked.

* * * * *

(Authority: 38 U.S.C. 5113, 3680(b), 3680(c), 3680(g))

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0178 and 2900–0604)

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

■ 3. The authority citation for part 21, Subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 32, 36, and as noted in specific sections.

■ 4. Amend § 21.5133 by:
■ a. Revising paragraph (b)(2);
■ b. Revising the information collection approval at the end of the section; and.
■ c. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 21.5133 Certifications and release of payments.

* * * * *

(b) * * *

(2) VA has received from the training establishment a certification of hours

worked. Generally, this certification will be required monthly, resulting in monthly payments.

* * * * *

(Approved by the Office of Management and Budget under control numbers 2900–0178 and 2900–0465)

(Authority: 38 U.S.C. 3680(c), 3680(g), 3689)

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

■ 5. The authority citation for part 21, Subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, and as noted in specific sections.

■ 6. Amend § 21.7140 by:

■ a. Revising paragraph (c)(2)(ii);

■ b. Adding an authority citation for paragraph (c)(2); and

■ c. Revising the information collection approval at the end of the section.

The revisions and addition read as follows:

§ 21.7140 Certifications and release of payments.

* * * * *

(c) * * *

(2) * * *

(ii) VA has received from the training establishment a certification of hours worked.

(Authority: 38 U.S.C. 3034, 3680(g))

* * * * *

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0178, 2900–0695, and 2900–0698)

Subpart L—Educational Assistance for Members of the Selected Reserve

■ 7. The authority citation for part 21, Subpart L continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, and as noted in specific sections.

■ 8. Amend § 21.7640 by:

■ a. Revising paragraph (a)(3)(ii); and

■ b. Revising the information collection approval at the end of the section.

The revisions read as follows:

§ 21.7640 Release of payments.

* * * * *

(a) * * *

(3) * * *

(ii) VA has received certification by the training establishment of the reservist's hours worked.

* * * * *

(Approved by the Office of Management and Budget under control numbers 2900–0073 and 2900–0178)

[FR Doc. 2020–03884 Filed 2–27–20; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 127, 403, and 503

[EPA–HQ–OECA–2019–0408; FRL–10005–21–OECA]

RIN 2020–AA52

NPDES Electronic Reporting Rule—Phase 2 Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA published the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (''NPDES eRule'') on 22 October 2015. The 2015 rule required EPA and states to modernize Clean Water Act (CWA) reporting. The NPDES eRule included a phased implementation schedule. In this notice, EPA proposes postponing the compliance deadlines for Phase 2 implementation by three years and providing states with additional flexibility to request additional time as needed. Further, this notice proposes changes to the NPDES eRule that would clarify existing requirements and eliminate some duplicative or outdated reporting requirements. Taken together, these changes are designed to save the NPDES authorized programs considerable resources, make reporting easier for NPDES-regulated entities, streamline permit renewals, ensure full exchange of NPDES program data between states and EPA, enhance public transparency, improve environmental decision-making, and protect human health and the environment.

DATES: Comments must be received on or before April 28, 2020. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before March 30, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2019–0408, to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. 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, 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: For additional information, please contact Mr. Carey A. Johnston, Office of Compliance (mail code 2222A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–566–1014; or email: *johnston.carey@epa.gov* (preferred). Also see the following website for additional information regarding the rulemaking: *https://www.epa.gov/compliance/npdes-ereporting.*

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include all NPDES-permitted facilities, whether covered by an individual permit or general permit, industrial users located in cities without approved local pretreatment programs, facilities subject to EPA's biosolids regulations, and governmental entities that have received NPDES program authorization or are implementing portions of the NPDES program in a cooperative agreement with EPA. These entities include:

Category	Examples of regulated entities
Facilities seeking coverage under an individual NPDES permits, general permit, or subject to an NPDES inspection.	Publicly-owned treatment works (POTW) facilities, treatment works treating domestic sewage (TWTDS), municipalities, counties, stormwater management districts, state-operated facilities, Federally-operated facilities, industrial facilities, construction sites, and concentrated animal feeding operations (CAFOs).
Industrial users located in cities without approved local pretreatment programs.	Industrial facilities discharging to POTWs and for which the designated pretreatment Control Authority is EPA or the authorized state, tribe, or territory rather than an approved local pretreatment program.
POTWs and other facilities subject to EPA's biosolids regulations.	Class I sludge management facilities (as defined in 40 CFR 503.9(c)), POTWs with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more.
State and territorial governments	States and territories that have received NPDES program authorization from EPA, that are implementing portions of the NPDES program in a cooperative agreement with EPA, or that operate NPDES-permitted facilities.
Tribal governments	Tribes that have received NPDES program authorization from EPA, that are implementing portions of the NPDES program in a cooperative agreement with EPA, or that operate NPDES-permitted facilities.
Federal governments	Federal facilities with a NPDES permit and EPA Regional Offices acting for those states, tribes, and territories that do not have NPDES program authorization or that do not have program authorization for a particular NPDES subprogram (*e.g.,* biosolids or pretreatment).

This table is not intended to be an exhaustive list, but rather provides some examples of the types of entities potentially regulated by this action. Other types of entities not listed in this table may also be regulated. If you have questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the agency taking?

EPA published the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (''NPDES eRule'') on 22 October 2015. The 2015 rule required EPA and states to modernize Clean Water Act (CWA) reporting for municipalities, industries and other facilities. The rule divided implementation into two ''Phases.'' The deadline for Phase 1 implementation passed on December 21, 2016. The deadline for Phase 2 is currently December 21, 2020. Some state authorized NPDES programs have provided feedback to EPA on how to improve Phase 2 implementation of the NPDES eRule and, in particular, have recommended changes to the schedule for Phase 2 implementation to allow both EPA and states sufficient time to develop and implement the information technology solutions necessary for electronic reporting of the Phase 2 data (see DCN 0001 to 0009). This notice proposes a change to the compliance deadlines for Phase 2 implementation and other changes to the NPDES eRule to allow for a smoother transition from paper to electronic reporting for the NPDES program.

C. What is the agency's authority for taking this action?

Pursuant to the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.,* EPA promulgated the NPDES eRule, which added a new part to title 40 (40 CFR part 127) and made changes to existing NPDES regulations. The EPA promulgated the NPDES eRule under authority of the CWA sections 101(f), 304(i), 308, 402, and 501. EPA is using the same authority to propose the changes in this notice. EPA notes that the Congressional Declaration of Goals and Policy of the CWA specifies in section 101(f) that ''It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.''

Harnessing information technology that is now a common part of daily life is an important step toward reaching the goals of the CWA. EPA is promulgating this rule under the authority of CWA section 304(i) that authorizes EPA to establish minimum procedural and other elements of state programs under section 402, including reporting requirements and procedures to make information available to the public. In addition, EPA is promulgating this rule under section 308 of the CWA. Section 308 of the CWA authorizes EPA to require access to information necessary to carry out the objectives of the Act, including sections 301, 305, 306, 307, 311, 402, 404, 405, and 504. Section 402 of the CWA establishes the NPDES permit program for the control of the discharge of pollutants into the nation's waters. EPA is promulgating this rule under CWA sections 402(b) and (c), which require each authorized state, tribe, or territory to ensure that permits meet certain substantive requirements, and provide EPA information from point sources, industrial users, and authorized programs in order to ensure proper oversight. Finally, EPA is promulgating this rule under the authority of section 501, which authorizes EPA to prescribe such regulations as are necessary to carry out provisions of the Act.

D. What are the incremental costs and benefits of this action?

EPA identified only minimal incremental costs of this proposed rule as the overall impact of these proposed changes would be to allow states to more efficiently implement the NPDES eRule. EPA proposes postponing the compliance deadlines for Phase 2 implementation by three years and providing states with additional flexibility to request an extension if more time is necessary but with no extension allowed beyond December 21, 2026.

This rule also proposes changes to the NPDES eRule that would clarify existing requirements and eliminate some duplicative or outdated reporting requirements. For example, EPA proposes to eliminate three data elements from the minimum set of NPDES program data (Appendix A to 40 CFR part 127): Reportable Noncompliance Tracking, Reportable Noncompliance Tracking Start Date, and Applicable Categorical Standards. This will reduce the costs to authorized NPDES programs in collecting, managing, and sharing these data. EPA also anticipates that the clarifications contained in this proposed rule will

help states avoid unnecessary implementation costs. For example, the proposed changes would make clear that the electronic reporting requirement for Notices of Termination (NOTs) applies only to general permit covered facilities (see Table 1 to Appendix A, 40 CFR part 127) and not to individually permitted facilities.

II. Background

EPA published the NPDES eRule on 22 October 2015. The 2015 rule required EPA and states to modernize Clean Water Act (CWA) reporting for municipalities, industries and other facilities. That rule replaced most paper-based NPDES reporting requirements with electronic reporting. This rule converted the following paper reports to electronic: (1) Discharge Monitoring Reports (DMRs); (2) general permit reports (*e.g.,* Notices of Intent to discharge in compliance with a general permit); and (3) other specified program reports. The NPDES eRule included a phased implementation schedule (40 CFR 127.26). Most states and permittees have successfully implemented Phase 1 of the NPDES eRule, which includes electronic submission of DMRs and the Federal Biosolids Annual Report where EPA is the Regulatory Authority.

The NPDES eRule requires EPA to calculate electronic reporting participation rates for each authorized NPDES program six months after the deadline for conversion from paper to electronic submissions and annually thereafter [see 40 CFR 127.26(j)]. The compliance deadlines for Phase 1 of the NPDES eRule were 21 December 2016 and they included NPDES Data Groups No. 3 (Discharge Monitoring Reports or ''DMRs'') and No. 4 [Sewage Sludge/Biosolids Annual Program Reports, where EPA implements the biosolids program (40 CFR part 503)]. EPA's first three assessments have shown considerable progress in Phase 1 implementation (see DCN 0012—0014), although more work needs to be done to achieve the full benefits of Phase 1. Current tracking of Phase 1 implementation is available through the ''NPDES eRule Readiness Dashboard.'' See: *https://echo.epa.gov/trends/npdes-erule-dashboard-public.*

Electronic submission of all other reports and notices covered by the NPDES eRule are part of Phase 2 implementation. See Table 1 to 40 CFR 127.16. The online ''NPDES eRule Phase 2 Implementation Dashboard'' provides an inventory of all general permits and program reports covered by the NPDES eRule. See: *https://edap.epa.gov/public/extensions/eRule_Phase2/eRule_Phase2.html.* This dashboard also provides an updated view of EPA's progress in gathering information and deploying NPDES electronic reporting tools for Phase 2 general permits and program reports (see DCN 0015).

EPA and states are now focusing on implementing Phase 2 of the NPDES eRule and also continuing to work on completing Phase 1 reporting deadlines. EPA and states are now gathering information and deploying NPDES electronic reporting tools for Phase 2 reports. EPA and states are collaborating and sharing information through multiple workgroups. The EPA-state General Permit and Program Report Technical Workgroup focuses on the EPA Regional and state general permits and program reports that will use EPA's NPDES Electronic Reporting Tool (NeT) for Phase 2 data.

The EPA-state NPDES Noncompliance Report (NNCR) workgroup discusses how to identify, categorize, sort, and display violations on the NNCR. This workgroup is discussing how best to implement the new NNCR regulations in 40 CFR 123.45. EPA held three listening sessions with the EPA-state NNCR workgroup to discuss updated language in 40 CFR 123.45. States provided feedback on how to clarify the category I noncompliance criteria for enforcement order violations, permit effluent limit violations, and reporting violations. EPA incorporated comments and other minor clarifying text and formatting issues from these workgroup discussions in this proposed rule.

EPA received letters from authorized NPDES programs on how to improve Phase 2 implementation of the NPDES eRule which recommended changes to the schedule for Phase 2 implementation to allow both EPA and states sufficient time to develop and implement the information technology solutions necessary for electronic reporting of the Phase 2 data (see DCN 0001 to 0009). In response to the feedback from the states in the letters and oral communications, this notice proposes changes to the NPDES eRule to allow for a smoother transition from paper to electronic reporting for the NPDES program.

EPA collected these changes over the past few years as EPA and states began implementing the NPDES eRule. These suggested changes are intended to clarify and streamline NPDES eRule implementation. These changes also update the required minimum set of NPDES program data to include recent changes to the NPDES program. EPA recently updated the NPDES permit application regulations (40 CFR 122.21) and the related forms with the 2019 NPDES Applications and Program Updates final rule. See February 12, 2019; 84 FR 3324. Taken together, these data standardizations and the corresponding electronic reporting requirements are designed to save the NPDES authorized programs considerable resources, make reporting easier for NPDES-regulated entities, streamline permit renewals (as permit writers typically review previous noncompliance events during permit renewal), improve the accuracy and completeness of NPDES program data shared with EPA from authorized states, ensure transparency of NPDES program data to the public, improve environmental decision-making, and protect human health and the environment.

Finally, in a separate rulemaking, EPA has proposed to update the minimum set of NPDES program data (Appendix A to 40 CFR part 127) for the municipal separate storm sewer systems (MS4s) sector. See April 20, 2019; 84 FR 18200. These changes to the NPDES eRule will correct obsolete citations and current inconsistencies with the newly modified MS4 Phase II regulations. See December 8, 2016; 81 FR 89320. These updates would not change the burden associated with complying with the NPDES eRule but, rather, the changes would assist permitting authorities and MS4 permittees in implementing NPDES electronic reporting. Today's proposal does not address those previously-proposed changes to the MS4 data elements.

III. Changes to Phase 2 Compliance Deadlines

This notice proposes to postpone the compliance deadlines for Phase 2 implementation of the NPDES eRule from December 21, 2020, to December 21, 2023 (see Table 1 to 40 CFR 127.16). EPA has received feedback from authorized NPDES programs on how to improve Phase 2 implementation of the NPDES eRule. This state feedback, in particular, recommended changes to the schedule for Phase 2 implementation to allow both EPA and states sufficient time to develop and implement the information technology solutions necessary for electronic reporting of the Phase 2 data (see DCN 0001 to 0009). One letter submitted by the Association of Clean Water Agencies (''ACWA'') noted that, ''the new deadline should take into consideration the resources and time EPA will need to invest in updating ICIS–NPDES, the resources and time EPA will need to invest to complete work on the NPDES Electronic Tool, known as ''NeT,'' and the resources and time states will then need

to complete their implementation of the rule given the new information.''

The reason for this proposal is to allow EPA additional time to complete the development of electronic tools that the States may use to comply with the electronic reporting requirements. EPA had intended for these tools to be available as an option for the states to use by December 2020, but EPA has experienced unexpected delays since EPA promulgated the 2015 NPDES Rule. These delays include the modernization of its pre-existing electronic reporting tool for the collection of DMRs (called ''NetDMR'') and the switch from using a commercially license software platform to an open-source software platform for general permits and program reports (called ''NPDES Electronic Report Tool'' or ''NeT''). The NetDMR changes involved migrating tens of thousands of NetDMR users to the Agency's Central Data Exchange (CDX) system for account management. This simplified NetDMR account management for EPA, states, and NetDMR users. EPA made the switch to open-source software platform for NeT to lower its costs. EPA estimates that these tools will be available by December 21, 2023 (see DCN 0017). EPA has gathered basic information on all general permits and program reports that will use NeT (see NPDES eRule Phase 2 Implementation Dashboard). EPA expects to build the necessary NeT applications in order to meet the new Phase 2 compliance deadlines as it has already deployed general permit electronic reporting tools for more than 27,000 facilities that are subject to federal or authorized state general permits (approximately 55% of the estimated number of facilities that will use NeT). An extension of the Phase 2 compliance deadlines will also assist states who have experienced similar challenges in developing the information technology infrastructure to implement electronic reporting tools for their general permit covered facilities.

The following are the proposed regulatory changes that EPA is considering for the Phase 2 compliance deadlines:

- Change the Phase 2 compliance deadlines in Table 1 to 40 CFR 127.16 from December 21, 2020, to December 21, 2023 for general permit reports and program reports.
- Change the Phase 2 compliance deadlines in the NPDES regulations in 40 CFR parts 122, 403, and 503. These provisions originated the reporting requirements.

EPA proposes to change the Phase 2 compliance (deadline) date for the following NPDES reporting requirements in 40 CFR parts 122, 403, and 503:

- Low Erosivity Waivers (LEW)—40 CFR 122.26(b)(15)(i)(C);
- No Exposure Certifications (NOE)—40 CFR 122.26(g)(1)(iii);
- Notice of Intent to discharge (NOI)—40 CFR 122.28(b)(2)(i);
- Small Municipal Separate Storm Sewer System (MS4) Program Report—40 CFR 122.34(d)(3);
- Sewer Overflow/Bypass Event Report—40 CFR 122.41(l)(6)(i), 122.41(l)(7), 122.41(m)(3)(i), and 122.41(m)(3)(ii);
- Medium or Large MS4 Program Report—40 CFR 122.42(c);
- CAFO Annual Report—40 CFR 122.42(e)(4);
- Notice of Terminations (NOT)—40 CFR 122.64(c);
- Significant Industrial User Compliance Reports in Municipalities Without Approved Pretreatment Programs—40 CFR 403.12(e) and (h);
- Pretreatment Program Report—40 CFR 403.12(i); and
- Biosolids Annual Report—40 CFR 503.18, 503.28, 503.48.

In addition to moving the compliance deadlines to December 21, 2023, EPA proposes to add a reference to the proposed alternative Phase 2 compliance deadlines provisions at 40 CFR 127.24(e) or (f). This is discussed in more detail below. Other than the changes to the deadlines for complying with Phase 2 compliance deadlines and the addition of the reference to the alternative Phase 2 compliance deadlines provisions, EPA is not proposing any changes to the requirements in these sections and will not respond to any public comments on issues other than the dates.

Finally, EPA regulations set the NNCR publication date at December 21, 2021. EPA originally picked this date as it needed time to develop this report and that it was one year after the Phase 2 compliance deadlines for electronic reporting. As previously noted, EPA and states have made significant progress in implementing Phase 1 and EPA has held frequent meetings with states on how to develop the NNCR.

EPA does not see the need to extend the NNCR publication compliance deadline for an additional three years, as it has some Phase 1 data that can be incorporated into the NNCR. EPA plans to incorporate Phase 2 data into the NNCR as these data become available. The benefit of this approach would be to give EPA, states, and the public a complete inventory of facilities with violations based on the most currently available set of NPDES program data. This will help EPA and states identify noncompliance issues that might impact human health or the environment.

However, EPA needs additional time to work with states on completing Phase 1 reporting and how best to categorize and display non-compliance in the NNCR based on Phase 1 data. In addition, EPA is already working with states on reducing the level of Significant Non-Compliance with NPDES requirements using the Phase 1 data as one of its National Compliance Initiatives for 2020–2023.[1] Therefore, EPA is proposing to delay the public release date of the NNCR by one year, to December 21, 2022. This date will allow EPA and states to use the new NNCR as EPA is making decisions on its next round of National Compliance Initiatives. EPA solicits comment on this proposed NNCR publication date.

IV. Alternative Phase 2 Compliance Deadlines

In addition to changing the Phase 2 compliance deadline, EPA is proposing new regulatory provisions to create additional flexibility for Phase 2 compliance deadlines in case they are needed. These new provisions respond to the requests from ACWA and other authorized NPDES programs for more time to develop and implement the information technology solutions necessary for electronic reporting of the Phase 2 data (see DCN 0001 to 0009).

The EPA proposes a new regulatory provision [40 CFR 127.24(e)] that would allow authorized NPDES programs to request additional time beyond December 21, 2023 to implement Phase 2 of the NPDES eRule. Under this provision, an authorized NPDES program would send a request for EPA to review and approval. This request would identify the facilities, general permits, program reports, or data elements for which the authorized NPDES program needs additional time beyond December 21, 2023. For example, under this option a state could seek approval from the EPA to postpone implementation of electronic reporting for a NPDES general permit until an agreed-upon time after December 21, 2023, but no later than December 21, 2026. This waiver might be helpful if a state has a permit or program report that is a lower priority for electronic reporting (*e.g.,* a general permit that provides coverage for 10 or fewer NPDES-regulated entities) and for which electronic reporting tool development is delayed.

[1] See the following website for details: *https://www.epa.gov/enforcement/fy2020-fy2023-national-compliance-initiatives.*

While states may make multiple requests for compliance deadline extensions beyond December 21, 2023, the proposed rule would not allow EPA to grant extensions beyond December 21, 2026. Each alternative Phase 2 compliance deadline request would need to:

- Be submitted to EPA by the Director, as defined in 40 CFR 122.2;
- Identify each general permit, program report, and related data elements covered by the request and the corresponding alternative compliance deadline(s);
- Identify each facility covered by the request and the corresponding alternative compliance deadline(s) (Note: This only applies if the request covers some but not all facilities covered by the relevant general permit or program report requirement);
- Be submitted at least 120 days prior to the then-applicable compliance deadline(s) in Table 1 to 40 CFR 127.16 or a previously EPA approved alternative compliance deadline; and
- Provide a rationale for the delay and enough details (*e.g.,* tasks, milestones, roles and responsibilities, necessary resources) to clearly describe how the program will successfully implement electronic reporting for general permit, program report, and related data elements covered by the request.

EPA would review each alternative Phase 2 compliance deadline request to determine if it provides enough detail to accurately assess if the state has a reasonable plan to deploy electronic reporting by the requested alternative Phase 2 compliance deadline. EPA would return alternative Phase 2 compliance deadline requests with insufficient detail back to the Director within 30 days of receipt and provide recommendations. EPA would approve or deny each complete alternative Phase 2 compliance deadline request within 120 days of receipt of a sufficiently detailed request. EPA would provide notice to the authorized NPDES program of EPA's approval or denial. The authorized NPDES program could re-apply if the initial request were denied by EPA.

Under the proposal, EPA could elect to deny an alternative Phase 2 compliance deadline request and then could continue to follow the procedure in the existing rule for determining the initial recipient of electronic NPDES information (see 40 CFR 127.27). EPA must become the initial recipient of electronic NPDES information from NPDES-regulated facilities if the state, tribe, or territory does not consistently maintain electronic data transfers in compliance with the NPDES eRule [see 40 CFR 127.27(d)(2)]. EPA would update its website with each alternative Phase 2 compliance deadline request and the corresponding Agency approval or denial notice. EPA would provide updated information at: *https://www.epa.gov/compliance/npdes-ereporting.* EPA would also update its website and online ''NPDES eRule Phase 2 Implementation Dashboard'' to clearly identify the approved alternative Phase 2 compliance deadlines for each facility, general permit report, program report, and related data elements by authorized NPDES program.

EPA is also proposing a separate regulatory provision [40 CFR 127.24(f)] that would authorize EPA to, on its own initiative, allow for additional time for one or more states to implement NPDES electronic reporting beyond December 21, 2023. Under this proposal, EPA could establish an alternative Phase 2 compliance deadline for electronic reporting and data sharing for one or more facilities, general permit reports, program reports, and related data elements (see Table 2 to Appendix A to 40 CFR part 127). Under the proposal, EPA could set an alternative Phase 2 compliance deadline for up to three years but not beyond December 21, 2026. EPA would update its website and online ''NPDES eRule Phase 2 Implementation Dashboard'' to clearly identify the alternative Phase 2 compliance deadlines for each facility, general permit report, program report, and related data elements by authorized NPDES program. Separately, EPA would provide notice to the one or more authorized NPDES program covered by each alternative Phase 2 compliance deadline through email or letters. This notice would include a rationale for the delay and enough details (*e.g.,* tasks, milestones, roles and responsibilities, necessary resources) to clearly describe how EPA would successfully implement electronic reporting for general permit, program report, and related data elements covered by the extension. This additional flexibility would also allow more time for EPA and authorized NPDES programs to resolve any issues related to the sharing of Phase 2 data.

V. Clarifying Edits for More Efficient Implementation and 2019 NPDES Updates Rule Changes

The following are proposed clarifying edits to the 2015 NPDES eRule. These changes are based on EPA and state experience over the past few years during NPDES eRule implementation. These proposed changes are intended to clarify and streamline NPDES eRule implementation. The last two changes also include two new data sharing requirements related to NAICS codes and variance requests that were recently added to the NPDES application forms. See the 2019 NPDES Applications and Program Updates Rule (February 12, 2019; 84 FR 3324).

A. Correct the Title for 40 CFR 123.45

EPA proposes to delete ''by the Director'' in the title for this section. EPA proposes this deletion as the NPDES eRule eliminated the previous noncompliance reports that were authored by state NPDES programs and replace them with one noncompliance report (*i.e.,* NPDES Noncompliance Report or ''NNCR''). The NNCR is authored by EPA rather than any state ''Director.''

B. Provide Greater Clarity and Specificity for the NNCR Category I Noncompliance Definitions

The NPDES eRule also eliminated state noncompliance reporting [*e.g.,* Quarterly Noncompliance Report (QNCR), Annual Noncompliance Report (ANCR)] and required EPA to produce a public inventory of NPDES violations (called the NPDES Noncompliance Report or ''NNCR''). The NPDES eRule also revised and update the violation classification definitions to specifically identify Category I violations with all other violations as Category II violations. EPA proposes the following changes to the NNCR Category I violation classification definitions, which are listed at 40 CFR 123.45(a)(2). EPA regulatory:

- Re-order the violation categories to better match the order EPA previously used in the pre-2015 version of 123.45 for the Category I noncompliance definitions;
- Correct the label and definition used for violations of administrative or judicial enforcement orders;
- Correct the label for permit effluent limit violations;
- Clarify the definition of Category I noncompliance for reporting violations; and
- Clarify the text in Appendix A to 40 CFR 123.45 and update the formatting to correctly show labels and groups of pollutants.

EPA solicited feedback from the EPA-state NNCR workgroup on these proposed changes. EPA received feedback from states that it would be helpful to re-order the noncompliance categories to better match the order EPA used prior to promulgating the 2015 NPDES eRule. States also provided feedback to EPA that several NNCR Category I definitions should be clarified and refined. States suggested

that EPA change ''Compliance schedule violations'' to ''Enforcement order violations,'' as this category of violations relates to violations of ''any requirement or condition in administrative or judicial enforcement orders, other than compliance construction violations and reporting violations.'' This proposed change would remove the word ''permit'' from this definition as these types of violations are not related to permit requirements. EPA is proposing to change the label ''Effluent limits'' to ''Permit effluent limits'' as this category of violations only relates to violations or effluent limits that are in NPDES permits.

States also suggested deleting the word ''complete'' in the ''Reporting violations'' violation category. Some states indicated that this definition could be interpreted to mean that the submission of an incomplete report could trigger Category I noncompliance (*e.g.,* failure to report one value on a DMR as opposed to the entire DMR). EPA proposes to delete the word ''complete'' to make clear that a Category I reporting violation only occurs when an NPDES-regulated entity fails to file an entire report within the appropriate reporting period.

EPA is retaining in the NNCR the identification of Category I reporting violations for facilities that do not provide the required data for an entire DMR but instead report a noncompliant reason for not providing these data. An example of this kind of noncompliance is when a facility fails to conduct any sampling or analysis during the reporting period as required by its NPDES permit. The facility would use the DMR form to report this noncompliance to the authorized NPDES program. These noncompliant reasons at the DMR form level will continue to be classified as Category I noncompliance reporting violations.

States also requested more clarity on the type of reporting violations that would always trigger Category I noncompliance. EPA is proposing to retain the 30-day grace period and list the reports that must be filed within 30 days: (1) Final compliance schedule progress reports; (2) Discharge Monitoring Reports [see 40 CFR 122.41(l)(4)(i)], and (3) program reports [see 40 CFR 127.2(f)]. These reports are critical compliance monitoring information and closely align with NPDES eRule (see Table 1 to 40 CFR 127.16). EPA is also retaining violations of the twenty-four reporting and five-day reporting NPDES requirements [see 40 CFR 122.41(l)(6)] in the ''Reporting violations'' violation category as these reporting violations relate to ''noncompliance which may endanger health or the environment.'' States also provided feedback that they would like the ability to use their discretion to identify other reporting violations as Category I violations. EPA notes that the NNCR already includes this flexibility as the ''Other violations'' category includes, ''any violation or group of violations, which in the discretion of the Director or EPA, are considered to be of concern.''

Finally, EPA proposes to clarify the text in Appendix A to 40 CFR 123.45 and update the formatting to correctly show labels and groups of pollutants. These proposed clarifications would fix an inaccurate reference and use the same wording from the ''Violation classifications'' section of the NNCR. EPA intends no substantive change to the scope of Category I noncompliance through these changes.

C. Correct Appendix A Deficiency Descriptions To Match Current Practices of Authorized NPDES Programs

EPA proposes to delete the last sentence in the data description for the following four 'deficiency' data elements in Appendix A to 40 CFR part 127: ''The values for this data element will distinguish between noncompliance and significant noncompliance (SNC).''

- Deficiencies Identified Through the Biosolids/Sewage Sludge Compliance Monitoring
- Deficiencies Identified Through the MS4 Compliance Monitoring
- Deficiencies Identified Through the Pretreatment Compliance Monitoring
- Deficiencies Identified Through the Sewer Overflow/Bypass Compliance Monitoring

EPA is also proposing to delete the regulation citation to 40 CFR 123.45 for these four data elements.

EPA proposes to delete the last sentence in the data description for the four 'deficiency' data elements as only violations affect compliance status. This change would make clear that these four 'deficiency' data elements should not be used to affect compliance status. These separate data elements mirror the current inspection and violation identification practices of authorized NPDES programs. In general, EPA and state inspectors document their findings made during inspections and note any 'deficiencies.' EPA created four different 'deficiency' data elements to identify and track these instances of potential noncompliance. The inspector's manager will typically review these 'deficiencies' and decide if any of them warrant separate identification as violations. These violations are already tracked with the ''Violation Code'' data element. Deleting this sentence from the descriptions for these four data elements will eliminate any potential confusion as to whether the identified deficiency automatically created an instance of non-compliance.

D. Correct Data Element Name and Description and Reference for Biosolids or Sewage Sludge—Land Application or Surface Disposal Deficiencies

EPA proposes to rename the ''Biosolids or Sewage Sludge—Land Application or Surface Disposal Deficiencies'' data element to ''Biosolids or Sewage Sludge—Violations'' and update the related data description.

EPA mislabeled the ''Biosolids or Sewage Sludge—Land Application or Surface Disposal Deficiencies'' data element in the NPDES eRule. This element is part of the Federal biosolids annual report and allows NPDES-regulated entities to self-report violations on all regulated biosolids management practices (*i.e.,* land application, surface disposal, and incineration) (see 22 October 2015; 80 FR 64079). This change also makes clear that this data element tracks self-reported violations for the three biosolids management practices regulated under EPA's Federal biosolids regulations (40 CFR part 503). EPA is also proposing to add the corresponding CFR reference for the biosolids incineration annual report (40 CFR 503.48). This change will help reduce confusion with the data element ''Deficiencies Identified Through the Biosolids/Sewage Sludge Compliance Monitoring;'' these deficiencies are not violations and do not affect compliance status.

E. Correct the Title of the ''Sewer Overflow/Bypass Event Report'' in Table 1 of Appendix A and Table 1 of 40 CFR 127.16

EPA used an incorrect title in two sections of the NPDES eRule for the report that provides information on sewer overflows and bypass events. EPA used the incorrect title, ''Sewer Overflow Event Reports [40 CFR 122.41(l)(6) and (7)],'' at Table 1 to 40 CFR 127.16 and Table 1 to Appendix A, 40 CFR part 127. The correct title is, ''Sewer Overflow/Bypass Event Reports [40 CFR 122.41(l)(4), (6), (7), and 122.41(m)(3)].'' EPA used the correct title in all other references to this report. EPA is also proposing to make conforming changes to the ''Program area'' column and the ''Minimum frequency'' column in Table 1 (Appendix A 40 CFR part 127).

F. Deletion of the Following Two Data Elements: Reportable Noncompliance Tracking and Reportable Noncompliance Tracking Start Date

EPA proposes deleting the following two data elements as these data are no longer used for EPA's national NPDES program:

- Reportable Noncompliance Tracking; and
- Reportable Noncompliance Tracking Start Date.

EPA mistakenly included these two data elements in Appendix A. These two data elements are no longer needed to address unforeseen circumstances when the authorized NPDES program needs to turn off automatic violation detection by EPA's NPDES data system. The current recommended approach to turn off compliance tracking in EPA's NPDES data system is for EPA or authorized NPDES programs to use the Permit Compliance Tracking Status and DMR Non-Receipt data elements. See ''NPDES Electronic Reporting Implementation Guidance for Tracking Compliance and Major Designations,'' 28 December 2016, *https://www.epa.gov/compliance/data-entry-guidance-and-technical-papers.*

G. Provide Greater Clarity for the ''Facility Concentrated Aquatic Animal Production (CAAP) Status'' Data Element Name and Description

EPA proposes to make changes to the ''Facility CAAP Status'' data element name and description. States provided feedback to EPA that the current name and description of this data element could be interpreted to mean that this data element applies to all NPDES-regulated entities as the current data description provides ''Yes'' and ''No'' as example reference values. This interpretation implies that states would need to provide a ''Yes'' or ''No'' for all NPDES-regulated entities.

The proposed changes would make clear that this data element only applies to aquatic animal production facilities. The proposed change would ensure that states do not need to share these data with EPA for facilities that do not have aquatic animal production (*i.e.,* lower data entry burden for states). Moreover, the proposed changes would also provide the information necessary to distinguish between the two CAAP identification methods. EPA proposes to change the name of this data element from ''Facility CAAP Designation'' to ''Facility CAAP Status.'' The proposed change from ''Designation'' to ''Status'' makes clear that this data element tracks both methods for identifying an aquatic animal production facility as a CAAP facility. The first method is solely based on production amounts provided by the facility and the second method is a manual designation process performed by the authorized NPDES program.

- Method #1 (Based on Facility Production Data)—CAAP identification is automatic based on the comparison of permit application/NOI information against the criteria used in EPA's CAAP NPDES regulations (see 40 CFR 122.24(b)); and
- Method #2 (Authorized NPDES Program Designation)—Using a case-by-case approach the RA may designate any warm or cold-water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the United States (see 40 CFR 122.24(c)).

The two methods are sequenced as follows. Facilities seeking NPDES permit coverage that acquire the CAAP status under Method #1 are not evaluated under Method #2 [*i.e.,* Facility CAAP Status is set to ''Yes (Based on Facility Production Data)'']. Conversely, facilities seeking NPDES permit coverage that do not acquire CAAP status under Method #1 can be designated by the authorized NPDES program as a CAAP facility under Method #2 [*i.e.,* Facility CAAP Status is set to ''Yes (Authorized NPDES Program Designation)'']. The proposed changes would also require NPDES programs to share data with EPA on aquatic animal production facilities that they inspect under Method #2 and found to not be a CAAP facility [*i.e.,* Facility CAAP Status is set to ''No (Authorized NPDES Program Determination)''].

H. Provide Greater Clarity on the 'Permit Component' Data Element With Respect to Unpermitted Facilities

EPA proposes changes to the ''Permit Component'' data element description to clarify its applicability to unpermitted facilities subject to NPDES inspections. EPA proposes these changes as EPA's regulations require authorized NPDES programs to have ''inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements.'' See 40 CFR 123.26(b). EPA's NPDES Compliance Monitoring Strategy (CMS) also provides compliance monitoring goals for authorized NPDES programs and guidance regarding inspection of facilities without NPDES permit coverage.[2] For example, this document notes, ''Regions and states should also conduct compliance monitoring activities to locate industrial facilities that have failed to obtain permit coverage or file a 'no exposure certification' under 40 CFR 122.26(g). Inspections of unpermitted industrial stormwater facilities, including those with 'no exposure certification,' will count toward the annual industrial stormwater coverage goal of 10%.''[3] EPA provided a discussion of when states must share data on unpermitted facilities with EPA in the preamble to the final rule (October 22, 2015; 80 FR 64078).

This change would clarify that this data element applies to unpermitted facilities when states are required by EPA regulations to share data about these unpermitted facilities with EPA. This change would also update the regulatory citation for this data element to explicitly include certain unpermitted facilities [*e.g.,* certain unpermitted facilities subject to a CWA NPDES inspection, facilities regulated by the Federal biosolids regulation (40 CFR part 503)]. This change would help EPA and states ensure that unpermitted facilities can be properly sorted into their respective NPDES programs (*e.g.,* industrial stormwater, construction stormwater, CAFOs). EPA estimates that this change would only be a minor increase in costs to states as most states already share these data for tracking compliance with the CMS and other programmatic needs. For example, EPA uses this data element to mask facility information in public search tools for unpermitted Concentrated Animal Feeding Operations (CAFOs) and Animal Feeding Operations (AFOs) that EPA or state inspectors found were not discharging and do not require an NPDES permit (see 22 October 2015; 80 FR 64092).

I. Provide Greater Clarity on the Notice of Termination (NOT) Electronic Reporting Requirements

EPA proposes to make changes to the Notice of Termination (NOT) section in the NPDES regulations (40 CFR 122.64(c)). The NPDES eRule made clear that the electronic reporting requirement for NOTs only applied to general permit covered facilities (see Table 1 to Appendix A, 40 CFR part 127). This proposed language clarifies the electronic reporting requirement for NOTs and helps ensure that the state

[2] U.S. EPA, 2014. Issuance of Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy, Memorandum from Lisa Lund, Director, Office of Compliance, July 21. See *https://www.epa.gov/compliance/clean-water-act-national-pollutant-discharge-elimination-system-compliance-monitoring.*

[3] Ibid, Page 15.

burden associated with implementing the NPDES eRule is minimized.

J. Provide Greater Clarity on the ''Applicable Effluent Limitations Guidelines'' Data Element and Delete the Duplicative Data Element, ''Applicable Categorical Standards''

EPA proposes to update the data description for the ''Applicable Effluent Limitations Guidelines'' data element to make clear that this data element applies to all NPDES-regulated entities and to clarify EPA's expectation that the authorized NPDES program should identify all applicable effluent limitations guidelines. Making these changes will also allow EPA to delete the ''Applicable Categorical Standards'' data element. EPA is also proposing to make conforming changes to the regulatory citation and ''NPDES Data Group'' columns in Table 2 (Appendix A to 40 CFR part 127).

This proposed change will help reduce the burden on states to create a duplicative data element, ''Applicable Categorical Standards.'' This change will help ensure that EPA and states have an accurate inventory of facilities that meet the applicability criteria of the one or more effluent guidelines as well as allow EPA to maintain an accurate inventory of facilities that do not have any applicable effluent guidelines. Finally, these changes will also help reduce state data sharing burden as the data description makes clear that the Control Authority can use pretreatment program report and the state can use the NOI submissions to manage these data.

K. Provide Greater Clarity on the ''Receiving Waterbody Name for Permitted Feature'' Data Element Name and Description

EPA proposes to delete the word ''Receiving'' from the ''Receiving Waterbody Name for Permitted Feature'' data element name and update the data description. EPA is also proposing to add conforming regulatory citations to 40 CFR 122.21(f)(9) for this data element as well as the ''Source Water for Cooling Purposes'' data element.

EPA recently updated the NPDES regulations governing individual NPDES permit applications (see 12 February 2019; 84 FR 3324). The Rule added 40 CFR 122.21(f)(9), requires individual permit applications to include the following cooling water information: ''An indication of whether the facility uses cooling water and the source of the cooling water.'' EPA now proposes a conforming change to the data element in Appendix A. This proposed change would also make clear that this data element is optional for other intake structures. EPA proposes to update the data sharing requirements for both individual and general permit covered facilities. This would ensure that there is consistent and complete reporting nationwide of industrial classification data, which are useful for regulatory decisions and program oversight.

L. Requiring NAICS Code Data To Match the 2019 NPDES Applications and Program Updates Final Rule

EPA proposes to update the data descriptions for the ''NAICS Code'' and ''NAICS Code Primary Indicator'' data elements. EPA is also proposing to add conforming regulatory citations to 40 CFR 122.21(f)(3) and 122.28(b)(2)(ii) for these data elements.

EPA proposes these changes to conform to its updated NPDES permit application regulations (see 12 February 2019; 84 FR 3324), which became effective on June 12, 2019. Since this date, applicants for EPA-issued NPDES permits are required to meet the new application requirements. EPA proposes to update each of the eight NPDES application forms to conform to the February 12, 2019 final rule and improve clarity and usability. States that are authorized to administer the NPDES program might require use of EPA's application forms or might have developed their own state-specific application forms. In either case, the final NPDES Applications and Program Updates Rule provides states up to one year to make conforming programmatic and regulatory changes, and up to two years if statutory changes are needed.

The 2019 NPDES Applications and Program Updates Final Rule requires permit applications to include data on the four-digit Standard Industrial Classification (SIC) codes *and* the six-digit NAICS codes. Prior to this 2019 rulemaking, EPA only required NPDES permit applications to include SIC code data. EPA is proposing to update the data sharing requirements for both individual and general permit covered facilities. This would ensure that there is consistent and complete reporting nationwide of industrial classification data, which are useful for regulatory decisions and program oversight. EPA is proposing to require states to share these NAICS code data with EPA when they approve NPDES permit coverage. This will help lower the implementation costs to states.

M. Add Variance Data Elements to Appendix A To Match the 2019 NPDES Applications and Program Updates Final Rule

EPA proposes to make changes to variance related data elements in Appendix A as well as add new variance related data elements. These variances relate to the following provisions in the CWA:

- Fundamentally different factors (FDFs) (CWA section 301(n));
- Non-conventional pollutants (CWA section 301(c) and (g));
- Water quality related effluent limitations (CWA Section 302(b)(2));
- Thermal discharges (CWA Section 316(a)); and
- Discharges to marine waters (CWA Section 301(h))].

EPA proposes to make conforming changes to the data element citations. EPA proposes to amend Table 2 to Appendix A for these variance data elements to include references to 40 CFR 123.41 ('Sharing of Information') for variances that do not expire (*e.g.,* FDFs) as well as references to NPDES permit application variance information sections at 40 CFR 122.21(f)(10) and 122.21(j)(1)(ix).

EPA proposes to include these revised and new data elements in the minimum set of NPDES program data (Appendix A to 40 CFR part 127) as these data would allow EPA and states to better track variance requests and related statuses for the NPDES program. EPA recently updated the NPDES permit application regulations (40 CFR 122.21) and the related forms with the 2019 NPDES Applications and Program Updates final rule. EPA proposes updating the data sharing requirements for both individual and general permit covered facilities. This would ensure that there is consistent and complete reporting nationwide of variance data. EPA is proposing to require states to share these variance data with EPA when they approve NPDES permit coverage. This approach will integrate with the authorized NPDES program's data collection and sharing activities.

VI. Assistance to States To Implement Phase 2

EPA will continue to provide technical assistance and support to authorized NPDES programs during the transition to electronic reporting. This includes building electronic reporting tools for authorized NPDES programs that elect to use these tools and to support the development of new data transfer protocols. Authorized NPDES programs can request EPA's assistance for electronic reporting by submitting a request to *NPDESeReporting@epa.gov.*

EPA offers authorized programs financial assistance through the Exchange Network Grant Program. This program provides funding to states, territories, and federally recognized Indian tribes to support the

development of the National Environmental Information Exchange Network. The primary outcome expected from Exchange Network assistance agreements is improved access to, and exchange of, high-quality environmental data from public and private sector sources. More information on this program is available at: *https://www.epa.gov/exchangenetwork/exchange-network-grant-program.*

EPA will continue to work with authorized NPDES programs to implement NPDES electronic reporting. This includes the use of workgroups to help authorized NPDES programs share data with EPA and to provide recommendations on how EPA should build the NNCR. Authorized NPDES programs can contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to learn how to join these workgroups.

VII. Statutory and Executive Order Reviews

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

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

B. Executive Order 13771: Reducing Regulations 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

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number [2617.01]. You can find a copy of the supporting statement for this ICR in the docket for this rule (see DCN 0016). It is briefly summarized here.

EPA has primary responsibility for ensuring the CWA's NPDES program is effectively and consistently implemented nationwide, thus ensuring that public health and environmental protection goals of the CWA are met. EPA is taking this action pursuant to CWA sections 101(f), 304(i), 308, 402, and 501. The accurate, complete, and timely information collected under this ICR will help EPA and states more efficiently implement the 2015 NPDES eRule. The improved information sharing would increase transparency and accountability and help EPA and authorized NPDES programs collaborate and measure progress in implementing the 2015 NPDES eRule. This information collection would provide EPA with more timely, consistent, and accurate inventory of all general permits and program reports, the number of facilities that must electronically submit reports, and the online location of state electronic reporting tools.

Receiving current high-level data on general permits and program reports is critical to EPA's ability to oversee and manage authorized NPDES programs. Authorizing the burden under this ICR will allow EPA to provide timely assistance to authorized NPDES programs as they implementation the NPDES eRule. The general permits and program reports inventory will help promote efficiencies in NPDES eRule implementation as states will be able to use this information to identify other states that have already developed electronic reporting tools. Additionally, with the implementation of this information collection activity, regulated entities would be able to ensure that they are fully aware of the compliance deadlines and electronic reporting tools for their reporting obligations.

Respondents/affected entities: This ICR covers the 47 states and one U.S. Territory authorized to implement the NPDES program.

Respondent's obligation to respond: EPA is taking this action pursuant to CWA sections 101(f), 304(i), 308, 402, and 501.

Estimated number of respondents: This ICR covers the 48 authorized NPDES programs.

Frequency of response: EPA estimates that twelve authorized NPDES programs will provide updated information on general permits and program reports and the related electronic reporting tools each month. Additionally, all 48 authorized NPDES programs will conduct an annual review and update of EPA's inventory. Finally, EPA estimates that approximately 15 authorized NPDES programs will prepare and submit an alternative Phase 2 compliance deadline request during the three-year period covered by the ICR.

Total estimated burden: 416 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $25,418 (per year), includes $0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than March 30, 2020. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action does not affect small entities as the proposed changes in this action only cover states, tribes, and territories that have NPDES program authorization. The RFA defines ''small governmental jurisdiction'' as the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000 (5 U.S.C. 601(5)). For the purposes of the RFA, States and tribal governments are not considered small governments.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The proposed changes in this action help streamline the implementation of the NPDES eRule and provide states with more flexibility. EPA estimates that the additional time and flexibility afforded by the proposed changes will help lower the implementation costs.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not affect small entities as the proposed changes in this action only cover states, tribes, and territories that have NPDES program authorization. Currently there are no tribal governments that are authorized for the NPDES program. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The proposed changes in this action only cover states, tribes, and territories that have NPDES program authorization.

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 proposed changes in this action only cover states, tribes, and territories that have NPDES program authorization.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 123

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 127

Environmental protection, Administrative practice and procedure, Automatic data processing, Electronic data processing, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control.

40 CFR Part 403

Environmental protection, Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 503

Environmental protection, Reporting and recordkeeping requirements, Sewage disposal.

Dated: January 31, 2020.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR parts 9, 122, 123, 127, 403, and 503 as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add the entry ''127.24'' in numerical order under the undesignated center heading ''NPDES Electronic Reporting'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
NPDES Electronic Reporting	
* * * * *	
127.24	2020–NEW
* * * * *	

* * * * *

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 3. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 4. In § 122.26, revise paragraphs (b)(15)(i)(C) and (g)(1)(iii) to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(15) * * *

(i) * * *

(C) As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all certifications submitted in compliance with paragraphs (b)(15)(i)(A) and (B) of this section must be submitted electronically by the owner or operator to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, owners or operators may be required to report electronically if specified by a particular permit or if required to do so by state law.

* * * * *

(g) * * *

(1) * * *

(iii) Submit the signed certification to the NPDES permitting authority once every five years. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all certifications submitted in compliance with this section must be submitted electronically by the owner or operator to the Director or initial recipient, as defined in 40 CFR 127.2(b), in

compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, owners or operators may be required to report electronically if specified by a particular permit or if required to do so by state law.

* * * * *

■ 5. In § 122.28, revise paragraph (b)(2)(i) to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2) * * * (i) Except as provided in paragraphs (b)(2)(v) and (vi) of this section, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Director a notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph (b)(2)(v), contains a provision that a notice of intent is not required or the Director notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph (b)(2)(vi). A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of §§ 122.6, 122.21, and 122.26. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all notices of intent submitted in compliance with this section must be submitted electronically by the discharger (or treatment works treating domestic sewage) to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, discharger (or treatment works treating domestic sewage) may be required to report electronically if specified by a particular permit or if required to do so by state law.

* * * * *

■ 6. In § 122.34, revise paragraph (d)(3) to read as follows:

§ 122.34 Permit requirements for regulated small MS4 permits.

* * * * *

(d) * * *

(3) *Reporting.* Unless the permittee is relying on another entity to satisfy its NPDES permit obligations under § 122.35(a), the permittee must submit annual reports to the NPDES permitting authority for its first permit term. For subsequent permit terms, the permittee must submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the small MS4 to the NPDES permitting authority or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit or if required to do so by state law. The report must include:

* * * * *

■ 7. In § 122.41, revise paragraphs (l)(6)(i), (l)(7), (m)(3)(i) and (ii) to read as follows:

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

* * * * *

(l) * * *

(6) * * *

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A report shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times), and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (*e.g.,* manhole, combine sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

* * * * *

(7) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs (l)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6). For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in paragraph (l)(6) and the applicable required data in appendix A to 40 CFR part 127. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3

(including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

* * * * *

(m) * * *

(3) * * * (i) *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all notices submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.

(ii) *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24-hour notice). As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all notices submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.

* * * * *

■ 8. In § 122.42, revise paragraphs (c) and (e)(4) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(c) *Municipal separate storm sewer systems.* The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under § 122.26(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the MS4 to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, the owner, operator, or the duly authorized representative of the MS4 may be required to report electronically if specified by a particular permit or if required to do so by state law. The report shall include:

* * * * *

(e) * * *

(4) *Annual reporting requirements for CAFOs.* The permittee must submit an annual report to the Director. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all annual reports submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, the permittee may be required to report electronically if specified by a particular permit or if required to do so by state law. The annual report must include:

* * * * *

■ 9. In § 122.64, revise paragraph (c) to read as follows:

§ 122.64 Termination of permits (applicable to State programs, see § 123.25).

* * * * *

(c) Permittees that wish to terminate their permit must submit a Notice of Termination (NOT) to their permitting authority. If requesting expedited permit termination procedures, a permittee must certify in the NOT that it is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all NOTs submitted by general permit covered facilities in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D), § 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, the permittee may be required to report electronically if specified by a particular permit or if required to do so by state law.

PART 123—STATE PROGRAM REQUIREMENTS

■ 10. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 11. In § 123.45:
■ a. Revise the section heading.
■ b. Revise the introductory text.
■ c. Revise paragraphs (a)(2)(i) through (iv).
■ d. Revise appendix A to § 123.45.

The revisions read as follows:

§ 123.45 Noncompliance and program reporting.

As of December 21, 2022, EPA must prepare public (quarterly and annual) reports as set forth here from information that is required to be submitted by NPDES-regulated facilities and the State Director.

* * * * *

(a) * * *

(2) * * *

(i) *Enforcement order violations.* These include violations of any requirement or condition in administrative or judicial enforcement orders, other than compliance construction violations and reporting violations.

(ii) *Compliance construction violations.* These include failure to start construction, complete construction, or achieve final compliance within 90 days after the date established in a permit, administrative or judicial order, or regulation.

(iii) *Permit effluent limit violations.* These include violations of permit effluent limits that exceed the ''Criteria

for Category I Permit Effluent Limit Violations'' in appendix A to § 123.45.

(iv) *Reporting violations.* These include failure to submit a required report within 30 days after the date established in a permit, administrative or judicial order, or regulation. These reports only include final compliance schedule progress reports, Discharge Monitoring Reports [see 40 CFR 122.41(l)(4)(i)], and program reports [see 40 CFR 127.2(f)]. In addition, these violations also include any failure to comply with the reporting requirements at 40 CFR 122.41(l)(6).

* * * * *

Appendix A to § 123.45—Criteria for Category I Permit Effluent Limit Violations

This appendix describes the criteria for reporting Category I violations of NPDES permit effluent limits in the NPDES noncompliance report (NNCR) as specified under paragraph (a)(2)(iii) of this section. Any violation of an NPDES permit is a violation of the Clean Water Act (CWA) for which the permittee is liable. As specified in paragraph (a)(2) of this section, there are two categories of noncompliance, and the table below indicates the thresholds for violations in Category I. An agency's decision as to what enforcement action, if any, should be taken in such cases, shall be based on an analysis of facts, legal requirements, policy, and guidance.

Violations of Permit Effluent Limits

The categorization of permit effluent limit violations depends upon the magnitude and/or frequency of the violation. Effluent violations shall be evaluated on a parameter-by-parameter and outfall-by-outfall basis. The criteria for Category I permit effluent limit violations apply to all Group I and Group II pollutants and are as follows:

a. Criteria for Category I Violations of Monthly Average Permit Effluent Limits—Magnitude and Frequency

Violations of monthly average permit effluent limits which exceed or equal the product of the Technical Review Criteria (TRC) times the permit effluent limit and occur two months in a six-month period. The TRCs for the two groups of pollutants are as follows:

- Group I Pollutants (TRC) = 1.4
- Group II Pollutants (TRC) = 1.2

The following is a listing of the Group I and Group II pollutants.

Group I Pollutants

Oxygen Demand

- Biochemical Oxygen Demand
- Chemical Oxygen Demand
- Total Oxygen Demands
- Total Organic Carbon
- Other

Solids

- Total Suspended Solids (Residues)
- Total Dissolved Solids (Residues)
- Other

Nutrients

- Inorganic Phosphorus Compounds
- Inorganic Nitrogen Compounds
- Other

Detergents and Oils

- MBAS
- NTA
- Oil and Grease
- Other detergents or algicides

Minerals

- Calcium
- Chloride
- Fluoride
- Magnesium
- Sodium
- Potassium
- Sulfur
- Sulfate
- Total Alkalinity
- Total Hardness
- Other Minerals

Metals

- Aluminum
- Cobalt
- Iron
- Vanadium

Group II Pollutants

Metals (all forms)

- Other metals not specifically listed under Group I

Inorganic

- Cyanide
- Total Residual Chlorine

Organics

- All organics are Group II except those specifically listed under Group I

b. Criteria for Category I Violations of Monthly Average Permit Effluent Limits—Chronic Violations of monthly average permit effluent limits which are exceeded in any four months in a six-month period.

PART 127—NPDES ELECTRONIC REPORTING

■ 12. The authority citation for part 127 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 13. In § 127.16, revise the table in paragraph (a) to read as follows:

§ 127.16 Implementation of electronic reporting requirements for NPDES permittees, facilities, and entities subject to this part [see § 127.1(a)].

* * * * *

TABLE 1—COMPLIANCE DEADLINES FOR ELECTRONIC SUBMISSIONS OF NPDES INFORMATION

NPDES information	Compliance deadlines for electronic submissions [1]
General Permit Reports [Notices of Intent to discharge (NOIs); Notices of Termination (NOTs); No Exposure Certifications (NOEs); Low Erosivity Waivers (LEWs) and other Waivers] [40 CFR 122.26(b)(15), 122.28, and 122.64].	December 21, 2023.
Discharge Monitoring Reports [40 CFR 122.41(l)(4)]	December 21, 2016.
Biosolids Annual Program Reports [40 CFR part 503]	December 21, 2016 (when the Regional Administrator is the Director) [2] December 21, 2023 (when the state, tribe or territory is the authorized NPDES program).[2]
Concentrated Animal Feeding Operation (CAFO) Annual Program Reports [40 CFR 122.42(e)(4)].	December 21, 2023.
Municipal Separate Storm Sewer System (MS4) Program Reports [40 CFR 122.34(d)(3) and 122.42(c)].	December 21, 2023.
POTW Pretreatment Program Annual Reports [40 CFR 403.12(i)]	December 21, 2023.
Significant Industrial User Compliance Reports in Municipalities Without Approved Pretreatment Programs [40 CFR 403.12(e) and (h)].	December 21, 2023.
Sewer Overflow/Bypass Event Reports [40 CFR 122.41(l)(4), (6), (7), and 122.41(m)(3)]	December 21, 2023.
CWA 316(b) Annual Reports [40 CFR part 125 subparts I, J, and N]	December 21, 2023.

[1] EPA may approve an alternative compliance deadline for general permit reports and program reports in accordance with § 127.24(e) and (f).
[2] Note: Director is defined in 40 CFR 122.2.

* * * * *

■ 14. In § 127.21, revise paragraph (b) to read as follows:

§ 127.21 Data to be reported electronically to EPA by states, tribes, and territories.

* * * * *

(b) States, tribes, and territories that have received authorization from EPA to implement the NPDES program must electronically transfer these data, listed in § 127.21(a), to EPA within 40 days of the completed activity or within 40 days of the receipt of a report from an NPDES permittee, facility, or entity subject to this part [see § 127.1(a)]. EPA may set an alternative compliance deadline for data sharing for one or more facilities, general permit reports, program reports, and related data elements (see 40 CFR 127.24) provided this alternative compliance date does not extend beyond December 21, 2026.

■ 15. In § 127.24:

■ a. Revise the section heading.

■ b. Add paragraphs (e) and (f).

The revision and additions read as follows:

§ 127.24 Responsibilities regarding review of waiver requests from NPDES permittees, facilities, and entities subject to this part [see § 127.1(a)] and alternative compliance deadlines.

* * * * *

(e) A state, tribe, or territory that is designated by EPA as the initial recipient [see §§ 127.2(b) and 127.27] for an NPDES data group [as defined in § 127.2(c)] may submit a request to EPA to establish an alternative compliance deadline for electronic reporting of one or more general permit reports, program reports, and related data elements (see Table 2 to appendix A). A State may request to establish an alternative compliance deadline for up to three years beyond the currently-applicable date but not beyond December 21, 2026. It is the duty of the authorized NPDES program to re-apply for a new alternative compliance deadline.

(1) The alternative compliance deadline request shall:

(i) Be submitted to EPA by the Director, as defined in 40 CFR 122.2;

(ii) Identify each general permit, program report, and related data elements covered by the request and the corresponding alternative compliance deadline(s);

(iii) Identify each facility covered by the request and the corresponding alternative compliance deadline(s) (Note: This only applies if the request covers some but not all facilities subject to the general permit or program report requirement);

(iv) Be submitted at least 120 days prior to the applicable compliance deadline in Table 1 to 40 CFR 127.16 or an alternative compliance deadline previously approved by EPA; and

(v) Provide a rationale for the delay and enough details (*e.g.,* tasks, milestones, roles and responsibilities, necessary resources) to clearly describe how the program will successfully implement electronic reporting for general permit, program report, and related data elements covered by the request.

(2) EPA will review each alternative compliance deadline request to see if it provides enough detail to accurately assess if the state has a reasonable plan to deploy electronic reporting by the requested alternative compliance deadline. EPA will return alternative compliance deadline requests with insufficient detail back to the Director within 30 days of receipt and provide recommendations. EPA will approve or deny each complete alternative compliance deadline request within 120 days of receipt. EPA will provide notice to the authorized NPDES program of EPA's approval or denial. The authorized NPDES program may re-apply if the initial request is denied by EPA.

(3) EPA will update its website after it approves a request to clearly identify the approved alternative compliance deadlines for each facility, general permit report, program report, and related data elements by authorized NPDES program. EPA will also post each alternative compliance deadline request and the corresponding Agency approval or denial notice after each determination. EPA will provide updated information at: *https://www.epa.gov/compliance/npdes-ereporting.*

(f) EPA may, as it deems appropriate, establish an alternative compliance deadline for electronic reporting and data sharing for one or more facilities, general permit reports, program reports, and related data elements (see Table 2 to appendix A) in one or more states. EPA may establish an alternative compliance deadline up to three years beyond the currently applicable date, but in no event beyond December 21, 2026. Separately, EPA will provide notice to the one or more authorized NPDES program covered by each alternative compliance deadline. This notice will include a rationale for the delay and enough details (*e.g.,* tasks, milestones, roles and responsibilities, necessary resources) to clearly describe how it will successfully implement electronic reporting for general permit, program report, and related data elements covered by the extension. EPA will update its website to clearly identify the alternative compliance deadlines for each facility, general permit report, program report, and related data elements by authorized NPDES program.

■ 16. In appendix A to part 127:

■ a. In table 1:

■ i. Revise the entry ''9''.

■ b. In table 2:

■ i. Revise the entries ''Permit Component'', ''Applicable Effluent Limitations Guidelines'', ''NAICS Code'', and ''NAICS Code Primary Indicator'' under the ''Basic Permit Information'' center heading.

■ ii. Delete the ''Reportable Noncompliance Tracking'' and ''Reportable Noncompliance Tracking Start Date'' entries under the ''Basic Permit Information'' center heading.

■ iii. Revise the entry ''Receiving Waterbody Name for Permitted Feature'' to ''Waterbody Name for Permitted Feature'' and related description under the ''Permitted Feature Information'' center heading.

■ iv. Revise the center heading from ''Animal Feeding Operation Information on NPDES Permit Application or Notice of Intent'' to ''Animal Feeding Operation Information.''

■ v. Revise the entry ''Facility CAAP Designation'' to ''Facility CAAP Status'' and related description under the proposed revised ''Animal Feeding Operation Information'' center heading.

■ vi. Delete the entry ''Applicable Categorical Standards'' under the ''Pretreatment Information on NPDES Permit Application or Notice of Intent (this includes permit application data required for all new and existing POTWs [40 CFR 122.21(j)(6)]'' center heading.

■ vii. Revise the entry ''Source Water for Cooling Purposes'' under the ''Cooling Water Intake Information on NPDES Permit Application or Notice of Intent'' center heading.

■ viii. Revise the center heading from ''CWA section 316(a) Thermal Variance Information on NPDES Permit Application or Notice of Intent'' to ''NPDES Variance Information.''

■ ix. Revise the entry ''Thermal Variance Request Type'' to ''Variance Type'' and ''Thermal Variance Granted Date'' to ''Variance Action Date'' and related descriptions under the proposed revised center heading ''NPDES Variance Information.''

■ x. Add the following entries ''Variance Request Version'', ''Variance Status'', and ''Variance Submission Date'' under the proposed revised center heading ''NPDES Variance Information.''

■ xi. Revise the entries ''Deficiencies Identified Through the Biosolids/

Sewage Sludge Compliance Monitoring'', ''Deficiencies Identified Through the MS4 Compliance Monitoring'', ''Deficiencies Identified Through the Pretreatment Compliance Monitoring'', and ''Deficiencies Identified Through the Sewer Overflow/Bypass Compliance Monitoring'' under the ''Compliance Monitoring Activity Information (Program Data Generated from Authorized NPDES Programs and EPA)'' center heading.

xii. Revise the entry ''Biosolids or Sewage Sludge—Land Application or Surface Disposal Deficiencies'' to ''Biosolids or Sewage Sludge-Violations'' under the ''Compliance Monitoring Activity Information (Data Elements Specific to Sewage Sludge/Biosolids Annual Program Reports)'' center heading.

The revisions and additions read as follows:

Appendix A to Part 127—Minimum Set of NPDES Data

* * * * *

TABLE 1—DATA SOURCES AND REGULATORY CITATIONS [1]

NPDES Data group No. [2]	NPDES data group	Program area	Data provider	Minimum frequency [3]
*	*	*	*	*
9	Sewer Overflow/Bypass Event Reports [40 CFR 122.41(l)(4), (6), (7), and 122.41(m)(3)].	Sewer Overflows and Bypass Events.	NPDES Permittee	Within 5 days of the time the permittee becomes aware of the sewer overflow event (health or environment endangerment); Monitoring report frequency specific in permit (all other sewer overflow and bypass events); At least 10-days before the date of the anticipated bypass; and Within 5-days of the time the permittee becomes aware of the unanticipated bypass.
*	*	*	*	*

[1] Entities regulated by a NPDES permit will comply with all reporting requirements in their respective NPDES permit.

[2] Use the ''NPDES Data Group Number'' in this table and the ''NPDES Data Group Number'' column in Table 2 of this appendix to identify the source of the required data entry. EPA notes that electronic systems may use additional data to facilitate electronic reporting as well as management and reporting of electronic data. For example, NPDES permittees may be required to enter their NPDES permit number (''NPDES ID''—NPDES Data Group 1 and 2) into the applicable electronic reporting system in order to identify their permit and submit a Discharge Monitoring Report (DMR—NPDES Data Group 3). Additionally, NPDES regulated entities may be required to enter and submit data to update or correct erroneous data. For example, NPDES permittees may be required to enter new data regarding the Facility Individual First Name and Last Name (NPDES Data Group 1 and 2) with their DMR submission when there is a facility personnel change.

[3] The applicable reporting frequency is specified in the NPDES permit or control mechanism, which may be more frequent than the minimum frequency specified in this table.

TABLE 2—REQUIRED NPDES PROGRAM DATA

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group No. (see Table 1)
*	*	*	*
Basic Permit Information			
*	*	*	*
Permit Component	This will identify one or more applicable NPDES subprograms (e.g., pretreatment, CAFO, CSO, POTW, biosolids/sewage sludge, stormwater) for the permit record. This field is only required when the permit includes one or more NPDES subprograms. This data element is also required for unpermitted facilities when the authorized NPDES programs is required to share facility, inspection, violation, or enforcement action data regarding these facilities with EPA's national NPDES data system.	122.2, 122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 123.26, 123.41(a), 123.43(d), 403.10, and 501.19.	1, 2.
*	*	*	*
Applicable Effluent Limitations Guidelines.	This data element will identify the one or more applicable effluent limitations guidelines and new source performance standards for the facility by the corresponding 40 CFR part number (e.g., part 414—Organic chemicals, plastics, and synthetic fibers point source category, part 433—Metal Finishing point source category). For Categorical Industrial Users (CIUs) this data element will track the one or more applicable categorical standards even when the CIU is subject to one or more local limits that are more stringent than the applicable categorical standards. This data element will also identify if there are no applicable effluent limitations guidelines, new source performance standards, or categorical standards for the facility (including Significant Industrial Users (SIUs)). This data element can be updated by the Control Authority for SIUs and CIUs through submission of the Pretreatment Program Reports [40 CFR 403.12(i)]. Additionally, the authorized NPDES program can automate the creation of these data through submission of the Notices of Intent to discharge (NOI) [40 CFR 122.28(b)(2)(ii)].	122.21, 122.21(j)(6), 122.21(q), 122.44, 122.44(j), 122.28(b)(2)(ii), 403.10(e), 403.10(f), 403.12(i).	1, 2, and 7.

TABLE 2—REQUIRED NPDES PROGRAM DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group No. (see Table 1)
*	* * * * *	*	*
NAICS Code	The one or more six-digit North American Industry Classification System (NAICS) codes/descriptions that represents the economic activity of the facility. This field is required to be shared with the U.S. EPA when authorized NPDES programs approve NPDES permit coverage after June 12, 2021 (i.e., two years after the effective date of the 2019 NPDES Applications and Program Updates Rule). See February 12, 2019; 84 FR 3324.	40 CFR 122.21(f)(3), 122.28(b)(2)(ii), EPA SIC/NAICS Data Standard, Standard No. EX000022.2, 6 January 2006, Office of Management and Budget, Executive Office of the President, Final Decision on North American Industry Classification System (62 FR 17288), 403.10(f).	1, 2, and 7.
NAICS Code Primary Indicator	This data element will identify the primary economic activity, NAICS code, of the facility. This data element is required for electronic data transfer between state and EPA systems. This field is required to be shared with the U.S. EPA when authorized NPDES programs approve NPDES permit coverage after June 12, 2021 (i.e., two years after the effective date of the 2019 NPDES Applications and Program Updates Rule). See February 12, 2019; 84 FR 3324.	40 CFR 122.21(f)(3), 122.28(b)(2)(ii), EPA SIC/NAICS Data Standard, Standard No. EX000022.2, 6 January 2006, Office of Management and Budget, Executive Office of the President, Final Decision on North American Industry Classification System (62 FR 17288), 403.10(f).	1, 2, and 7.
*	* * * * *	*	*
Permitted Feature Information			
*	* * * * *	*	*
Waterbody Name for Permitted Feature.	The name of the waterbody that is or will likely receive the discharge from each permitted feature. If the permitted feature is a cooling water intake structure, this data element is the name of the source water. Authorized NPDES programs can also use this data element to identify the name of the source water for other intake structures that are permitted features.	122.21, 122.21(f)(9), 122.28(b)(2)(ii).	1,2.
*	* * * * *	*	*
Animal Feeding Operation Information			
Facility CAAP Status	The unique code/description to indicate whether the facility includes Concentrated Aquatic Animal Production (CAAP) and the CAAP identification method [e.g., ''Yes (Based on Facility Production Data)'', ''Yes (Authorized NPDES Program Designation)'']. This field also applies when an authorized NPDES program has conducted an on-site inspection of an aquatic animal production facility and determined that the facility should not be regulated under the NPDES permit program [e.g., ''No (Authorized NPDES Program Determination)'']. This data element only applies to aquatic animal production facilities. This data element can be automatically generated from production data that is provided by aquatic animal production facilities.	122.21(i)(2), 122.24, 122.25, 122.28(b)(2)(ii).	1,2.
*	* * * * *	*	*
Cooling Water Intake Information on NPDES Permit Application or Notice of Intent			
*	* * * * *	*	*
Source Water for Cooling Purposes	* * * * *	122.21(f)(9), 122.21(r), 122.28(b)(2)(ii), 125.86, 125.95, 125.136, 401.14 and CWA section 316(b).	* * * * *
*	* * * * *	*	*
NPDES Variance Information			
Variance Type	The unique code(s)/description(s) that describes the type for each variance request submitted by the NPDES-regulated entity [e.g., fundamentally different factors (CWA Section 301(n)), non-conventional pollutants (CWA Section 301(c) and (g)), water quality related effluent limitations (CWA Section 302(b)(2)), thermal discharges (CWA Section 316(a)), discharges to marine waters (CWA Section 301(h))]. This field is required to be shared with the U.S. EPA when authorized NPDES programs approve NPDES permit coverage after June 12, 2021 (i.e., two years after the effective date of the 2019 NPDES Applications and Program Updates Rule). See February 12, 2019; 84 FR 3324.	122.21(f)(10), 122.21(j)(1)(ix), 122.28(b)(2)(ii), 123.41, subpart H of 125 and CWA section 316(a).	1.

TABLE 2—REQUIRED NPDES PROGRAM DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group No. (see Table 1)
Variance Request Version	The unique code(s)/description(s) that describe whether each variance request from the NPDES-regulated entity is a new request, renewal, or a continuance for variances that do not expire. This field is required to be shared with the U.S. EPA when authorized NPDES programs approve NPDES permit coverage after June 12, 2021 (i.e., two years after the effective date of the 2019 NPDES Applications and Program Updates Rule). See February 12, 2019; 84 FR 3324.	122.21(f)(10), 122.21(j)(1)(ix), 122.28(b)(2)(ii), 123.41, subpart H of 125 and CWA section 316(a).	1.
Variance Status	The unique code(s)/description(s) that describes the status for each the variance request submitted by the NPDES-regulated entity (e.g., pending, approved, denied, withdrawn by NPDES-regulated entity, terminated). This field is required to be shared with the U.S. EPA when authorized NPDES programs approve NPDES permit coverage after June 12, 2021 (i.e., two years after the effective date of the 2019 NPDES Applications and Program Updates Rule). See February 12, 2019; 84 FR 3324.	122.21(f)(10), 122.21(j)(1)(ix), 122.28(b)(2)(ii), 123.41, subpart H of 125 and CWA section 316(a).	1.
Variance Submission Date	This is the date for each variance request submitted by the NPDES-regulated entity to the NPDES permitting authority. The date must be provided in YYYY–MM–DD format where YYYY is the year, MM is the month, and DD is the day. This field is required to be shared with the U.S. EPA when authorized NPDES programs approve NPDES permit coverage after June 12, 2021 (i.e., two years after the effective date of the 2019 NPDES Applications and Program Updates Rule). See February 12, 2019; 84 FR 3324.	122.21(f)(10), 122.21(j)(1)(ix), 122.28(b)(2)(ii), 123.41, subpart H of 125 and CWA section 316(a).	1.
Variance Action Date	This is the date for each variance request when the NPDES permitting authority approves (grants, renews), denies, or terminates a variance request as well as the date when the NPDES-regulated entity withdraws the variance request. For variances that do not expire, entire the original action date. The date must be provided in YYYY–MM–DD format where YYYY is the year, MM is the month, and DD is the day. This field is required to be shared with the U.S. EPA when authorized NPDES programs approve NPDES permit coverage after June 12, 2021 (i.e., two years after the effective date of the 2019 NPDES Applications and Program Updates Rule). See February 12, 2019; 84 FR 3324.	122.21(f)(10), 122.21(j)(1)(ix), 122.28(b)(2)(ii), 123.41, subpart H of 125 and CWA section 316(a).	1.
Public Notice of Section 316(a) Requests.	* * * * *	* * * * *	* * * * *
*	* * * *	*	*
Compliance Monitoring Activity Information (Program Data Generated from Authorized NPDES Programs and EPA)			
Deficiencies Identified Through the Biosolids/Sewage Sludge Compliance Monitoring.	This is the unique code/description that that identifies each deficiency in the facility's biosolids and sewage sludge program (40 CFR part 503) for each compliance monitoring activity (e.g., inspections, audits) by the regulatory authority. This data element includes unique codes to identify when the facility failed to comply with any applicable permit requirements or enforcement actions.	123.26, 123.41(a), and CWA section 308.	1.
Deficiencies Identified Through the MS4 Compliance Monitoring.	This is the unique code/description that that identifies each deficiency in the MS4's program to control stormwater pollution for each compliance monitoring activity (e.g., inspections, audits) by the regulatory authority. This data element includes unique codes to identify when the MS4 failed to comply with any applicable permit requirements or enforcement actions.	123.26, 123.41(a), and CWA section 308.	1.
Deficiencies Identified Through the Pretreatment Compliance Monitoring.	This is the unique code/description that that identifies each deficiency in the POTW's authorized pretreatment program for each pretreatment compliance monitoring activity (e.g., inspections, audits) by the regulatory authority. These unique codes include: (1) Failure to enforce against pass through and/or interference; (2) failure to submit required reports within 30 days; (3) failure to meet compliance schedule milestones within 90 days; (4) failure to issue/reissue control mechanisms to 90% of SIUs within 6 months; (5) failure to inspect or sample 80% of SIUs within the past 12 months; and (6) failure to enforce standards and reporting requirements.	123.26, 123.41(a), 403.10, and CWA section 308.	1.
Deficiencies Identified Through the Sewer Overflow/Bypass Compliance Monitoring.	This is the unique code/description that that identifies each deficiency in the POTW's control of combined sewer overflows, sanitary sewer overflows, or bypass events for each compliance monitoring activity (e.g., inspections, audits) by the regulatory authority. This data element includes unique codes to identify when a POTW has failed to provide 24-hour notification to the NPDES permitting authority or failed to submit the Sewer Overflow/Bypass Event Report within the required 5-day period. This data element also includes unique codes to identify when the POTW failed to comply with any applicable long-term CSO control plan, permit requirements, or enforcement actions.	122.41(h), 122.41(l)(6) and (7), 122.43, 123.26, 123.41(a), and CWA sections 308 and 402(q)(1).	1.

TABLE 2—REQUIRED NPDES PROGRAM DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group No. (see Table 1)
*	* * * * *	*	*
Compliance Monitoring Activity Information (Data Elements Specific to Sewage Sludge/Biosolids Annual Program Reports)		
*	* * * * *	*	*
Biosolids or Sewage Sludge—Violations.	This data element is applicable to facilities that use land application, active surface disposal site (e.g., monofills, surface impoundments, lagoons, waste piles, dedicated disposal sites, and dedicated beneficial use sites), and/or incineration. This data element uses one or more unique codes/descriptions to identify all violations. This includes violations of additional or more stringent requirements (40 CFR 503.5), sampling and analysis requirements (40 CFR 503.8), land application requirements (40 CFR 503, Subpart B), surface disposal requirements (40 CFR 503, Subpart C), pathogen and vector attraction reduction requirements (40 CFR 503, Subpart D), and incineration requirements (40 CFR 503, Subpart E).	503.18, 503.28, 503.48	4.
*	* * * * *	*	*

Notes: (1) The NPDES program authority may pre-populate these data elements and other data elements (*e.g.,* Federal Registry System ID) in the NPDES electronic reporting systems in order to create efficiencies and standardization. For example, the NPDES program authority may configure their electronic reporting system to automatically generate NPDES IDs for control mechanisms for new facilities reported on a Pretreatment Program Report [40 CFR 403.12(i)]. Additionally, the NPDES program authority can decide whether to allow NPDES regulated entities to override these pre-populated data.

(2) The data elements in this table conform to EPA's policy regarding the application requirements for renewal or reissuance of NPDES permits for discharges from municipal separate storm sewer systems (see 61 FR 41698; 6 August 1996).

(3) The data elements in this table are also supported by the Office Management and Budget approved permit applications and forms for the NPDES program.

(4) These data will allow EPA and the NPDES program authority to link facilities, compliance monitoring activities, compliance determinations, and enforcement actions. For example, these data will provide several ways to make the following linkages: linking violations to enforcement actions and final orders; linking single event violations and compliance monitoring activities; linking program reports to DMRs; linking program reports to compliance monitoring activities; and linking enforcement activities and compliance monitoring activities.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

■ 17. The authority citation for part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 18. In § 403.12, revise paragraphs (e)(1), (h), and (i) to read as follows:

§ 403.12 Reporting requirements for POTW's and industrial users.

* * * * *

(e) * * * (1) Any Industrial User subject to a categorical Pretreatment Standard (except a Non-Significant Categorical User as defined in § 403.3(v)(2)), after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge reported in paragraph (b)(4) of this section except that the Control Authority may require more detailed reporting of flows. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the User shall submit documentation required by the Control Authority or the Pretreatment Standard necessary to determine the compliance status of the User. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may modify the months during which the above reports are to be submitted. For Industrial Users for which EPA or the authorized state, tribe, or territory is the Control Authority, as of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports submitted in compliance with this section must be submitted electronically by the industrial user to the Control Authority or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, the Industrial Users for which EPA or the authorized state, tribe, or territory is the Control Authority may be required to report electronically if specified by a particular control mechanism or if required to do so by state law.

* * * * *

(h) *Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards.* The Control Authority must require appropriate reporting from those Industrial Users with Discharges that are not subject to categorical Pretreatment Standards. Significant Non-categorical Industrial Users must submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR part 136 of this chapter and amendments thereto. This sampling and analysis may be performed by the Control Authority in lieu of the significant non-categorical Industrial User. For Industrial Users for which EPA or the authorized state, tribe, or territory is the Control Authority, as of December 21, 2023 or an EPA-approved alternative date (see 40 CFR

127.24(e) or (f)), all reports submitted in compliance with this section must be submitted electronically by the industrial user to the Control Authority or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, the Industrial Users for which EPA or the authorized state, tribe, or territory is the Control Authority may be required to report electronically if specified by a particular control mechanism or if required to do so by state law.

(i) *Annual POTW reports.* POTWs with approved Pretreatment Programs shall provide the Approval Authority with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter, and must include, at a minimum, the applicable required data in appendix A to 40 CFR part 127. The report required by this section must also include a summary of changes to the POTW's pretreatment program that have not been previously reported to the Approval Authority and any other relevant information requested by the Approval Authority. As of December 21, 2023 or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all annual reports submitted in compliance with this section must be submitted electronically by the POTW Pretreatment Program to the Approval Authority or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to 40 CFR part 3), 40 CFR 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR part 127, the Approval Authority may also require POTW Pretreatment Programs to electronically submit annual reports under this section if specified by a particular permit or if required to do so by state law.

* * * * *

PART 503—STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE

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

Authority: Sections 405(d) and (e) of the Clean Water Act, as amended by Pub. L. 95–217, sec. 54(d), 91 Stat. 1591 (33 U.S.C. 1345(d) and (e)); and Pub. L. 100–4, title IV, sec. 406(a), (b), 101 Stat., 71, 72 (33 U.S.C. 1251 *et seq.*).

■ 20. Revise § 503.18 to read as follows:

§ 503.18 Reporting.

Class I sludge management facilities, POTWs (as defined in § 501.2 of this chapter) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit a report on February 19 of each year. As of December 21, 2016, all reports submitted in compliance with this section must be submitted electronically by the operator to EPA when the Regional Administrator is the Director in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. As of December 21, 2023, or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports submitted in compliance with this section must be submitted electronically in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to 40 CFR part 3), 40 CFR 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to the compliance deadlines for electronic reporting (see Table 1 in 40 CFR 127.16), the Director may also require operators to electronically submit annual reports under this section if required to do so by state law.

(a) The information in § 503.17(a), except the information in § 503.17 (a)(3)(ii), (a)(4)(ii) and in (a)(5)(ii), for the appropriate requirements on February 19 of each year.

(b) The information in § 503.17(a)(5)(ii)(A) through (a)(5)(ii)(G) on February 19th of each year when 90 percent or more of any of the cumulative pollutant loading rates in Table 2 of § 503.13 is reached at a land application site.

■ 21. Revise § 503.28 to read as follows:

§ 503.28 Reporting.

Class I sludge management facilities, POTWs (as defined in 40 CFR 501.2) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit a report on February 19 of each year. As of December 21, 2016, all reports submitted in compliance with this section must be submitted electronically by the operator to EPA when the Regional Administrator is the Director in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to 40 CFR part 3), 40 CFR 122.22, and 40 CFR part 127. As of December 21, 2023, or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports submitted in compliance with this section must be submitted electronically in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to 40 CFR part 3), 40 CFR 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to the compliance deadlines for electronic reporting (see Table 1 in 40 CFR 127.16), the Director may also require operators to electronically submit annual reports under this section if required to do so by state law.

■ 22. Revise § 503.48 to read as follows:

§ 503.48 Reporting.

Class I sludge management facilities, POTWs (as defined in § 501.2 of this chapter) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve a population of 10,000 people or greater shall submit a report on February 19 of each year. As of December 21, 2016, all reports submitted in compliance with this section must be submitted electronically by the operator to EPA when the Regional Administrator is the Director in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to 40 CFR part 3), 40 CFR 122.22, and 40 CFR part 127. As of December 21, 2023, or an EPA-approved alternative date (see 40 CFR 127.24(e) or (f)), all reports submitted in compliance with this section must be submitted electronically in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. 40 CFR part 127 is not intended to undo existing requirements for electronic reporting. Prior to the compliance deadlines for electronic reporting (see Table 1 in 40 CFR 127.16), the Director may also require operators to electronically submit annual reports under this section if required to do so by state law.

[FR Doc. 2020–02889 Filed 2–27–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2019–0496; FRL–10005–72–Region 6]

Air Plan Approval; Louisiana; Withdrawal of Stage II Vapor Recovery Systems Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve a revision to the Louisiana State Implementation Plan (SIP) submitted by the State of Louisiana on May 30, 2019 that pertains to gasoline dispensing facilities (GDFs) in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, and Pointe Coupee. The SIP revision proposed for approval would remove from the SIP the requirement to install Stage II vapor recovery systems and include the requirements for the decommissioning of existing Stage II equipment at GDFs in these areas.

DATES: Written comments must be received on or before March 30, 2020.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2019–0496, at *https://www.regulations.gov/* or via email to *jacques.wendy@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Wendy Jacques, 214–665–7395, *jacques.wendy@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

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

FOR FURTHER INFORMATION CONTACT: Wendy Jacques, EPA Region 6 Office, Infrastructure & Ozone section, 1201 Elm Street, Suite 500, Dallas, TX 75270, 214–665–7395, *jacques.wendy@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Jacques or Mr. Bill Deese at 214–665–7253.

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

I. Background

Ozone is a gas composed of three oxygen atoms. Ground-level ozone is generally not emitted directly from a vehicle's exhaust or an industrial smokestack but is created by a chemical reaction between nitrogen oxides (NO_X) and volatile organic compounds (VOC) in the presence of sunlight and high ambient temperatures. (VOC and NO_X emissions often are referred to as ''precursors'' to ozone formation.) Thus, ozone is known primarily as a summertime air pollutant. Motor vehicle exhaust and industrial emissions, gasoline vapors, chemical solvents and natural sources emit NO_X and/or VOC. Urban areas tend to have high concentrations of ground-level ozone, but areas without significant industrial activity and with relatively low vehicular traffic are also subject to increased ozone levels because wind carries ozone and its precursors hundreds of miles from their sources. In 1979, under section 109 of the CAA, the EPA established the primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone at 0.12 parts per million (ppm) averaged over a 1-hour period (44 FR 8202, February 8, 1979). In 1997, we revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period (62 FR 38856, July 18, 1997). In 2008, we further revised the primary and secondary ozone NAAQS to 0.075 ppm, averaged over an 8-hour period (73 FR 16436, March 27, 2008). In 2015, we again revised the primary and secondary ozone NAAQS to 0.070 ppm, averaged over an 8-hour period (73 FR 16436, March 27, 2008). For additional information on ozone, visit *https://www.epa.gov/ozone-pollution.*

Stage II Vapor Recovery is an air pollution control technology for automobiles. When an automobile or other vehicle is brought into a gas station to be refueled, the empty portion of the gas tank on the vehicle contains gasoline vapors, which are VOCs. When liquid gasoline is pumped into the partially empty gas tank the vapors are forced out of the tank as the tank fills with liquid gasoline. Where air pollution control technology is not used, these vapors are emitted into the air. In the atmosphere, these VOCs can, in the presence of sunlight, react with NO_X and VOCs from other sources to form ozone. The Stage II system consists of special nozzles and coaxial hoses at each gas pump that capture vapor from the vehicle's fuel tank and route them to underground or aboveground storage tank(s) during the refueling process.

Onboard refueling vapor recovery (ORVR) is another emission control system that can capture fuel vapors from vehicle gas tanks during refueling. As stated, Stage II vapor recovery systems are specifically installed at gasoline dispensing facilities and capture the refueling fuel vapors at the gasoline pump nozzle. The system carries the vapors back to the underground storage tank at the gasoline dispensing facility to prevent the vapors from escaping to the atmosphere. ORVR systems are carbon canisters installed directly on automobiles to capture the fuel vapors evacuated from the gasoline tank before they reach the nozzle. The fuel vapors captured in the carbon canisters are then combusted in the engine when the automobile is in operation.

Stage II vapor recovery systems and vehicle ORVR systems were initially both required by the 1990 Amendments to the CAA. Under CAA Section 182(b)(3) ozone nonattainment areas classified as moderate and above were required to adopt Stage II requirements with the goal of the technology being implemented on all gas stations by November 1994. CAA section 202(a)(6), requires an onboard system of capturing vehicle refueling emissions, commonly referred to as an ORVR system. In 1994, EPA promulgated ORVR standards (59 FR 16262 (April 6, 1994)). Section 202(a)(6) of the CAA required that the EPA's ORVR standards apply to light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards were promulgated, and that ORVR systems provide a minimum evaporative emission capture efficiency of 95

percent.[1] ORVR equipment has been phased in for new light duty vehicles (passenger vehicles) beginning with model year 1998 and starting with model year 2001 for light-duty trucks and most heavy-duty gasoline powered vehicles. Since 2006, ORVR has been a required emissions control on nearly all new gasoline-powered highway vehicles having less than 14,000 pounds gross vehicle weight rating. CAA section 202(a)(6) provides discretionary authority to the Administrator, by rule, the ability to revise or waive the application of the Stage II requirements for areas classified as Serious, Severe, or Extreme for ozone, as appropriate, after such time as the Administrator determines that onboard emissions control systems are in widespread use throughout the motor vehicle fleet.

On May 16, 2012, EPA issued a national rulemaking making the finding that Stage II systems are in ''widespread use'' and determined that emission reductions from ORVR alone are essentially equal to and will soon surpass the emission reductions achieved by Stage II alone (see 77 FR 28772 at 28772). In the May 16, 2012 action, we noted that each year, non-ORVR-equipped vehicles continue to be replaced with ORVR-equipped vehicles and Stage II and ORVR systems capture the same VOC emissions and thus, are redundant. *Id.* EPA also determined that ORVR systems are in widespread use and waived the Stage II requirement for GDFs if doing so did not interfere with attaining or maintaining the ozone standards. *Id.* at 28776–287789. EPA also noted that any state currently implementing Stage II vapor recovery programs may submit SIP revisions that would allow for the phase-out of Stage II vapor recovery systems including a CAA section 110(l) analysis showing that its removal did not interfere with attaining or maintaining the ozone standards. *Id.*

The Baton Rouge ozone area, consisting of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes, was designated as nonattainment under the 1-hour ozone NAAQS (56 FR 56694 (November 6, 1991)), the 1997 8-hour ozone NAAQS (69 FR 23857 (April 30, 2004)) and the 2008 8-hour ozone NAAQS (77 FR 30088 (May 21, 2012)). The Baton Rouge ozone area was subject to Stage II under the 1990 Clean Air Act Amendments as it was classified as Serious nonattainment for the 1-hour NAAQS for ozone. In 1994, EPA approved the Louisiana Stage II SIP (59 FR 14112 (March 25, 1994)) that required owners and operators of GDFs to install and operate Stage II vapor recovery equipment in the Louisiana 1-hour ozone nonattainment area. The Baton Rouge ozone area was found to be attaining the 1-hour ozone NAAQS on February 10, 2010 (75 FR 6570), and was redesignated as attainment for the 1997 8-hour ozone NAAQS on November 20, 2011 (76 FR 7400) and the 2008 8-hour ozone NAAQS on December 27, 2016, (81 FR 95051). Under the 2015 ozone NAAQS, all of Louisiana is designated as attainment/unclassifiable (82 FR 54232 (November 16, 2017) and 83 FR 25776 (June 4, 2018)).

The Stage II vapor recovery requirements also apply to Pointe Coupee Parish despite EPA's 1997 removal of Pointe Coupee Parish from the Baton Rouge ozone area and Pointe Coupee's attainment determination for the 1-hour ozone NAAQS. This was due to EPA's prior inclusion of Point Coupee Parish as part of the Baton Rouge 1-hour ozone nonattainment area in 1991 and EPA's approval of the Louisiana Stage II SIP in 1994 (59 FR 14112 (March 25, 1994)).[2]

To determine whether we can approve the SIP revision, we must evaluate the impact of removing the Stage II vapor recovery requirements for the Baton Rouge ozone area which includes the Louisiana parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge as well as Pointe Coupee. (We hereinafter refer to the parishes within the Baton Rouge ozone area and Pointe Coupee Parish as ''the 6-Parish Area.'').

II. Louisiana's SIP Revision

On May 30, 2019, Louisiana submitted revisions to Title 33 of the Louisiana Air Code, Part III, Chapter 21 (denoted LAC 33:III.2132) and corresponding revisions to the Louisiana Stage II Vapor Recovery SIP. In their SIP submittal, Louisiana demonstrated that emissions reductions from ORVR systems are estimated to be negligibly less than those from Stage II systems at GDFs, but that the air quality would not be negatively affected by the removal of Stage II equipment. Because of these two demonstrations, Louisiana requested the withdrawal of Stage II vapor recovery systems requirements for the 6-Parish Area from the SIP.

The revisions to the SIP describe the continued applicability of Stage II requirements until the operator of the GDF completes the decommissioning of the Stage II system; the requirement of the operator of the GDF to submit written notification to the Louisiana Department of Environmental Quality (LDEQ) of its intent to decommission Stage II equipment at least 30 calendar days prior to beginning any decommissioning activity; the requirement that technicians that have appropriate training and certification may perform the Stage II decommissioning procedure; the requirement that the operator shall notify LDEQ in writing no later than 10 days after completion of all decommissioning activities; and the requirement for the GDF to maintain all documents related to the decommissioning onsite at least 4 years and make such documents available upon request. All decommissioning activity must be completed within 30 days after the start date. Any existing GDF in Louisiana shall complete the decommissioning of the Stage II equipment within 18 months of EPA's final approval of this proposed rule. The revisions to the SIP also include a demonstration that the removal of Stage II equipment in the 6-Parish Area is consistent with section 110(l) of the Act.

III. EPA's Evaluation of the Revision

EPA's primary consideration for determining the approvability of Louisiana's revisions to remove Stage II vapor control requirements and provide for decommissioning of all Stage II equipment in the 6-Parish Area is whether these revisions comply with section 110(l) of the Act. Section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the Act. The EPA can approve a SIP revision that removes or modifies control measures in the SIP once the state makes a ''noninterference'' demonstration that such removal or modification will not interfere with attainment of the NAAQS, RFP or any other CAA requirement. Louisiana must make a demonstration of noninterference in the parishes of Ascension, East Baton Rouge, Iberville,

[1] Unlike Stage II, which is a requirement only in ozone nonattainment areas, ORVR requirements apply to vehicles everywhere.

[2] In 1991, Pointe Coupee Parish originally was included in the Baton Rouge 1-hour ozone nonattainment area (56 FR 5694 (November 6, 1991)). In 1997, we later removed Pointe Coupee Parish from the Baton Rouge ozone nonattainment area because it was not part of the Baton Rouge Consolidated Metropolitan Statistical Area (CMSA), and since it was no longer part of the Baton Rouge ozone area, we corrected its classification to Marginal, redesignated Pointe Coupee Parish to attainment for the 1-hour ozone NAAQS, and approved the Maintenance Plan, all in the same **Federal Register** Notice at 62 FR 648 (January 6, 1997). The State, however, did not submit a SIP revision to remove the Stage II requirement from the SIP until May 2019.

Livingston, Pointe Coupee, and West Baton Rouge in order to remove the Stage II requirements from its SIP.

EPA has reviewed Louisiana's submittal, which specifically revised LAC 33:III.2132 subsections B–F and J, as well as the accompanying SIP narrative, and has concluded that Louisiana's May 30, 2019, SIP revision addresses the EPA's Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver (77 FR 28772) and is consistent with EPA's ''Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures'' (EPA–457/B–12–001 (August 7, 2012)).[3] In accordance with EPA's Guidance on Removing Stage II, Louisiana submitted a demonstration that the Stage II decommissioning will not interfere with attainment or maintenance of the ozone NAAQS, included the requirements for the decommissioning of Stage II vapor recovery equipment, and included the analysis of VOC emission impacts from removal of Stage II controls at GDFs located in the 6-Parish Area. Louisiana estimated using the guidance methodologies from the August 2012 guidance memo referenced above that the VOC emissions would minimally increase. LDEQ estimated the impact on emissions from decommissioning Stage II in the 6-Parish Area by using EPA approved equations from the same 2012 guidance, to assess compliance with CAA 110(l). The equations used were two values of Stage II vapor recovery system efficiencies (60 percent and 75 percent), and two representative fleet age distributions (2010 and 2017). The analyses indicated that by 2017, the removal of Stage II vapor recovery systems would result in a minimal increase in VOC emissions that ranges from 0.02 to 0.09 tons per day (tpd) distributed over the 6-Parish Area.

This minimal increase in VOC emissions from the 6-Parish Area is negligible when comparing the 0.02 to 0.09 tpd with the total amount of VOCs from all anthropogenic sources in the Baton Rouge ozone area. In the current Baton Rouge ozone area maintenance plan, VOC emissions were calculated to be 145.5 tpd in 2011, and projected to be 141.2 tpd in 2022 and 140.8 tpd in 2027 (83 FR 16017 at 16019, (April 13, 2018)).[4] In addition, LDEQ indicated in their SIP submittal that ozone formation has been found in past photochemical modeling exercises in the 6-Parish Area to be driven by changes in NO_X emissions, rather than VOC emissions. LDEQ indicated that ozone impacts were expected to be negligible from the increases in VOCs and included a reference to a prior modeling analysis that LDEQ had contracted Environ and ERG to perform in 2013.[5] The modeling analysis reduced all man-made VOCs in Louisiana by 30% in the 2017 Future Year modeling, which equated to a decrease of 45 tpd in the 6-Parish Area subject to Stage II. Removal of 45 tpd resulted in reductions of only 0 to 1 ppb in the 2017 Future Year Design Value.[6] We have reviewed this modeling and concur with LDEQ's assessment in their referenced report, that the 6-Parish Area typically responds to NO_X emission changes and not VOC emission changes.[7] Given that (1) the projected increase in VOC emissions is extremely small (<0.1 tpd) when compared to all the anthropogenic VOC emissions in the area and (2) ozone formation in the area has been found to be predominantly driven by changes in NO_X emissions rather than VOC emissions, we believe that removal of Stage II vapor recovery systems would have a negligible impact on ozone levels.

In addition, the removal of Stage II is consistent with the current maintenance plan for the Baton Rouge ozone area for the 2008 8-hour ozone NAAQS (83 FR 24226 (May 25, 2018)) and the maintenance plan for Pointe Coupee Parish (78 FR 27058 (May 9, 2013)). The approved, revised maintenance plan for the redesignated Baton Rouge area demonstrates attainment of the 2008 8-hour ozone NAAQS through 2027.[8] This approved maintenance plan for the five parishes estimates VOC emissions for 2027 to be 140.8 tpd. Assuming a maximum increase of 0.09 tpd VOC due to removal of Stage II vapor recovery requirements, the estimated VOC emissions for 2027 would be 140.8 + 0.09 = 140.89 tpd. Should the VOC emissions reach the maximum estimate of 140.89 tpd, they would still be less than the 2011 base year emissions of 144.1 tpd and thus, a maximum increase of 0.09 tpd VOC emissions is consistent with the maintenance plan for the area and would not interfere with the attainment or maintenance of the 2008 NAAQS in the five parishes.

For Pointe Coupee Parish, we approved a maintenance plan for the 1997 8-hour ozone standard on May 9, 2013 (78 FR 27058). This maintenance plan demonstrates attainment through 2014. The maintenance plan estimates VOC emissions for 2014 as 7.66 tpd. Assuming a maximum increase of 0.09 tpd VOC due to removal of Stage II vapor recovery requirements, the estimated VOC emissions for 2014 would be 7.66 + 0.09 = 7.75 tpd. Should the VOC emissions reach the maximum estimate of 7.75 tpd, they would still be less than the 2002 base year emissions of 8.63 tpd and thus, a maximum increase of 0.09 tpd VOC emissions is consistent with the maintenance plan and would not interfere with the attainment or maintenance of the 1997 8-hour NAAQS in this parish.[9]

For the 2015 ozone standard, all six parishes are designated attainment/unclassifiable. As noted above, we believe that removal of Stage II vapor recovery systems would have a negligible impact on ozone levels and the small increase is consistent with the 2008 ozone maintenance plan for the Baton Rouge area and the 1997 8-hour maintenance plan for Pointe Coupee Parish. Thus, approval of the SIP revision would not interfere with any applicable requirement concerning attainment and maintenance of any ozone standard and is compliant with CAA section 110(l).

[3] The guidance document is available at: *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20120807_page_stage2_removal_guidance.pdf.*

[4] EPA's proposed approval of Baton Rouge 2008 8-hour ozone NAAQS maintenance plan: 83 FR 16017 (April 13, 2018); EPA's final action: 83 FR 24226 (5/25/18). The State's submittal, **Federal Register** actions, and TSD to that action, are incorporated by reference into this action. See Docket number EPA–R06–OAR–2018–1111.

[5] See LDEQ SIP pages 17 & 22. ENVIRON and ERG, 2013. ''Technical Support Document: Photochemical Modeling for the Louisiana 8-hour Ozone State Implementation Plan.'' Prepared by Environ International Corporation, Novato, CA, and Eastern Research Group, Inc., Rancho Cordova, CA, for the Louisiana Department of Environmental Quality, Baton Rouge, LA (August 2013); pdf pages 152–158. This document is in the docket as EPA–R06–OAR–2019–0496.

[6] Id. and ''EPA_Analysis_of_Environ_2013_Modeling_Report.xlsx'' This document is in the docket as EPA–R06–OAR–2019–0496.

[7] See. ''Technical Support Document: Photochemical Modeling for the Louisiana 8-hour Ozone State Implementation Plan.'' Prepared by Environ International Corporation, Novato, CA, and Eastern Research Group, Inc., Rancho Cordova, CA, for the Louisiana Department of Environmental Quality, Baton Rouge, LA (August 2013); pdf pages 152–158. This document is in the docket as EPA–R06–OAR–2019–0496.

[8] In the approved maintenance plan, *https://www.govinfo.gov/content/pkg/FR-2018-05-25/pdf/2018-11217.pdf,* the VOC emissions for 2027 are estimated to be 140.8 tpd, which are lower than the 2011 base year emissions of 144.1 tpd. The State's submittal, **Federal Register** actions, and TSD to that action, are incorporated by reference into this action. See Docket number EPA–R06–OAR–2018–0111.

[9] In the approved maintenance plan, *https://www.govinfo.gov/content/pkg/FR-2013-05-09/pdf/2013-10832.pdf,* the VOC emissions for 2014 are estimated to be 7.66 tpd, which are lower than the 2002 base year emissions of 8.63 tpd. The State's submittal, **Federal Register** actions, and TSD are incorporated by reference into this action. See Docket number EPA–R06–OAR–2007–0206.

IV. Proposed Action

The EPA is proposing to approve revisions to the Louisiana SIP that control emissions of VOCs and pertain to the removal of Stage II vapor recovery equipment submitted on May 30, 2019. Specifically, we are proposing to approve revisions to subsections B–F and J within LAC 33:III.2132 that remove from the SIP, the requirement for Stage II from the six parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge and related revisions that address the removal of Stage II equipment. We are proposing to find that the SIP demonstrates that the removal of Stage II equipment in the six parishes meets section 110(l) of the Act.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Louisiana regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and in hard copy at the EPA Region 6 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

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

Dated: February 20, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2020–04064 Filed 2–27–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2019–0211; FRL–10005–69–Region 6]

Air Plan Approval; Louisiana; Infrastructure for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or Act), the EPA is proposing to approve elements of two State Implementation Plan (SIP) submittals from Louisiana for the 2015 ozone (O_3) National Ambient Air Quality Standards (NAAQS). The submittals address how the existing SIP provides for the implementation, maintenance and enforcement of the 2015 ozone NAAQS (infrastructure SIP or i-SIP). The i-SIP ensures that the Louisiana SIP is adequate to meet the state's responsibilities under the CAA for this NAAQS.

DATES: Written comments must be received on or before March 30, 2020.

ADDRESSES: Submit your comments, identified by Docket Number EPA–R06–OAR–2019–0211, at *http://www.regulations.gov* or via email to *fuerst.sherry@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Sherry Fuerst, 214–665–6454, *fuerst.sherry@epa.gov.* 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.*

Docket: The index to the docket for this action is available electronically at

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

FOR FURTHER INFORMATION CONTACT: Sherry Fuerst, 214–665–6454, *fuerst.sherry@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Fuerst or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

Under section 109 of the CAA, EPA establishes NAAQS to protect human health and public welfare. On October 26, 2015, the EPA revised the primary and secondary 8-hour ozone NAAQS from 0.075 ppm to 0.070 ppm to provide increased protection of public health and the environment (80 FR 65291). The primary standards are set to protect human health, while secondary standards are set to protect public welfare.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an ''infrastructure SIP'' or ''i-SIP''. These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[1] We are following that existing approach in acting on these submissions. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[2] The EPA has other CAA authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

The State of Louisiana's i-SIP certification, submitted on February 7, 2019, and the certification submitted on November 8, 2019, intend to demonstrate how the existing Louisiana SIP meets the applicable CAA section 110(a)(2) requirements for the 2015 ozone NAAQS. Our technical evaluation of these submittals is provided in the Technical Support Document (TSD) for this action.[3]

II. The EPA's Evaluation of Louisiana's i-SIP

The State's submissions on dated February 7, 2019 and November 8, 2019 are intended to demonstrate how the existing Louisiana SIP meets the infrastructure requirements for the 2015 ozone NAAQS. The February 7, 2019 submission addresses most elements pertaining to CAA section 110(a)(2) requirements for the 2015 ozone NAAQS, while the November 8, 2019 submission focuses on Section 110(a)(2)(D) requirements for the 2015 ozone NAAQS. We are not evaluating or proposing action on portions of the submissions pertaining to 110(a)(2)(D)(i) as described below. As mentioned in the previous section, a detailed discussion of our evaluation can be found in the TSD for this action, accessible through *www.regulations.gov* (Docket No. EPA–R06–OAR–2019–0211). Below is a summary of the EPA's evaluation of the Louisiana i-SIP for each applicable element of 110(a)(2)(A) through (M).

(A) Emission limits and other control measures: The CAA section 110(a)(2)(A) requires the SIP to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act and other related matters as needed to implement, maintain and enforce each of the NAAQS.[4]

The Louisiana Air Control Law found in the Louisiana Environmental Quality Act at Louisiana Revised Statutes (Louisiana Revised Statutes 30:2054 (La R.S. 30:2054)) provides the Secretary of the Louisiana Department of Environmental Quality (LDEQ) with broad legal authority. The Secretary can adopt emission standards and compliance schedules which are applicable to regulated entities; emission standards and limitations; and any other measures necessary for attainment and maintenance of national standards. The Secretary can also enforce applicable laws, regulations, standards and compliance schedules, and seek injunctive relief. This authority has been employed in the past to adopt and submit multiple revisions to the Louisiana SIP. The approved SIP for Louisiana is documented at 40 CFR part 52.970, Subpart T.[5] LDEQ's air quality rules and standards are codified at Title 33, Part III of the Louisiana Administrative Code (LAC 33:III). As detailed in our TSD, numerous parts of the regulations codified into LAC 33:III necessary for implementing and enforcing the NAAQS have been adopted into the SIP.[6]

The EPA is therefore proposing to find that the Louisiana SIP meets the requirements of section 110(a)(2)(A) of the CAA with respect to the 2015 ozone NAAQS.

(B) Ambient air quality monitoring/data system: Section 110(a)(2)(B) of the CAA requires SIPs to include provisions for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to the EPA upon request.

La R.S. 30:2011(C)(1)(b) provides LDEQ with the authority to collect air quality monitoring data, quality-assure the results, and report the data. LAC

[1] EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013, Infrastructure SIP Guidance (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf*), as well as in numerous agency actions, including EPA's prior action on Louisiana's infrastructure SIP to address the 2006 $PM_{2.5}$, 2008 Pb, 2008 O_3, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS (81 FR 68322, October 4, 2016).

[2] See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center* v. *EPA,* No. 16–71933, 16–17 (August 30, 2018) (Potential problems with actual implementation are ''better addressed at a different time'' via specific provisions set forth in the Clean Air Act).

[3] The TSD for this action can be accessed through *www.regulations.gov* (Docket No. EPA–R06–OAR–2019–0211).

[4] The specific nonattainment area plan requirements of CAA section 110(a)(2)(I) are subject to the timing requirements of CAA section 172, not the timing requirement of CAA section 110(a)(1). Thus, CAA section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2015 ozone NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of CAA section 110(a)(2)(A). In the context of an infrastructure SIP, the EPA is not evaluating the existing SIP provisions for this purpose. Instead, the EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

[5] *http://www.ecfr.gov/cgi-bin/text-idx?SID=6e98cdf87e1b896da1b0a8cc2d2f69d6&mc=true&node=sp40.3.52.t&rgn=div6.*

[6] See the TSD for additional information.

33:III.709 outlines the procedures for the measurement of concentrations of the NAAQS. LDEQ maintains and operates a monitoring network to measure levels of the pollutants in accordance with EPA regulations specifying siting and monitoring requirements. All monitoring data is measured using EPA approved methods and is subject to the EPA quality assurance requirements. LDEQ submits all required data to EPA, consistent with EPA regulations. The monitoring network plan was approved into the SIP and it undergoes recurrent annual review by EPA.[7] In addition, LDEQ conducts a recurrent assessment of its monitoring network every five years, as required by EPA rules. The most recent of these 5-year monitoring network assessments was conducted by LDEQ and approved by EPA.[8] The LDEQ website provides the monitor locations and posts past and current concentrations of criteria pollutants measured in the State's network of monitors.[9]

In summary, Louisiana meets the requirements to: Establish, operate, and maintain an ambient air monitoring network; collect and analyze the monitoring data; and make the data available to the EPA upon request. The EPA is proposing to find that the current Louisiana SIP meets the requirements of CAA section 110(a)(2)(B) with respect to the 2015 ozone NAAQS.

(C) Program for enforcement of control measures: The SIP must include the following three elements: (1) A program providing for enforcement of the measures in CAA section 110(a)(2)(A); (2) a minor new source review (NSR) program for the regulation of new and modified minor stationary sources and minor modifications of new major stationary sources as necessary to protect the applicable NAAQS; and (3) a major stationary source permit program to meet the prevention of significant deterioration (PSD) permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question). Each of these elements is described in more detail in the TSD for this action.

(1) Enforcement of SIP Measures. The state must provide a program for enforcement of the necessary control measures described in subparagraph (A). As noted earlier, the Louisiana Revised Statutes and implementing regulations in the Louisiana Administrative Code (LAC 33:III Chapters 1, 5–7, 9, 11, 13–15 and 21–23) provide authority for the LDEQ, and its Secretary, to enforce the requirements of the LAC, and any regulations, permits, or final compliance orders. These Louisiana Revised Statutes and implementing regulations in the Louisiana Administrative Code also provide the LDEQ with general enforcement powers. Among other things, the La R. S. grants authority to the LDEQ to file lawsuits to compel compliance with the statutes and regulations; commence civil actions; conduct investigations of regulated entities; collect criminal and civil penalties; develop and enforce rules and standards related to protection of air quality; issue compliance orders; pursue criminal prosecutions; investigate, enter into remediation agreements; and issue emergency cease and desist orders. The LAC also provides additional enforcement authorities and funding mechanisms.

(2) Minor New Source Review. The SIP is required to include measures to regulate construction and modification of minor stationary sources and minor modifications to major stationary sources to protect the NAAQS. As detailed in the TSD, the Louisiana minor NSR permitting requirements are approved as part of the SIP at 30 LAC Chapter 5.[10]

(3) Prevention of Significant Deterioration (PSD) permit program. The Louisiana PSD portion of the SIP covers all NSR regulated pollutants as well as the requirements for the 2015 O_3 NAAQS.[11]

Based upon review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(C) are met.

(D) Interstate transport, and interstate and international pollution abatement: CAA section 110(a)(2)(D) has two primary parts; section 110(a)(2)(D)(i) and (ii). Section 110(a)(2)(D)(i) has four sub-elements addressing interstate transport of emissions as described below.

Section 110(a)(2)(D)(i)(I):

Sub-element 1 requires the SIP must prohibit emissions within Louisiana from contributing significantly to the nonattainment of the NAAQS in other states, and;

Sub-element 2 requires the SIP prohibit emissions within Louisiana from interfering with the maintenance of the NAAQS in other states.

Section 110(a)(2)(D)(i)(II):

Sub-element 3 requires the SIP must prohibit emissions within Louisiana from interfering with measures required to prevent significant deterioration in other states and;

Sub-element 4 requires the SIP must prohibit emissions within Louisiana from interfering with measures required to protect visibility in other states.

CAA 110(a)(2)(D)(ii) requires that states comply with the requirements listed in sections 126 of the CAA which is designed to aid in the abatement of interstate pollution and 115 of the CAA which were designed to aid in the abatement of international pollution. Section 115 authorizes the Administrator to require a state to revise its SIP under certain conditions to alleviate international transport into another country. Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. Section 126(b) provides that any state or political subdivision may petition the Administrator for a finding that a major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(ii) after public hearing. CAA 126(b) and (c) could occur if (1) the Administrator has, in response to a petition, made a finding under section 126(b) that emissions from a source or sources within the air agency's jurisdiction emit prohibited amounts of air pollution relevant to the new or revised NAAQS for which the infrastructure SIP is being made; and (2) under section 126(c), the Administrator has required the source or sources to cease construction, cease or reduce operations, or comply with emissions limitations and compliance schedule requirements for continued operation.

At this time, we are proposing approval that the SIP meets the requirements sub-element 3 of Section 110(a)(2)(D)(i)(I). We are also proposing approval that the SIP meets the

[7] A copy of the 2019 Annual Air Monitoring Network Plan and EPA's approval letter, October 21, 2019, are included in the docket for this proposed rulemaking.

[8] A copy of LDEQ's 2015 5-year ambient monitoring network assessment and EPA's approval letter, July 5, 2016, are included in the docket for this proposed rulemaking.

[9] See *http://airquality.deq.louisiana.gov/.*

[10] In specifically approving this i-SIP element, we note that EPA is not opening up for action any provisions in the existing Louisiana minor NSR program to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element C (*e.g.,* 76 FR 41076–41079, July 13, 2011). Louisiana submitted a SIP revision on April 20, 2011. The revision was acted on and approved into the SIP on August 4, 2016 (81 FR 51341). The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs.

[11] As discussed further in the TSD.

requirements in 110(a)(2)(D)(ii), for both the interstate and international pollution abatement provisions. We plan to act on the remaining sub-elements of Section 110(a)(2)(D)(i)(I) in separate actions.

For 110(a)(2)(D)(i)(II), Louisiana has EPA-approved PSD SIP provisions which will limit Louisiana emissions from new major sources or major modifications, which will help ensure that Louisiana will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in other states in the future. As we have approved the Louisiana comprehensive PSD program, we propose to approve that the current SIP meets CAA section 110(a)(2)(D)(i)(II) sub-element 3 requirements.

CAA section 110(a)(2)(D)(ii) requires that the SIP contain adequate provisions insuring compliance with the applicable requirements of section 126 (relating to interstate pollution abatement) and section 115 (relating to international pollution abatement). As stated in their submittal, Louisiana meets the section 126 requirements as (1) they have a fully approved PSD SIP (81 FR 74923, October 28, 2016), which includes notification to neighboring air agencies of potential impacts from each new or modified major source, and (2) no source or sources have been identified by the EPA as having any interstate impacts under CAA section 126 in any pending action related to any air pollutant.

There are no findings under section 115 of the CAA against Louisiana with respect to the 2015 ozone NAAQS.

Based upon our review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(D)(ii) are met.

(E) Adequate authority, resources, implementation, and oversight: CAA section 110(a)(2)(E) requires that the SIP provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) compliance with requirements relating to state boards as required under section 128 of the CAA; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan. Both subsections A and E of this action address the requirement that there is adequate authority and no legal impediments to implement and enforce the SIP.

The i-SIP submissions for the 2015 ozone NAAQS describe the SIP regulations governing the various functions of personnel within the LDEQ, including the administrative, technical support, planning, enforcement, and permitting functions of the program.

The duties, powers and structure of the LDEQ (described at La R.S. 30:2011.F) provide that ''the basic personnel [* * *] shall be employed or provided by the department:'' and the LDEQ may contract, employ, and compensate such assistance on a full or part-time basis as may be necessary to carry out the provisions of this Subtitle. In addition, the State has the Environmental Trust Fund, established at La R.S. 30:2015, which is used, in part, to ''defray the cost to the State of permitting, monitoring, * * * maintaining and administering the programs provided for under the Louisiana Environmental Quality Act.''

There are Federal sources of funding for the implementation of the NAAQS, for example the CAA sections 103 and 105 provide grant funds. The LDEQ receives Federal funds on an annual basis, under sections 103 and 105 of the Act, to support its air quality programs. Fees collected for motor vehicle inspections, non-Title V permit programs, and other inspections, maintenance and renewals required of other air pollution sources also provide necessary funds to help implement the State's air programs. Information on permitting fees is provided in the discussion for 110(a)(2)(L) below. The Secretary has the power and duty ''to receive and budget duly appropriated monies and to accept, receive, and administer grants or other funds or gifts from public and private agencies, including the Federal government to carry out the provisions and purposes of this Subtitle.'' (La R.S. 30:2011.D.10). The SIP approved rule at 33 LAC Chapter 1, section 101 describes the LDEQ as the State's air pollution control agency and describes its enforcement authority, referencing the 1983 Louisiana Environmental Quality Act (54 FR 9783, March 8, 1989).

As required by the CAA and the SIP, the majority of the members that compose any board or body which approves permits or enforcement orders must not derive any ''significant portion'' of their income from persons subject to permits and enforcement orders or persons who appear before the board on issues related to the CAA or the Louisiana Air Quality Rules (La. R.S. 30:2014.1). The members of the board or body, or the head of an agency with similar powers, are required to adequately disclose any potential conflicts of interest.

Louisiana has not delegated any authority to implement any of the provisions of its plan to local governmental entities. The LDEQ acts as the primary air pollution control agency.

Based upon review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities [12] and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(E) are met.

(F) Stationary source monitoring system: CAA section 110(a)(2)(F) requires that the SIP provide for the establishment of a system to monitor emissions from stationary sources and to submit periodic emission reports. Element F requires the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources and require that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

LAC 33:III Chapter 9 authorizes the LDEQ to require persons engaged in operations which result in air pollution to monitor or test emissions and to file reports containing information relating to the nature and amount of emissions. There are also SIP approved state regulations pertaining to sampling and testing and requirements for reporting of emissions inventories (81 FR 4891 (January 28, 2016)). In addition, SIP approved rules establish general requirements for maintaining records and reporting emissions.[13]

The LDEQ uses this information, in addition to information obtained from other sources, to track progress towards maintaining the NAAQS, develop

[12] Cited in the TSD.

[13] LAC 33:III Chapter 9 outlines the general requirements for maintaining records and reporting. There are also additional requirements provided in the rules for each emission source, for example Chapter 13 outlines the emission standard for Particulate Matter where there are additional recording keeping requirements for abrasive blasting. All chapters are noted in the TSD.

control and maintenance strategies, identify sources and general emission levels, and determine compliance with SIP approved regulations and additional EPA requirements. The SIP requires this information be made available to the public. Provisions concerning the handling of confidential data and proprietary business information are included in the SIP approved regulations. These rules specifically exclude from confidential treatment any records concerning the nature and amount of emissions reported by sources.

Based upon review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(F) are met.

(G) Emergency authority: CAA section 110(a)(2)(G) requires a demonstration that the state has the authority to restrain any source from causing imminent and substantial endangerment to public health or welfare or the environment. The SIP must include an adequate contingency plan to implement such authorities as necessary.

La R.S. 30:2011.D.15 provides LDEQ with the required authority to address environmental emergencies, and LDEQ has contingency plans to implement the emergency episode provisions in the SIP. The LDEQ promulgated the ''Prevention of Air Pollution Emergency Episodes,'' which includes contingency measures, and these provisions were approved into the SIP in 1989 (54 FR 9783, March 8, 1989). The episode criteria and contingency measures are found in LAC 33.III Chapter 56.

Louisiana has general emergency powers to address any possible dangerous air pollution episode, if necessary, to protect the environment and public health.

Based upon review of the infrastructure SIP submissions, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(G) are met.

(H) Future SIP revisions: CAA section 110(a)(2)(H) requires that states must have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

La R.S. 30:2011 authorizes the LDEQ to revise the Louisiana SIP, as necessary, to account for revisions of an existing NAAQS, establishment of a new NAAQS, to attain and maintain a NAAQS, to abate air pollution, to adopt more effective methods of attaining a NAAQS, and to respond to EPA SIP calls concerning NAAQS adoption or implementation.

Based upon review of the infrastructure SIP submissions, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(H) are met.

(I) Nonattainment areas: The CAA section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas.

The EPA does not expect infrastructure SIP submissions to address element I. The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for CAA section 110 infrastructure elements. Instead, the EPA will take action on part D attainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.[14]

(J) Consultation with government officials, public notification, PSD and visibility protection: The SIP must meet the following three CAA requirements: (1) Section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; (3) prevention of significant deterioration of air quality and (4) visibility protection.

(1) Interagency consultation: As discussed in detail in the TSD, both the La R.S and LAC require a public hearing before the adoption of any regulations or emission control requirements, and all interested persons are given a reasonable opportunity to review the action that is being proposed and to submit data or arguments, either orally or in writing, and to examine witnesses testifying at the hearing (La R.S. 30:2011, LAC 33:III Chapter 5). This means, among other things, that the SIP revision public participation requirements are met.

In addition, the La R.S provides the LDEQ the power and duty to establish cooperative agreements with local authorities, and consult with other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control (La. R.S. 30:2032). Furthermore, as found in LAC 33:III Chapter 5, the Louisiana PSD SIP rules mandate that the LDEQ provide for public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, tribal authorities, and Federal Land Manager (FLMs) whose lands may be affected by emissions from the source or modification (LAC 33:III.509). Additionally, these rules require the LDEQ to consult with FLMs regarding permit applications for sources with the potential to impact Class I Federal Areas. The SIP also includes a commitment to consult continually with the FLMs on the review and implementation of the visibility program. Louisiana works with the FLMs providing notification or early consultation with a new or modifying source prior to the submission of a permit application and with PSD projects. Likewise, the State's Transportation Conformity SIP rules (LAC 3:III Chapter 13) provide for interagency consultation, resolution of conflicts, and public notification.

(2) *Public Notification:* On January 10, 1980, the Governor submitted a SIP revision to the ambient monitoring portion of the state implementation plan. The revision was included into the SIP on August 6, 1981 (46 FR 40005). This portion of the SIP includes requirements for public notification of information related to air quality standards violations included in 40 CFR part 51 in order to meet the requirements of Section 127 of the Act, requiring LDEQ to regularly notify the public of instances or areas in which any NAAQS are exceeded, advise the public of the health hazards associated with such exceedances, and enhance public awareness of measures that can prevent such exceedances and ways in which the public can participate in efforts to improve air quality. In addition, as discussed for infrastructure element B above, the LDEQ air monitoring website provides air quality data for each of the monitoring stations in Louisiana; this data is provided instantaneously for certain pollutants, such as ozone. The website also provides information on the health effects of lead, ozone, particulate matter, and other criteria pollutants.[15]

[14] This infrastructure SIP rulemaking will not address the Louisiana program for provisions related to nonattainment areas, since EPA considers evaluation of these provisions to be outside the scope of infrastructure SIP actions.

[15] Louisiana's ambient air monitoring web page includes links to the air monitoring sites, list of monitoring sites mobile air monitoring lab

Continued

(3) *PSD:* The PSD requirements for this element are the same as those addressed under element (C) above. As was mentioned earlier, the State has a PSD program, so this requirement has been met.

(4) *Visibility Protection:* The Louisiana SIP requirements relating to visibility and regional haze do not change when EPA establishes or revises a NAAQS. Therefore, EPA believes that there are no new visibility protection requirements for Louisiana due to the revision of the 2015 ozone NAAQS, and consequently there are no newly applicable visibility protection obligations pursuant to infrastructure element (J).

Based upon review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(J) are met.

(K) Air quality and modeling/data: Element K requires that the SIP provide for performing air quality modeling to predict the effects on ambient air quality from emissions of any NAAQS pollutant, and for submission of such data to the EPA upon request.

The LDEQ has the power and duty, under La R.S. 30:2011 *et seq.* to employ or provide scientific, technical, administrative and operational services necessary to carry out the duties of the Department of Environmental Quality. The LDEQ may, by contract, secure services as it may deem necessary to carry out the duties of the Department of Environmental Quality. Past modeling and emissions reductions measures have been submitted by the State and approved into the SIP. Additionally, Louisiana has the ability to perform modeling for primary and secondary NAAQS as necessary consistent with their SIP approved PSD rules and with EPA issued guidance.

The La R.S. authorizes and requires LDEQ to cooperate with the federal government and local authorities concerning matters of common interest in the field of air quality control, thereby allowing the agency to make such submissions to the EPA. LAC 33:III.509.L(1) states that ''all estimates of ambient concentrations required under this Subsection shall be based on applicable air quality models, databases, and other requirements specified in Appendix W of 40 CFR part 51''.

Based upon review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(K) are met.

(L) Permitting fees: The SIP must require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under CAA section 504, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by the EPA.

The State has met this requirement as it has a fully developed fee system in place which is outlined in LAC 33:III Chapter 2 and is approved as part of the SIP. See element (E) above for the description of the mandatory collection of permitting fees outlined in the SIP.

Based upon review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(L) are met.

(M) Consultation/participation by affected local entities: CAA section 110(a)(2)(M) requires that the SIP must provide for consultation and participation by local political subdivisions affected by the SIP.

See the discussion for element (J) above for a description of the SIP's public participation process, the authority to advise and consult, and the PSD SIP's public participation requirements. Additionally, the LDEQ noted that La R.S. 30:2011(D)(21) also requires initiation of cooperative action between local authorities and the LDEQ, between one local authority and another, or among any combination of local authorities and the LDEQ for control of air pollution in areas having related air pollution problems that overlap the boundaries of political subdivisions, and has authority to enter into agreements and compacts with adjoining states and Indian tribes, where appropriate. The transportation conformity component of the Louisiana SIP requires that interagency consultation and opportunity for public involvement be provided before making transportation conformity determinations and before adopting applicable SIP revisions on transportation-related issues. (LAC 33:III.1434).

Based upon review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(M) are met.

III. Proposed Action

The EPA is proposing to approve the February 7, 2019 submittal, and portions of the November 8, 2019 submittal for Louisiana pursuant to the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2015 ozone NAAQS. Table 1 below outlines the specific actions the EPA is proposing to approve. As mentioned earlier in this action, the EPA is not taking action on portions of CAA section 110(a)(2)(D)(i) for Louisiana for the 2015 ozone NAAQS.

TABLE 1—PROPOSED ACTION ON LOUISIANA INFRASTRUCTURE SIP SUBMITTALS FOR THE 2015 OZONE NAAQS UNDER CAA SECTION 110(a)(2)(A)–(M)

Element	2015 O_3
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)(i): Enforcement of SIP measures	A
(C)(ii): PSD program for major sources and major modifications	A
(C)(iii): Permitting program for minor sources and minor modifications	A
(D)(i)(I): Prohibit emissions to other states which will (1) significantly contribute to nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS	NA

information, guidance documents and other monitoring information. The page may be found: *https://www.deq.louisiana.gov/page/ambient-air-monitoring-program.*

TABLE 1—PROPOSED ACTION ON LOUISIANA INFRASTRUCTURE SIP SUBMITTALS FOR THE 2015 OZONE NAAQS UNDER CAA SECTION 110(a)(2)(A)–(M)—Continued

Element	2015 O_3
(D)(i)(II): Prohibit emissions to other states which will (3) interfere with PSD requirements	A
(D)(i)(II): Prohibit emissions to other states which will (4) interfere with visibility protection	NA
(D)(ii): Interstate Pollution Abatement and International Air Pollution	A
(E)(i): Adequate resources	A
(E)(ii): State boards	A
(E)(iii): Necessary assurances with respect to local agencies	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)(i): Consultation with government officials	A
(J)(ii): Public notification	A
(J)(iii): PSD	A
(J)(iv): Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

Key to Table:
A—Approve;
+—Not germane to infrastructure SIPs
NA—No action. EPA will take future action in a separate rulemaking action.

Based upon our review of these infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in the State's submissions or referenced in the Louisiana SIP, the EPA finds that Louisiana has the infrastructure in place to address required elements of CAA sections 110(a)(2)(A)–(C), (D)(i)(II) sub-element 3, (D)(ii)–(H), and (J)–(M) to ensure that the 2015 ozone NAAQS is implemented throughout the State of Louisiana.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve SIP submissions that comply with 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Incorporation by reference, Reporting and recordkeeping requirements.

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

Dated: February 24, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2020–04065 Filed 2–27–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BJ20

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 51

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

ACTION: Notice of availability; request for comments.

SUMMARY: The Gulf of Mexico (Gulf) Fishery Management Council (Council) has submitted Amendment 51 to the Fishery Management Plan for the Reef

Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce (Secretary), Amendment 51 would establish and modify status determination criteria and harvest levels for the gray snapper stock. The purposes of Amendment 51 are to end overfishing of gray snapper and achieve optimum yield (OY) for the stock.

DATES: Written comments must be received by April 28, 2020.

ADDRESSES: You may submit comments on Amendment 51 identified by ''NOAA–NMFS–2019–0116'' by either 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-2019-0116,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit all written comments to Peter Hood, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 51, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-51-establish-gray-snapper-status-determination-criteria-and-modify-annual-catch.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *peter.hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The Council prepared the FMP being revised by Amendment 51, and, if approved, Amendment 51 would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

Gray snapper in the Gulf exclusive economic zone (EEZ) are managed as a single stock with a stock annual catch limit (ACL), and a stock annual catch target (ACT). There is no allocation between the commercial and recreational sectors. Gray snapper occur in estuaries and shelf waters of the Gulf, and are particularly abundant off south and southwest Florida.

Generally, the fishing season is open year-round, January 1 through December 31. However, accountability measures (AMs) for gray snapper specify that if commercial and recreational landings exceed the stock ACL in a fishing year, then during the following fishing year if the stock ACL is reached or is projected to be reached, the commercial and recreational sectors will be closed for the remainder of the fishing year. The gray snapper ACL and AMs were implemented in 2012 (76 FR 82044; December 29, 2011) and the stock ACL of 2.42 million lb (1.1 million kg), round weight, was not exceeded between 2012 and 2018. A preliminary review of the most recent landings data suggest the ACL will also not be exceeded in 2019. However, landings in 2014 and 2016 did exceed the ACLs proposed in Amendment 51. Unless stated otherwise, all weights in this notice are described in round weight.

In 2018, the stock status of gray snapper was evaluated for the first time through a Southeast Data, Assessment, and Review benchmark stock assessment (SEDAR 51). SEDAR 51 was completed and reviewed by the Council's Scientific and Statistical Committee (SSC) in May 2018. The SSC accepted the gray snapper assessment as the best scientific information available and determined that the stock is experiencing overfishing as of 2015 because the fishing mortality rate (F) in 2015 was greater than the maximum fishing mortality threshold (MFMT). However, the SSC was not able to determine if the stock is overfished because the maximum sustainable yield (MSY) and minimum stock size threshold (MSST) for gray snapper are not specified in the FMP.

Actions Contained in Amendment 51

Amendment 51 includes actions to set the MSY, MSST, OY, and modify the MFMT, overfishing limit (OFL), acceptable biological catch (ABC), ACL and ACT for the gray snapper stock in the Gulf. Amendment 51 also updates the goals and objectives of the FMP.

Maximum Sustainable Yield

SEDAR 51 could not estimate the actual MSY with the best scientific information available. Therefore, the Council considered alternatives for an MSY proxy that uses the spawning potential ratio (SPR). The SPR is the ratio of the average number of eggs per fish over its lifetime when the stock is fished compared to the same value when the stock is not fished. The SPR assumes that a certain amount of fish must survive and spawn in order to replenish the stock. Analyses of stocks with various life histories suggest that, in general, MSY is most commonly associated with the yield when fishing at an F that corresponds to an SPR between 30 and 40 percent.

After reviewing the SEDAR 51 assessment, the SSC recommended that the MSY proxy be set at the yield when fishing at an F corresponding to 30 percent SPR ($F_{30\%SPR}$), which is consistent with the current MFMT definition. However, the Council noted that the Gulf red snapper proxy is set at the yield when fishing at an F corresponding to 26 percent SPR ($F_{30\%SPR}$), which allows for a larger yield at a given stock size. After further analyses and review, the SSC determined that the yield when fishing at $F_{30\%SPR}$ is scientifically acceptable as a proxy for MSY, but maintained its previous recommendation of the more risk-averse MSY proxy using the yield when fishing at $F_{30\%SPR}$ because of the uncertainty in the SEDAR 51 assessment.

The Council selected the yield when fishing at $F_{30\%SPR}$ for the MSY proxy. This proxy is consistent with the MSY proxy used for red snapper, which has a similar life history to gray snapper. The Council selected this proxy to balance protection of the gray snapper stock with the increase in social and economic benefits for fishers targeting the species that is expected to result from allowing more harvest.

Status Determination Criteria

NMFS uses the MSST and MFMT to determine if a stock is overfished or undergoing overfishing, respectively. If the stock biomass falls below the MSST,

then the stock is considered overfished and the Council would then need to develop a rebuilding plan capable of returning the stock to a level that allows the stock to achieve MSY on a continuing basis. In years when there is a stock assessment, if fishing mortality exceeds the MFMT, a stock is considered to be undergoing overfishing because this level of fishing mortality, if continued, would reduce the stock biomass to an overfished condition. In years in which there is no assessment, overfishing occurs if landings exceed the OFL.

Currently, the MFMT is equal to $F_{30\%SPR}$. Because the MSY proxy selected in Amendment 51 is the yield when fishing at $F_{30\%SPR}$, the Council chose to modify the MFMT to be equal to $F_{30\%SPR}$ for consistency. Under this definition, projections from SEDAR 51 suggest overfishing ended in 2017.

The MSST needs to be equal or less than the biomass (B) capable of producing MSY or MSY proxy ($B_{msy\ (or\ MSY\ proxy)}$). The closer the MSST value is to $B_{msy\ (or\ MSY\ proxy)}$, the more likely a stock could be declared overfished due to year-to-year fluctuations in stock biomass, resulting in an unneeded rebuilding plan. However, if MSST is set too low, then rebuilding the stock to MSY levels could result in more stringent management measures. Consistent with other reef fish stocks with a defined MSST (gag, red grouper, red snapper, vermilion snapper, gray triggerfish, greater amberjack, and hogfish), the Council selected the MSST for gray snapper as $0.50*B_{MSY(or\ MSY\ proxy)}$. The Council determined that because the Magnuson-Stevens Act requires ACLs and AMs to prevent overfishing, and that any overfishing be ended immediately, it is unlikely that sustained overfishing would occur and cause a stock to fall below the MSST. Under this MSST, the result of SEDAR 51 indicate that the gray snapper stock would not be overfished.

Optimum Yield

The Council determined that the OY should be the yield when fishing at 90 percent of $F_{MSY\ (or\ MSY\ proxy)}$. This value would allow for more harvest over the long term and likely have greater social and economic benefits, although it provides less protection to the stock than other values considered (the yield when fishing at 50 and 75 percent of $F_{MSY\ (or\ MSY\ proxy)}$). However, as noted previously, the ACLs and AM control yearly harvest and are designed to prevent overfishing.

Overfishing Limit, Acceptable Biological Catch, Annual Catch Limit, and Annual Catch Target

The current OFL, ABC, and ACL for gray snapper were established in the Generic ACL/AM Amendment using the Council's ABC control rule for stocks that have not been assessed, but are stable over time (76 FR 82044; December 29, 2011). The OFL is equal to 2.88 million lb (1.31 million kg), which is the mean plus 2.0 standard deviations of the annual landings from 1998 through 2008. The ABC is equal to 2.42 million lb (1.1 million kg), which is the mean plus 1.0 standard deviation of the annual landings from 1998 through 2008. The ACL is equal the ABC, and the ACT is 14 percent less than the ACL at 2.08 million lb (0.9 million kg).

Amendment 51 would modify the OFL and ABC consistent with the projections from SEDAR 51 for the MSY proxy selected by the Council and the SSC recommendations. The OFLs would be 2.58 million lb (1.17 million kg) for 2020, and 2.57 million lb (1.166 million kg) for 2021 and subsequent fishing years. The ABCs would be 2.51 million lb (1.14 million kg) for 2020 and subsequent years. The Council then used its ACL/ACT control rule to determine that an 11 percent buffer between the ABCs and ACLs was appropriate to account for management uncertainty. This results in Gulf gray snapper stock ACLs that would be 2.24 million lb (1.02 million), round weight, for the 2020 fishing year. In 2021, and subsequent fishing years, the ACL would be set at 2.23 million lb (1.01 million kg), round weight.

The gray snapper ACT is not currently used for management purposes. Therefore, the Council decided not to set an ACT through Amendment 51.

Proposed Rule for Amendment 51

A proposed rule to implement Amendment 51 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule for Amendment 51 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 51 for Secretarial review, approval, and implementation. Comments on Amendment 51 must be received by April 28, 2020. Comments received during the respective comment periods, whether specifically directed to Amendment 51 or the proposed rule, will be considered by NMFS in its decision to approve, partially approve, or disapprove Amendment 51. Comments received after the comment periods will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 51 or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: February 25, 2020.

Karyl K. Brewster-Geisz,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200219–0059]

RIN 0648–BJ35

Fisheries of the Exclusive Economic Zone Off Alaska; Modifying Seasonal Allocations of Pollock and Pacific Cod for Trawl Catcher Vessels in the Central and Western Gulf of Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 109 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) and to implement a regulatory amendment to the regulations governing pollock fishing in the Gulf of Alaska. This proposed rule will reduce operational and management inefficiencies in the Central Gulf of Alaska and Western Gulf of Alaska trawl catcher vessel pollock and Pacific cod fisheries by reducing regulatory time gaps between the pollock seasons, and changing Gulf of Alaska Pacific cod seasonal apportionments to allow greater harvest opportunities earlier in the year. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the GOA FMP, and other applicable laws.

DATES: Submit comments on or before March 30, 2020.

ADDRESSES: Submit your comments, identified by docket number NOAA–NMFS–2019–0125, by either of the following methods:

• *Federal e-Rulemaking Portal.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0125,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the end of the comment period ends. All comments received are a part of the public record, and NMFS will post the comments for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the draft Environmental Assessment and the Regulatory Impact Review (collectively referred to as the ''Analysis'') prepared for this proposed rule may be obtained from *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Krieger, 907–586–7228 or *joseph.krieger@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority for Action

NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska (GOA) under the GOA FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce (Secretary) approved, the GOA FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the GOA FMP appear at 50 CFR parts 600 and 679. The Council is authorized to prepare and recommend a fishery management plan (FMP) amendment for the conservation and management of a fishery managed under the FMP. NMFS conducts rulemaking to implement FMP amendments and regulatory amendments. FMP amendments and regulations developed by the Council may be implemented by NMFS only after approval by the Secretary.

The Council recommended Amendment 109 to the GOA FMP (Amendment 109) and a regulatory amendment for pollock fisheries in the Gulf of Alaska (GOA). This proposed rule would implement Amendment 109 by changing CGOA and WGOA Pacific cod seasonal apportionments to increase the trawl catcher vessel (CV) sector's A season total allowable catch (TAC) while proportionally decreasing the sector's B season TAC. This proposed rule also would implement the Council's regulatory amendment by combining the Central Gulf of Alaska (CGOA) and Western Gulf of Alaska (WGOA) trawl CV pollock fishery A and B seasons into a single season (redesignated as the A season), and the C and D seasons into a single season (redesignated as the B season), and by changing the annual start date of the redesignated pollock B season from August 25 to September 1. The proposed changes for pollock and Pacific cod would only be applicable to the CGOA and the WGOA, which are comprised of NMFS statistical areas 610 (WGOA) and 620 and 630 (CGOA) (see Figure 3 to part 679). This preamble uses the term ''management area'' to refer to ''statistical area'' to avoid confusion with State of Alaska ''statistical areas.'' Also, the term ''management area'' is commonly used by harvesters and processors to refer to NMFS statistical areas. In recommending Amendment 109 and the regulatory amendment, the Council intends to provide participants with an opportunity to increase fishery yield, increase management flexibility, and potentially decrease prohibited species catch (PSC) in the CGOA and WGOA while not redistributing fishing opportunities between management areas or harvesting sectors.

A notice of availability (NOA) for Amendment 109 was published in the **Federal Register** on February 6, 2020, with comments invited through April 6, 2020. Comments submitted on this proposed rule by the end of the comment period (See **DATES**) will be considered by NMFS and addressed in the response to comments in the final rule. Comments submitted on this proposed rule may address Amendment 109 or this proposed rule. However, all comments addressing Amendment 109 must be received by April 6, 2020, to be considered in the approval/disapproval decision on Amendment 109. Commenters do not need to submit the same comments on both the NOA and this proposed rule. All relevant written comments received by April 6, 2020, whether specifically directed to Amendment 109, this proposed rule, or both, will be considered by NMFS in the approval/disapproval decision for Amendment 109 and addressed in the response to comments in the final rule.

II. Background

This proposed rule would modify the seasonal apportionment of pollock and Pacific cod TAC in the CGOA and WGOA. The purpose of this action is to reduce operational and management inefficiencies in the CGOA and WGOA trawl CV pollock and Pacific cod fisheries by (1) reducing regulatory time gaps between the pollock fishery A and B seasons and the C and D seasons, and (2) changing seasonal Pacific cod apportionments in the GOA to allow greater harvest opportunities earlier in the year. Modifying the seasonal allocations of pollock and Pacific cod could allow the fisheries to more fully harvest the TAC of GOA pollock and Pacific cod, increase management flexibility, and potentially decrease PSC while not redistributing fishing opportunities between management areas or harvest sectors. The following sections describe (1) the affected fisheries participants and the current seasonal allocations of pollock and Pacific cod in the CGOA and WGOA, (2) the need for this action, and (3) this proposed rule.

III. The Affected Fisheries Participants and Current Seasonal Allocations

A. Affected Fisheries Participants

The trawl groundfish fisheries in the GOA include fisheries for pollock, sablefish, several rockfish species, numerous flatfish species, Pacific cod, and other groundfish. Trawl gear captures groundfish by towing a net above or along the ocean floor. This proposed rule would affect the trawl fisheries for pollock and Pacific cod in two specific areas of the GOA: (1) The CGOA regulatory area (comprised of management areas 620 and 630), and (2) the WGOA regulatory area (comprised of management area 610). These specific areas are defined at § 679.2. This proposed action would apply only to the federally permitted CVs using trawl gear to harvest pollock or Pacific cod in management areas 610, 620, and 630 of the GOA. This action would not apply to the Eastern GOA West Yakutat District (management area 640).

Regulations at § 679.4(k) require trawl vessels participating in the GOA pollock and Pacific cod fisheries to possess a License Limitation Program license (LLP). Overall, 124 CV LLPs are endorsed for GOA trawl fishing. Ninety-

seven CV LLPs are endorsed for CGOA trawl fishing and 78 CV LLPs are endorsed for WGOA trawl fishing. Fifty-one LLPs are trawl-endorsed for both areas. Table 4–1 in the Analysis shows the number of vessels that participated in the 2018 federally managed GOA pollock and Pacific cod fisheries, by season and gear type.

B. Current Seasonal Allocations of Pollock and Pacific Cod in the CGOA and WGOA

GOA Pollock

The four pollock seasons for the CGOA and WGOA (management areas 610, 620, and 630) are currently defined in regulations at § 679.23(d)(2) as follows:

A season—From 1200 hours, A.l.t., January 20 to 1200 hours, A.l.t., March 10

B season—From 1200 hours, A.l.t., March 10 to 1200 hours, A.l.t., May 31

C season—From 1200 hours, A.l.t., August 25 to 1200 hours, A.l.t., October 1

D season—From 1200 hours, A.l.t., October 1 to 1200 hours, A.l.t., November 1

Through the annual harvest specifications process, NMFS establishes pollock TACs for management areas 610, 620, and 630 within the CGOA and the WGOA. These TACs are established in proportion to the distribution of the pollock biomass in those areas as determined by the most recent NMFS surveys. In addition, the regulations at § 679.20(a)(5)(iv)(B) state that 25 percent of the combined pollock TAC for the CGOA and WGOA is allocated to each of the four seasons. The seasonal apportionments are then further apportioned across management areas (*i.e.,* management area 610, 620, and 630) based on estimated biomass distribution throughout the year. The most recent example of these allocations is found in the 2019/2020 annual harvest specifications for the GOA (84 FR 9416, March 14, 2019).

Over the last 15 years, the seasonal pollock biomass distribution has shifted substantially, resulting in relatively smaller seasonal apportionments in management area 610—most notably in the A and B seasons—while substantially increasing seasonal apportionments and annual TACs in management area 620 and, to a lesser degree, management area 630. In 2003, management area 610 received 25.00 percent of the A and B season apportionments, and 47.00 percent of the C and D season apportionments. In 2018, management area 610 received only 3.50 percent of the A and B season apportionments, and 36.59 percent of the C and D season apportionments. Over the same period, management area 620 went from 56.00 percent to 72.54 percent of the A season apportionment, and from 66.00 percent to 85.39 percent of the B season apportionment. For the C and D seasons, management area 620 went from 23.00 percent to 26.59 percent of the C and D season apportionments. Seasonal biomass distributions for the WGOA and CGOA pollock regulatory areas are summarized in Table 2–1 in the Analysis. The seasonal biomass distribution aspect of annual harvest specifications is designed so that the pollock fleet is able to harvest fish where they are occurring, and not to allocate harvest opportunities to one area relative to another.

NMFS inseason managers monitor the catch of pollock and close the directed pollock fishery in each management area when they determine the seasonal apportionment will be taken. Because this process is based on many variable factors, sometimes catch exceeds the seasonal apportionment and sometimes catch is less than the seasonal apportionment.

NMFS' objective is to allow for optimal harvest while avoiding an overage of the seasonal apportionment or the annual TAC. TAC that is not harvested in one area or season that cannot be reallocated to a subsequent season is not made available for later harvest. TAC that remains at the end of the D season is not rolled over to the following calendar year.

After each management area's overages or underages are accounted for, NMFS has the ability to reallocate, or ''rollover,'' pollock that is not harvested in one season to the subsequent season in the same or other management area(s) according to a prescribed series of steps that are predicated on the area TAC levels and seasonal apportionments established in the annual harvest specifications and are described in detail in Section 2.1.1 in the Analysis.

Regulations at § 679.20(a)(5)(iv)(B) state that unharvested pollock may be added to a subsequent seasonal allocation provided that the revised seasonal apportionment does not exceed 20 percent of the subsequent season's pollock apportionment for the management area. This provision also states that any rollover of unharvested pollock is applied first to the subsequent season in the same management area, and only then may any remaining pollock be further reallocated to other GOA management areas. The purpose of the rollover is to help fishery participants harvest as much of the TAC as possible. However, the rollover regulations are designed to mitigate incentives for the fleet to underharvest or overharvest the seasonal pollock apportionment in a management area in order to influence the amount of pollock available in the subsequent season.

GOA Pacific Cod

NMFS establishes annual WGOA and CGOA Pacific cod TACs for the WGOA and CGOA and apportions these TACs across two seasons. NMFS apportions 60 percent of the annual WGOA and CGOA Pacific cod TACs to the A season, and apportions 40 percent of the annual WGOA and CGOA Pacific cod TACs to the B season. For vessels deploying trawl gear, the A season occurs from January 20 through June 10, and the B season occurs from September 1 through November 1.

Since the implementation of Amendment 83 to the GOA FMP in 2012 (76 FR 74670, December 1, 2011), NMFS, after subtracting a set-aside for the jig gear sector, also allocates the annual WGOA and CGOA Pacific cod TACs among five sectors in the WGOA and six sectors in the CGOA. Each sector's allocation is apportioned between the A and B seasons in each area, and the ratio for each sector's seasonal apportionment is not required to be a 60:40 percent ratio. However, for all gear (trawl and non-trawl) and operational-type (CV and catcher/processors (C/Ps)) sectors, the total of A season sector apportionments in each area equals 60 percent of the annual Pacific cod TAC, and the total of B season sector apportionments in each area equals 40 percent of the annual Pacific cod TAC.

Regulations at Section 679.20(a)(12)(i) and Tables 2–2 and 2–3 in the Analysis show the seasonal percentage allocations for each sector. These tables illustrate that no sector, in isolation, experiences a 60:40 percent seasonal TAC split. For example, the CGOA trawl CV sector is currently allocated 21.1 percent of the annual CGOA Pacific cod TAC in the A season and 20.5 percent of the annual CGOA Pacific cod TAC in the B season. Those two figures are at a 51:49 percent ratio to each other. The WGOA trawl CV sector is allocated 27.7 percent of the annual WGOA Pacific cod TAC in the A season TAC and 10.7 percent of the annual WGOA Pacific cod TAC in the B season, which results in a 72:28 percent seasonal ratio. The WGOA trawl CVs receive a relatively greater proportion of their annual Pacific cod TAC allocation in the A season, as they do not target Pacific cod in the fall (B season). The sectors that receive a small percentage of the annual

TAC tend to be those that encounter Pacific cod as incidental catch that must be retained (as an Improved Retention/Improved Utilization Program (IR/IU) species) but do not conduct directed fishing for Pacific cod.

Regulations at § 679.20(a)(12)(ii) describe the reallocation of sector allocations ''if [. . . NMFS] determines that a sector will be unable to harvest the entire amount of Pacific cod allocated to [a] sector.'' NMFS publishes these reallocations as inseason actions in the **Federal Register** and posts them on the NMFS Alaska Region website as Information Bulletins. Regulations at § 679.20(a)(12)(ii) also state that NMFS should take into account ''the capability of a sector [. . .] to harvest the remaining Pacific cod TAC.'' There are no set dates upon which reallocations should occur; NMFS relies on its management expertise, as well as communication with the fleets about their expected levels of activity or encounter rates of Pacific cod. In practice, NMFS reallocates Pacific cod that it projects will go unharvested by a sector. The regulations provide a hierarchy that guides preference in reallocations if there are competing needs for additional TAC. The regulations at § 679.20(a)(12)(ii)(B) state that NMFS should consider reallocation to CV sectors first, then reallocation to the combined CV and C/P pot sector, and then to any of the other C/P sectors (trawl and hook-and-line). NMFS provides a record of inseason Pacific cod TAC reallocations on its website. Since 2012, almost all inseason reallocations of Pacific cod have occurred during the B season, and most reallocations flowed from the trawl CV sector; no reallocations have been made to the trawl CV sector.

IV. Need for This Action

This proposed rule addresses concerns that arose from a series of discussion papers that were presented to the Council in 2017, 2018, and 2019. The discussion papers examined the amount of uncaught Pacific cod TAC in all gear sectors during the WGOA and CGOA B season, options for changing WGOA and CGOA pollock and Pacific cod seasonal allocations with the goal of improving efficiency in fishery management, and whether delaying the start of the WGOA and CGOA pollock C season from August 25 to September 1 might provide operational benefits to vessels and processors that also engage in salmon fisheries or groundfish fisheries outside of the GOA.

For the pollock fishery, status quo management can result in time gaps between the A and B seasons and between the C and D seasons. The time gaps vary in length depending on the pace of fishing and TAC utilization during the A and C seasons. Table 4–8 in Section 4.5.1.2 of the Analysis shows instances where fisheries were closed for up to 80 percent of a season when the pollock TAC was taken quickly. In other cases, NMFS has closed directed fishing for pollock toward the very end of one season, and before another season has started, resulting in closures that lasted as little as one day. For example, NMFS has closed the pollock C season during the final four days of the season in management areas 610 and 630 on five occasions from 2012 through 2017.

The Council and NMFS acknowledge that these time gaps between seasons create operational inefficiencies and increase costs compared to a continuous fishery. For harvesters, operational inefficiencies could include fuel costs to transit back and forth to fishing grounds, lost labor productivity (*i.e.,* more days to earn the same income), missed windows of good weather, inability to fish during periods of high catch per unit effort (CPUE), or inability to fish during periods of high pollock roe content (and higher value product) that can occur between the A and B seasons. Processors also experience reduced productivity if labor and equipment are idled. A long time gap between seasons could also erode the real-time knowledge of the fishing grounds that skippers develop over the course of a continuous season. That knowledge is often key to achieving higher CPUE and minimizing bycatch of non-target species and PSC. Section 4.6.1.1.1 of the Analysis describes these inefficiencies in greater detail. Harvesters acknowledge that ''pulse'' fishing can limit the ability of the fleet to avoid fishing during periods of higher bycatch of species such as Chinook salmon and halibut and can limit the ability of the fleet to fish during periods of lower bycatch. In contrast, combining seasons and reducing time gaps could give the fleet more flexibility to avoid fishing in times of expected high Chinook salmon PSC rates by providing a lower risk of running out of time to fully harvest a seasonal TAC. Section 3.3 of the Analysis describes bycatch rates in the pollock and Pacific cod fisheries and the factors that can result in higher, or lower, bycatch of various species.

In recommending regulatory changes for the WGOA and CGOA pollock fishery, the Council also sought to address a concern about the amount of pollock TAC that may go unharvested in a season because of existing restrictions on TAC rollover. As described above, regulations at § 679.20(a)(5)(iv)(B) state that unharvested pollock in one season may be added to a subsequent seasonal allocation provided that the revised seasonal apportionment does not exceed 20 percent of the subsequent season's pollock apportionment for the management area (see Section 2.1.1 in the Analysis for more detail on rollover allocation procedures). The rollover limits are intended to prevent the concentration of annual fishing activity in a given time and space so that it does not adversely affect Steller sea lions (see Section 3.4 in the Analysis for more detail on effects to Steller sea lions). Because only a low percentage of a seasonal apportionment can be rolled over to the following season, the cap on rollovers can result in unharvested TAC that cannot be caught in the subsequent season. Because the 20 percent rollover cap must be ''filled'' for the next season in the area where an underharvest occurred before additional TAC may be allocated to other areas, rollover between areas is less frequent but not uncommon. In cases of severely underharvested seasonal apportionments, rollover caps can result in a situation where all areas receive the maximum possible apportionment for the following season, but an amount still remains that cannot be reallocated and is thus not available to be fished. The Council determined, and NMFS agrees, that combining the A/B and C/D pollock seasons better addresses the purpose and need for the proposed action than increasing the amount of pollock that can be rolled over to subsequent seasons.

As described in Section 2.2 of the Analysis, options considered under Alternative 2 included increasing the amount of unharvested pollock that may be reallocated from one season to the following season from 20 percent (status quo) to either 25 percent (sub-option 1) or 30 percent (sub-option 2). The Council's recommendation to maintain the 20 percent rollover cap was responsive to public testimony that underharvest in one season might continue into the following season, especially if the underharvest is due to poor fishing conditions in the underharvested area. As such, a higher rollover cap might increase the possibility of leaving fish stranded because TAC cannot be rolled over to other areas. This is further explained in Section 4.6.3 of the Analysis.

In addition, this proposed rule would delay the start of the redesignated pollock B season from August 25 to September 1 to provide operational benefits to vessels and processors that also engage in salmon fisheries or

groundfish fisheries outside of the GOA. A later pollock start date would minimize the potential for the redesignated pollock B season to overlap the end of salmon harvest and reduce the operational challenges that can occur with harvesters and processors that participate in both of these fisheries. Section 4.6.2.1 of the Analysis describes the operational inefficiencies and costs for harvesters and processors that can occur when processors cannot process peak capacities of pollock and salmon at the same time, resulting in limited deliveries of one species or the other.

To address concerns related to management inefficiencies in the GOA pollock fishery, the Council recommended, and NMFS proposes, regulations that would (1) combine the A and B season into a single season (redesignated as the A season), combine the C and D season into a single season (redesignated as the B season), and allocate pollock among the redesignated A season and redesignated B season at 50 percent to the A season and 50 percent to the B season, applicable to management areas 610, 620, and 630; and (2) change the start date of the redesignated B pollock season in the GOA from August 25 to September 1, resulting in a redesignated B season that runs from September 1 to November 1.

In recent years, trawl CVs in the GOA Pacific cod fishery only conduct directed fishing for B season Pacific cod in the CGOA. The WGOA trawl CV sector receives 10.7 percent of the total annual WGOA Pacific cod TAC in the B season (see Table 2–2 in the Analysis), but it goes largely unharvested by trawl vessels except as incidental catch during the C and D seasons in the pollock trawl fishery. In the CGOA, where the trawl CV fishery is prosecuted, harvest of Pacific cod in the B season lags A season harvest by a significant margin in percentage terms. Table 3–4 in the Analysis shows that harvest of CGOA B season Pacific cod TAC was typically below 50 percent and began to fall precipitously in the years leading up to the 2018 reduction in ABC. While industry participants have reported that fish size and flesh quality can be better in the fall B season than in the late-winter A season due to the length of time removed from spawning activity, GOA Pacific cod do not tend to aggregate in the fall in a manner that lends itself to efficient harvest with trawl gear. As a result, a significant portion of the GOA Pacific cod B season TAC is left unharvested by trawl CVs, while the A season TAC is more fully prosecuted by trawl CVs.

The Council acknowledged the changes that have occured in the B season Pacific cod fishery, resulting in unharvested Pacific TAC. To address this concern, the Council recommended Amendment 109 for Pacific cod fisheries in the GOA. Proposed regulations to implement Amendment 109 would increase trawl CV allocations of Pacific cod TAC in the CGOA and WGOA during the A season while proportionally decreasing trawl CV allocations of Pacific cod TAC in the CGOA and WGOA during the B season. Specifically, 25.29364 percent of the annual CGOA Pacific cod TAC would be allocated to the trawl CV sector during the A season and 16.29047 percent would be allocated to the B season. Additionally, 31.54 percent of the annual WGOA Pacific cod TAC would be allocated to the trawl CV sector during the A season and 6.86 percent would be allocated to the B season.

Options considered under Alternative 3 explored shifting Pacific cod TAC from the B season to the A season in 5 percent increments relative to status quo. For example, the CGOA trawl CV sector is currently allocated 21.14 percent of the total CGOA A season TAC and 20.45 percent of the total CGOA B season TAC. Those two figures are at a 51:49 percent ratio to each other. Option 1 sought a 5 percent change in relation to the status quo ratio or, in other words, a 56:44 percent ratio. Option 2 results in a 61:39 percent ratio for CGOA trawl CVs, and Option 3 would have resulted in a 66:34 percent ratio. The same method applied to the WGOA trawl CV sector (see Section 2.3 in the Analysis for more detail).

The Council's recommendation of Alternative 3 Option 2 strikes a balance between responding to the purpose and need and considering effects to marine mammals. The Pacific cod seasons were initially established to mitigate concerns surrounding prey availability for Steller sea lions. While the Council concluded that shifting a small amount of TAC from the B season to the A season meets its purpose and need for action, the Council stated that a precautionary approach is prudent given the potential effects on Steller sea lions (See Section 3.4.2 of the Analysis).

In adopting its preferred alternatives, the Council considered effects of the proposed action on Steller sea lions. For the CGOA and WGOA pollock trawl fishery, Section 4.6.2 of the Analysis explains that various factors affect pollock harvest patterns, including but not limited to fish aggregation and quality (roe content), market availability, encounter rates with PSC-limited species, high and low TAC years for pollock, economic opportunities in—or trade-offs with—other fisheries, and other individual vessel business decisions. These factors can be difficult to predict with accuracy, with respect to this action, at this time. Additionally, many constraints that dictate the timing and pace of the pollock fishery would remain, even if seasons were combined and the fleet had more available TAC at any given moment with which to optimize its fishing. Those constraints would be expected to prevent harvest patterns from changing in a significantly different manner under the proposed rule than seen in the past.

Finally, changing the start of the combined C/D season from August 25 to September 1 would not change anticipated effects to the pollock stock (as noted in Section 3.2.3 of the Analysis), and therefore does not change anticipated impacts to prey availability for Steller sea lions.

For the Pacific cod fishery in the CGOA and WGOA, the overall proposed change in seasonal allocation across all sectors combined is a modest 4 percent from the B season to the A season. This modest shift in seasonal allocation is not expected to result in an increase in vessel participation, nor a change in the spatial distribution of the fishing vessels (as noted in Section 4.6.4. of the Analysis).

For the reasons outlined above, the Council and NFMS do not expect the implementation of Amendment 109 to result in discernable spatial harvest concentration or a decrease in temporal dispersion of harvest which would significantly affect prey availability for Steller sea lions.

In recommending Amendment 109, the Council has chosen a portion of each action alternative for each of the GOA CV pollock and Pacific cod fisheries. This blended action will provide the greatest improvements to operational and management efficiency of all the alternatives while not re-distributing allocations of pollock or Pacific cod between management areas or among participants, which is a stated objective in the purpose and need for this action.

V. This Proposed Rule

CGOA and WGOA Pollock Fishery

This proposed rule would revise § 679.20(a)(5)(iv)(B) to combine the GOA Western and Central regulatory areas' pollock A and B seasons into a single season (redesignated as the A season) and combine C and D seasons into a single season (redesignated as the B season). This proposed rule also would apportion 50 percent of the CGOA and WGOA pollock TAC to the

redesignated A season and 50 percent to the redesignated B season. These proposed changes do not affect the relative amount of CGOA and WGOA pollock TAC apportioned to each season because current regulations specify that the TAC be evenly apportioned among each GOA pollock season.

This proposed rule would revise § 679.23(d)(2) to change the dates of the redesignated A season as January 20 through May 31 and the dates of the redesignated B season as September 1 through November 1. This proposed revision effectively leaves the duration of the redesignated A season unchanged from the duration of the current A and B seasons, but shortens the duration of the redesignated B season (September 1 to November 1) from the duration of the current C and D seasons (August 25 to November 1).

GOA Pacific Cod Fishery

This proposed rule would revise § 679.20(a)(12)(i) to specify the new seasonal apportionments of Pacific cod TAC for the CV trawl sectors in the CGOA and the WGOA. Although the overall ratio of A and B seasonal apportionments of Pacific cod for the trawl CV sector would be changed, this proposed rule would not affect the seasonal apportionments of Pacific cod to any of the other sectors. The seasonal apportionment of Pacific cod will remain unchanged for all other sectors in the CGOA and the WGOA.

This proposed rule would also revise the tables at § 679.20(a)(12)(i)(A) and (B) to change the seasonal allowance of Pacific cod for trawl CVs in the WGOA and the CGOA. For both the CGOA and the WGOA, the A season allowance would increase by approximately 4 percent while the B season allowance would decrease by approximately 4 percent.

VI. Classification

Pursuant to §§ 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Council's regulatory amendment for GOA pollock, Amendment 109 to the GOA FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for the 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.

Regulatory Impact Review (RIR)

An RIR was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS is recommending Amendment 109 and the regulatory revisions in this proposed rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below.

Certification Under the Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

This proposed rule would directly regulate the owners and operators of certain trawl CVs that target GOA pollock and Pacific cod. Under the Regulatory Flexibility Act (RFA), businesses classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts not in excess of $11.0 million for all affiliated operations worldwide, regardless of the type of fishing operation—*i.e.,* finfish or shellfish (81 FR 4469; January 26, 2016).

In 2017, the most recent year for which ex-vessel revenue data are available, 68 CVs participated in GOA pollock or Pacific cod trawl fisheries. Of those, 32 are classified as small entities based on individual vessel revenue. The remaining 36 vessels would be considered small entities based only on their individual vessel revenue. However, analysis of directly regulated entity revenue to determine entity size as measured against the commercial fishing threshold of $11.0 million must also consider ownership affiliations and other contractual affiliations of the entities, worldwide. Of these 36 participating vessels, 16 are affiliated with other vessels and their operating entities via affiliations with Central GOA Rockfish Program cooperatives. Additionally, the remaining 20 vessel operations are affiliated via American Fisheries Act cooperatives. Thus these 36 operating entities are not considered small entities for RFA purposes. There are also 43 inactive licenses that lack any recent associated revenue history and the owners of these licenses are considered potentially directly regulated small entities.

The general purpose of this action, as identified in the RIR, is to enhance the operational and management efficiency of the GOA pollock and Pacific cod trawl fisheries with the goal of improving efficiency in fishery management and prosecution while providing additional value from the fishery by allowing participants to focus effort when target groundfish species are available and of high product quality. The RIR determined that this action would provide harvesters and processors that prosecute GOA pollock with flexibility to maximize yield by fishing when the resource is most available and productive (*e.g.,* aggregation or roe content). The flexibility provided by this action might also allow harvesters to minimize PSC in certain cases. Essentially, this action provides an additional ''tool'' for participants to optimize their participation to the extent possible. With regard to directly regulated small entities operating in the GOA pollock and Pacific cod trawl fisheries, this action is a beneficial action. The proposed action will not impose any adverse economic impacts on any directly regulated small entities. This proposed action, therefore, is not expected to have a significant economic impact on a substantial number of directly regulated small entities. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 20, 2020.

Samuel D. Rauch III,

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

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

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

■ 2. In § 679.20, revise paragraphs (a)(5)(iv)(B), (a)(12)(i) introductory text, (a)(12)(i)(A)(*3*), and (a)(12)(i)(B)(*4*) to read as follows:

§ 679.20 General Limitations.

* * * * *

(a) * * *

(5) * * *

(iv) * * *

(B) *GOA Western and Central Regulatory Areas seasonal apportionments.* Each apportionment established under paragraph (a)(5)(iv)(A) of this section will be divided into two seasonal apportionments corresponding to the two fishing seasons specified in § 679.23(d)(2) as follows: A Season, 50 percent; and B Season, 50 percent. Within any fishing year, underharvest or overharvest of a seasonal apportionment may be added to or subtracted from remaining seasonal apportionments in a manner to be determined by the Regional Administrator, provided that any revised seasonal apportionment does not exceed 20 percent of the seasonal TAC apportionment for the statistical area. The reapportionment of underharvest will be applied to the subsequent season within the same statistical area up to the 20 percent limit specified in this paragraph. Any underharvest remaining beyond the 20 percent limit may be further apportioned to the subsequent season in the other statistical areas, in proportion to estimated biomass and in an amount no more than 20 percent of the seasonal TAC apportionment for the statistical area.

* * * * *

(12) * * *

(i) *Seasonal allowances by sector.* The Western and Central GOA Pacific cod TACs will be seasonally apportioned to each sector such that 63.84 percent of the Western GOA TAC is apportioned to the A season and 36.16 percent of the Western GOA TAC is apportioned to the B season, and 64.16 percent of the Central GOA TAC is apportioned to the A season and 35.84 percent of the Central GOA TAC is apportioned to the B season, as specified in § 679.23(d)(3).

(A) * * *

Sector	Gear type	Operation type	Seasonal allowances	
			A season (in percent)	B season (in percent)
*	*	*	*	*
(*3*)	Trawl	Catcher vessel	31.54	6.86
*	*	*	*	*

(B) * * *

Sector	Gear type	Operation type	Length overall in feet	Seasonal allowances	
				A season (in percent)	B season (in percent)
*	*	*	*	*	*
(*4*)	Trawl	Catcher vessel	Any	25.29364	16.29047
*	*	*	*	*	*

* * * * *

■ 3. In § 679.23, revise paragraph (d)(2) to read as follows:

§ 679.23 Seasons.

* * * * *

(d) * * *

(2) *Directed fishing for pollock.* Subject to other provisions of this part, directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the following two seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., May 31; and

(ii) *B season.* From 1200 hours, A.l.t., September 1 through 1200 hours, A.l.t., November 1.

* * * * *

[FR Doc. 2020–03777 Filed 2–27–20; 8:45 am]

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Notices

Federal Register

Vol. 85, No. 40

Friday, February 28, 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

Commodity Credit Corporation

Rural Business-Cooperative Service

Announcement of Future Competitive Grant Funds Availability for Higher Blends Infrastructure Incentive Program (HBIIP) for Fiscal Year 2020

AGENCY: Commodity Credit Corporation and the Rural Business Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) and the Rural Business-Cooperative Service (RBCS), a Rural Development agency of the United States Department of Agriculture (USDA), intend to announce in a Notice of Funding Availability (NOFA) the availability of up to $100 million in competitive grants to eligible entities for activities designed to expand the sales and use of renewable fuels under the Higher Blends Infrastructure Incentive Program (HBIIP). The purpose of this notice is to alert prospective participants and stakeholders of the Agencies' intentions to jointly publish a NOFA by mid-spring which will provide specific program information and requirements.

FOR FURTHER INFORMATION CONTACT: Anthony Crooks: telephone (202)205–9322, email: *EnergyPrograms@usda.gov.* Persons with disabilities that require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202)720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Purpose of the HBIIP

The overall goal of HBIIP is to increase the sales and use of higher blends of ethanol and biodiesel. HBIIP is intended to encourage a more comprehensive approach to marketing higher blend levels by sharing the costs related to and/or offering sales incentives for the installation of fuel pumps, related equipment, and infrastructure.

Under the HBIIP, funds will be made directly available to assist transportation fueling and biodiesel distribution facilities with converting to higher ethanol and biodiesel blend friendly status by sharing the costs related to and/or offering sales incentives for the installation of fuel pumps, related equipment, and infrastructure. Cost-share grants and/or incentives will be made available for higher fuel ethanol/biodiesel blends such as ''E15'' and ''B20'' (or higher), at vehicle fueling locations, including, but not limited to, local fueling stations, convenience stores (CS), hypermarket fueling stations (HFS), and/or fleet facilities.

The Commodity Credit Corporation (CCC) is an agency and instrumentality of the United States within the Department of Agriculture and operates under the supervision of the Secretary of Agriculture. Among the activities that section 5 of the CCC Charter Act authorizes CCC to undertake are actions to:

- Make available materials and facilities required in connection with the production and marketing of agricultural commodities (other than tobacco) and
- Increase the domestic consumption of agricultural commodities (other than tobacco) by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.

Under this authority, CCC will make available up to $100 million in the form of grants and/or sales incentives to eligible entities to assist with the implementation of activities to expand the infrastructure for renewable fuels derived from agricultural products produced in the United States. HBIIP will be administered under the general supervision of RBCS.

Applicants may enter into arrangements with private entities such as, but not limited to, commercial vendors of fuels, agricultural commodity promotional organizations, Tribes, and other entities interested in the renewable fuels in order to secure such non-Federal funds or in-kind contributions.

Funds made available under HBIIP may only be used for infrastructure to support higher biofuel blend sales and use.

Eligibility

Transportation fueling and biodiesel distribution facilities may apply for this program. Eligible entities would include: Retail fueling stations, convenience stores, hypermarket fueling stations, fleet facilities, and similar entities with equivalent capital investments. Consideration will also be given to biodiesel terminal operations and home heating oil distribution centers or equivalent entities.

The following information provides a general overview of the requirements for eligible applications. Application requirements and other important information will be provided in the forthcoming NOFA and on the HBIIP web page *https://www.rd.usda.gov/HBIIP*.

Cost-Sharing or Matching

Applicants will certify and demonstrate that any required matching funds are available during the grant period and provide appropriate documentation with the application.

There are a number of existing or prior and ongoing State-led programs and private sector efforts to help provide funding for higher blend infrastructure. These programs may be included as part of any matching contribution requirement. However, the application must show how the HBIIP grant will add to the infrastructure that fosters biofuel sales and use. HBIIP funds are intended to provide additional incentives.

Eligible funds must be:

- Spent on eligible expenses during the grant period.
- From eligible sources.
- Spent in advance or as a pro-rata portion of grant funds being spent.
- Provided either by the applicant or a third party in the form of cash or an eligible in-kind contribution.

Eligible funds cannot include:

- Employee's and/or member's time.
- Other Federal grant funds unless provided by authorizing legislation.
- Cash or in-kind contributions donated outside the grant period.
- Over-valued in-kind contributions.

Multiple Application Eligibility

Only one application may be submitted per applicant. However, an application may include proposed investments for more than one location.

Grant Period

An application must include no more than a one-year grant period, or it will not be considered for funding.

Application Evaluation Criteria

USDA will evaluate how the applications will increase the sale and use of fuel using the evaluation criteria specified in the NOFA and *Grants.gov* to select the applications that best support the HBIIP goals. Information required in a proposal will be detailed in the forthcoming NOFA.

Process for Evaluation of Applications and Award of Grants

Each application will be reviewed to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements specified in the NOFA.

Priority Scoring Criteria

Applications will be evaluated using the Priority Scoring Criteria listed in the NOFA. Evaluators will base scores only on the information provided or cross-referenced by page number in each individual evaluation criterion.

Federal Funding Accountability and Transparency Act

Applicants must be registered in the System for Award Management (SAM) prior to submitting an application; which can be obtained at no cost via a toll-free request line at (866) 705–5711 or online at *https://www.sam.gov/SAM/*. Registration of a new entity in SAM requires an original, signed, and notarized letter stating that the applicant is the authorized Entity Administrator, before the registration will be activated. All recipients of Federal financial grant assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

All applicants except those that are individuals, in accordance with 2 CFR part 25, must have a DUNS number, which can be obtained at no cost via a toll-free request line at (866) 705–5711 or online at *http://fedgov.dnb.com/webform.*

To use *Grants.gov,* you must already have a DUNS number and you must also be registered and maintain registration in SAM. We strongly recommend that you do not wait until the application deadline date to begin the application process through *Grants.gov*.

Grants.gov. Applications must include electronic signatures. Original signatures may be required if funds are awarded. After electronically applying through *Grants.gov,* you will receive an automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

Bette B. Brand,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2020–03831 Filed 2–27–20; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Notice of Solicitation of Applications (NOSA) for the Strategic Economic and Community Development Program for Fiscal Year (FY) 2020

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: Section 6401 of the Agricultural Act of 2018 (2018 Farm Bill) enables the Secretary of Agriculture to provide priority to projects that support Strategic Economic and Community Investment plans. The 2018 Farm Bill re-authorized the Strategic Economic and Community Development (SECD) priority, Section 6025 of the Agricultural Act of 2014 (2014 Farm Bill) with some modifications. Until the rulemaking process is finalized to incorporate the new changes, SECD will continue to operate using the existing regulation. In FY 2020, the Agency implements SECD through reserving funds from the ''underlying programs''. This Notice applies to applicants who will be submitting applications for the ''underlying programs''. This notice establishes the above mentioned priority effective upon the publication of this notice.

DATES: To apply for SECD priority points in FY 2020, applicants must submit Form RD 1980–88, ''Strategic Economic and Community Development (section 6025) Priority,'' by 5:00 p.m. Eastern Time on June 30, 2020.

All applicants are responsible for any additional expenses incurred in preparing and submitting applications.

ADDRESSES: Submit applications to the USDA Rural Development Area Office servicing the area where the project is located. A list of the USDA Rural Development Area Offices can be found listed by state at: *http://www.rd.usda.gov/contact-us/state-offices.*

FOR FURTHER INFORMATION CONTACT: For more information, please contact your respective Rural Development State Office listed here: *http://www.rd.usda.gov/browse-state* A checklist of all required application information for regional planning priority can be found at: *https://www.rd.usda.gov/programs-services/strategic-economic-and-community-development.*

For all other inquiries, contact Innovation Center Partnership Division Regional Coordinators as follows:

- Midwest Region—Christine Sorensen: 202–568–9832, *Christine.Sorensen@usda.gov.*
- Northeast Region—Angela Callie: 202 568 9738, *Angela.Callie@usda.gov.*
- Southern Region—Greg Dale: (870) 633–3055 Ext. 123, *Gregory.Dale@usda.gov.*
- Western Region—Tim O'Connell: (503) 414–3396, *Tim.Oconnell@usda.gov.*
- National Office— Greg Batson, Rural Development Innovation Center, U.S. Department of Agriculture, Stop 0793, 1400 Independence Avenue SW, Washington, DC 20250–0783, Telephone: 573–239–2945. Email: *gregory.batson@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866, as amended by Executive Order 13258.

I. Background

Section 6401 of the 2018 Farm Bill re-authorized Section 6025 of the Agricultural Act of 2014 (2014 Farm Bill) with some modifications. The provision provides priority to projects that support strategic economic development or community investment plans when applying for program funds under the rural development mission area. Until the rulemaking process is finalized to incorporate the new changes, SECD will continue to operate using the existing regulation. In FY 2020, the Agency will reserve funds from the ''underlying programs'', using SECD regulation 7 CFR 1980, Subpart K. This Notice provides applicants with

eligible projects the opportunity to apply for reserve funding in FY 2020.

A. Statutory Authority

This priority is authorized under Section 6401 of the 2018 Farm Bill.

B. Programs

Section 6401 of the 2018 Farm Bill authorizes any program under the Consolidated Farm and Rural Development Act (7 U.S.C. 2008v), as determined by the Secretary, to give priority to an application that supports the implementation of strategic community investment plans. In FY 2020, the Agency implements SECD through reserving funds from the ''underlying programs'', using SECD regulation 7 CFR 1980, Subpart K.

Accordingly, the Agency is giving regional planning priority through the following Rural Development programs:

- Community Facility Loans; see 7 CFR 1942, Subpart A
- Fire and Rescue and Other Small Community Facilities Projects; see 7 CFR 1942, Subpart C
- Community Facilities Grants; see 7 CFR 3570, Subpart B
- Community Programs Guaranteed Loans; see 7 CFR 3575
- Water and Waste Disposal Programs Guaranteed Loans; see 7 CFR 1779
- Water and Waste Loans and Grants; see 7 CFR 1780
- Business and Industry Guaranteed Loans; see 7 CFR 4279
- Rural Business Development Grants; see 7 CFR 4280, Subpart E

II. Award Information

Type of Awards: Guaranteed loans, direct loans and grants.

Fiscal Year Funds: FY 2020 appropriated funds.

Available Funds: The amount of funds available will depend on the amount of funds the underlying programs have available during the fiscal year.

Regional Planning Priority

For FY 2020 applications, the following table specifies the percentage of funds being reserved:

Program	Percentage of funds reserved for SECD
Community Facility Loans	10
Fire and Rescue and Other Small Community Facilities Projects	10
Community Facilities Grant Program	10
Community Programs Guaranteed Loans	10
Water and Waste Disposal Programs Guaranteed Loans	10
Water and Waste Loans	5
Water and Waste Grants	3
Business and Industry Guaranteed Loan	5
Rural Business Development Grants	5

Award Amounts: Guaranteed loans, direct loans and grants will be awarded in amounts consistent with each applicable underlying program.

Award Dates: Awards for applications submitted in FY 2020 will be made on or before June 30, 2020. The agency will return any reserved funds that are not obligated by June 30, 2020 to the underlying program's regular funding account, for obligation to all eligible projects in that program.

III. Eligibility Information

A. Eligible Requirements

To be considered for SECD priority points, both the applicant and project must meet the eligibility requirements of the underlying program. These requirements vary among the underlying programs and applicants should refer to the regulations for those programs, which are referenced in I. A. of this Notice.

The agency continues to make available additional priority for regional planning through the existing regulation without making any changes to the applicant eligibility requirements of the underlying programs. The regulation includes three criteria that a project must meet in order to be considered for priority points (see 7 CFR 1980.1010):

The first criterion, as noted above, is that the project meets the applicable eligibility requirements of the underlying program for which the applicant is applying.

The second criterion is that the project is ''carried out in a rural area'' as defined in 7 CFR 1980.1005. As defined, this means either the entire project is physically located in a rural area or all of the beneficiaries of the service(s) provided through the project must either reside in or be located in a rural area. Note that the definition of ''rural'' varies among the underlying programs and the Section 6025 regulation does not change those definitions, therefore, the applicable program regulations as outlined in I.A. should be reviewed as necessary.

The third criterion is that the project supports the implementation of a strategic economic development or community investment plan on a multi-jurisdictional basis as defined in 7 CFR 1980.1005.

In order to be considered for the reserved funds from underlying programs in FY 2020, applicants (1) meet all requirements of the underlying program; (2) meet all requirements in accordance with 7 CFR Subpart K (see 7 CFR 1980.1010); and (3) submit Form RD 1980–88 and supporting documentation. Form RD 1980–88 requests such information as (see 7 CFR 1980.1015):

- Identification of whether the applicant includes a State, county, municipal, or tribal government;
- Identification by name of the plan being supported by the project, the date the plan became effective and is to remain in effect, and a detailed description of how the project directly supports one or more of the plan's objectives;
- Sufficient information to show that the project will be carried out solely in a rural area; and
- Identification of any current or previous applications the applicant has submitted for funds from the underlying programs.

B. Cost Sharing or Matching

Any and all cost sharing, matching, and cost participation requirements of the applicable underlying program apply to projects seeking SECD priority points. The Section 6025 regulation does not change such requirements.

C. Other Eligibility Requirements

Any and all other eligibility requirements (beyond those identified in III.A of this Notice) found in the

underlying programs apply to applicants, their projects, and the beneficiaries of those projects are unchanged by either this Notice or the Section 6025 regulation.

IV. Application Evaluation and Selection for Underlying Programs Funds

All FY 2020 applications for underlying programs will be reviewed, evaluated, and scored based on the underlying program's scoring criteria. This Notice does not affect that process. This Notice only affects the scoring of SECD applications competing for an underlying program's funds.

A. Scoring of Applications

All eligible and complete applications competing for an underlying program's funds will be evaluated and scored based on the criteria of the applicable underlying program, whether or not the applicant seeks regional planning priority points.

For applicants wishing to be considered for the reserved funds in FY 2020, the Agency will review, evaluate, and score each Form RD 1980–88, based on the criteria specified in 7 CFR 1980.1020, to award the SECD priority points.

B. Selection Process

The Agency will select the highest scoring applications competing for an underlying program's funds based on the award process for the underlying program to determine which projects receive funds except that:

- An application's total score will be determined in accordance with section IV.A. of this Notice and
- To the extent provided by the underlying programs in this Notice, the Agency will encourage awarding ''SECD priority'' to qualifying applications.

VI. Award Administration Information

A. Award Notices

The Agency will notify SECD applicants who receive funding in a manner consistent with award notifications for the underlying program.

B. Administrative and National Policy Requirements

Any and all additional requirements of the applicable underlying programs apply to projects receiving funding in response to this Notice. Please see the regulations for the applicable underlying program.

C. Reporting Requirements

Any and all post-award reporting requirements contained in the underlying program apply to all projects receiving funding in response to this Notice.

Applicants who are selected for funding in FY 2020 in response to this Notice (*i.e.,* those applicants who submit Form RD 1980–88 and receive funding from the underlying program's funds) are required to submit information in accordance with 7 CFR 1980.1026. This information is on the project's measures, metrics, and outcomes that the awardee would already be submitting to the appropriate entity(ies) monitoring the implementation of the plan.

VII. Additional Information

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in 7 CFR part 1980, subpart K, have been approved by OMB under OMB Control Number 0570–0068.

National Environmental Policy Act

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, ''Environmental Policies.'' It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, neither an Environmental Assessment nor an Environmental Impact Statement is required.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must have a DUNS number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform.* Similarly, all grant applicants must be registered in the System for Award Management (SAM) prior to submitting an application. Applicants may register for the SAM at *http://www.sam.gov/SAM.* All recipients of Federal financial grant assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; *fax:* (202) 690–7442; or *email: program.intake@usda.gov.*

Donald DJ LaVoy,

Deputy Under Secretary, Rural Development.

[FR Doc. 2020–04031 Filed 2–27–20; 8:45 am]

BILLING CODE 3410–XY–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Notice of Guidance Documents

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of guidance documents.

SUMMARY: We, the Architectural and Transportation Barriers Compliance Board (hereafter, ''Access Board,'' ''Board,'' or ''we''), are issuing this notice to announce that, pursuant to Executive Order 13891, we have collected and listed all of our guidance documents on our website which can be found at *http://www.access-board.gov/guidance.*

FOR FURTHER INFORMATION CONTACT: Christopher Kuczynski, (202) 272–0042, *kuczynski@access-board.gov.*

SUPPLEMENTARY INFORMATION: Executive Order 13891 requires each agency to establish on its website ''a single, searchable, indexed database that contains or links all guidance documents in effect.'' (84 FR 55235, Oct. 9, 2019). In response, the Access Board has identified all of its guidance documents and co-located them at *https://www.access-board.gov/guidance.*

The Access Board is a small, independent federal agency dedicated to promoting equality for people with disabilities through, among other things, developing and maintaining accessibility guidelines under the Americans with Disabilities Act (ADA) and the Architectural Barriers Act (ABA). Under titles II and III of the ADA, the Board develops and maintains accessibility guidelines for buildings, facilities, and transit vehicles. *See* 42 U.S.C. 12204; *see also* 29 U.S.C 792(b)(3)(B) & (b)(10). These ADA Accessibility Guidelines serve as the basis for standards issued by the departments of Justice (DOJ) and Transportation (DOT) which enforce the ADA. *See, e.g.,* 42 U.S.C. 12134(c), 12149(b), 12163, 12186(c). The ABA requires facilities designed, built, altered, or leased with federal funds to be accessible to people with disabilities. The Access Board maintains the accessibility guidelines upon which the ABA standards are based and enforces these standards through the investigation of complaints. In addition to promulgating regulations, the Board is charged with developing advisory information and providing technical assistance on its regulations, titles II and III of the ADA, and the ABA. *See* 29 U.S.C. 792(b)(2); 42 U.S.C. 2131 *et seq.* and 12181 *et seq.* The majority of Access Board guidance documents explain and illustrate requirements in the ADA or ABA Standards. These guides are non-binding and simply help clarify the applicable standards and provide clearly labeled recommendations for optional best practices that exceed the minimum requirements.

The Board also issues standards and guidelines under Section 508 of the Rehabilitation Act, 29 U.S.C. 794d, and Section 255 of the Communications Act. Section 508 requires that information and communication technology (ICT) purchased, maintained, or used by the federal government be readily accessible to, and usable by, individuals with disabilities. Section 255 of the Communication Act, 47 U.S.C. 255, requires that telecommunications services and equipment be accessible to, and usable by, individuals with disabilities where readily achievable.

The guidance documents listed on the Board's website are divided into seven separate categories.

1. Guidance on the Americans With Disabilities Act (ADA) Accessibility Standards

These guidance documents, while listed separately, together make up a single guide to the ADA Standards. The guide is divided by chapters that correspond to the applicable Chapters in the ADA Standards. In the beginning of the Guide to the ADA Accessibility Standards, the Board notes that it ''explains requirements in the current editions of the ADA Standards issued by the DOJ and DOT. It was developed by the U.S. Access Board in cooperation with DOJ and DOT. It is important to use this guide along with a complete copy of the ADA Standards as it explains, but does not contain or reprint, the text of the ADA Standards.'' *See https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards/about-this-guide.*

2. Guidance on the Architectural Barriers Act (ABA) Accessibility Standards

This document is similar to the guide on the ADA Standards in that it is divided into multiple chapters that correspond to the chapters of the ABA Standards. Similarly, this guide explains current editions of the ABA Standards issued by the Department of Defense, the General Services Administration, and the U.S. Postal Service, which are based on, and are substantively similar to, the Board's updated ABA Accessibility Guidelines (2004).'' *See https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/guide-to-the-aba-standards/about-this-guide.* Additionally, the Board provides a disclaimer which states ''[i]t is important to use this guide along with a complete copy of the ABA Standards as it explains, but does not contain or reprint, the text of the ABA Standards.''

3. Animations on the ADA and ABA Standards

The Access Board has created multiple short animations which provide a visual and audible illustration of sections of the ADA and ABA Standards. These animations follow the same structure of the guides on the ADA and ABA Standards in that they explain requirements in the standards and provide best practices but do not establish any new or additional requirements above what is specified in the standards.

4. Guidance on the ADA Accessibility Guidelines for Transportation Vehicles

This guide provides technical assistance, background, and rationale for the ADA Accessibility Guidelines for Transportation Vehicles, 36 CFR part 1192, and gives examples of how the accessibility guidelines can be applied in particular cases.

5. Guidance on Requirements for Information and Communication Technology (ICT)

These older guidance documents provide technical assistance on the implementation of the original standards issued under Section 508 of the Rehabilitation Act. While the Board has updated these standards recently, we maintain this guide as there is still legacy ICT to which the Original 508 Standards are applicable. 36 CFR part 1194, Appendix D.

6. Guidance on Public Rights-of-Way

This section includes multiple documents and videos that provide technical assistance on providing access to public streets and sidewalks and other elements of public rights-of-way. These materials clearly state that they are only intended to provide technical assistance and are not binding as the public rights-of-way rulemaking has not been completed.

7. Guidance on Prescription Drug Labels

This is advisory guidance on making prescription drug container labels accessible to people who are blind, visually impaired, or elderly. Section 904 of the Food and Drug Administration and Innovation Act (Pub. L. 112–144, 126 Stat. 993) charged the Access Board with convening a working group to develop best practices for making information on prescription drug container labels accessible. However, these best practices are not mandatory and are not standards or accessibility guidelines of the Access Board. *Id.*

David M. Capozzi,

Executive Director.

[FR Doc. 2020–04058 Filed 2–27–20; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States.

ACTION: Notice of Commission subcommittee meeting.

DATES: Wednesday March 3, 2020, 12:00–1:30 p.m. ET.

ADDRESSES: Meeting to take place by telephone.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION: This business meeting is open to the public by telephone only: 1–800–353–6461, Conference ID 337–1130. Persons with disabilities who are requesting an accommodation for the call should contact Pamela Dunston at (202) 376–8105 or at *access@usccr.gov* at least three (3) business days before the scheduled date of the meeting.

Meeting Agenda

I. Approval of Agenda
II. Subcommittee Meeting: Roundtable to discuss business practices with employers and staff officials regarding workers with disabilities at a variety of work sites in Virgina.
- Opening Statements by roundtable participants
- Commissioner Questions

III. Adjourn Meeting.

Dated: February 26, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–04233 Filed 2–26–20; 4:15 pm]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission subcommittee meeting.

DATES: Wednesday March 4, 2020, 1:00–2:30 p.m. ET.

ADDRESSES: Meeting to take place by telephone.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION: This business meeting is open to the public by telephone only: 1–800–353–6461, Conference ID 601–0676. Persons with disabilities who are requesting an accommodation for the call should contact Pamela Dunston at (202) 376–8105 or at *access@usccr.gov* at least three (3) business days before the scheduled date of the meeting.

Meeting Agenda

I. Approval of Agenda
II. Subcommittee Meeting: Roundtable to discuss business practices with employers and staff officials regarding workers with disabilities at a variety of work sites in Vermont
- Opening Statements by roundtable participants
- Commissioner Questions

III. Adjourn Meeting

Dated: February 26, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–04234 Filed 2–26–20; 4:15 pm]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Covered Merchandise Referral and Initiation of Scope Inquiry

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

SUMMARY: Pursuant to the Enforce and Protect Act of 2015 (EAPA), the Department of Commerce (Commerce) received a covered merchandise referral from U.S. Customs and Border Protection (CBP) in connection with a CBP EAPA investigation concerning the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China). In accordance with EAPA, Commerce intends to determine whether the merchandise subject to the referral is covered by the scope of this order and promptly transmit its determination to CBP. Commerce is providing notice of the referral and inviting participation from interested parties.

DATES: Applicable February 28, 2020.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 was signed into law, which contains Title IV—Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title ''Enforce and Protect Act of 2015'' or ''EAPA'') (Pub. L. 114–125, 130 Stat. 122, 155, Feb. 24, 2016). Effective August 22, 2016, section 421 of the EAPA added section 517 to the Tariff Act of 1930, as amended (the Act), which establishes a formal process for CBP to investigate allegations of the evasion of antidumping duty and/or countervailing duty orders. Section 517(b)(4)(A) of the Act provides that if, during the course of an EAPA investigation, CBP is unable to determine whether the merchandise at issue is covered merchandise within the meaning of section 517(a)(3) of the Act, it shall refer the matter to Commerce to make such a determination. Section 517(a)(3) of the Act defines covered merchandise as merchandise that is subject to an antidumping duty order issued under section 736 of the Act or a countervailing duty order issued under section 706 of the Act. Section 517(b)(4)(B) of the Act states that Commerce, after receiving a covered merchandise referral from CBP, shall determine whether the merchandise is covered merchandise and promptly transmit its determination to CBP. The Act does not establish a deadline within which Commerce must issue its determination.

On December 17, 2019, Commerce received a covered merchandise referral from CBP regarding CBP EAPA Investigation No. 7354,[1] which concerns the antidumping duty order on diamond sawblades from China.[2] CBP explained that the petitioner's allegation involves diamond sawblades from China transshipped through Canada in one of the two channels of transshipment below:

Channel 1: Produced and exported by Protech Diamond Tools Inc. (Protech) and imported by Gogo International, Inc. (Gogo).

Channel 2: Produced by Protech and exported by Gogo.

CBP requested and obtained information from Gogo. CBP has requested that Commerce issue a determination as to whether the following categories of diamond

[1] *See* CBP's Letter, ''Covered Merchandise Referral Request for EAPA Investigation 7354, Imported by Gogo International, Inc., and Concerning the Investigation of Evasion of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China (A–570–900),'' dated December 17, 2019. Commerce intends to make available this document and any supporting documents on Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS) within five days of publication of this notice.

[2] *See Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Antidumping Duty Orders,* 74 FR 57145 (November 4, 2009) (order).

sawblades exported through either one of the two channels are covered merchandise subject to the antidumping duty order:

Category 1: Core and segments both sourced from China; joined in Canada.

Category 2: Core sourced from China and segments not sourced from China; joined in Canada.

Category 3: Segments sourced from China and core not sourced from China; joined in Canada.

On February 20, 2020, Commerce published the affirmative final determination of the anti-circumvention inquiry on the antidumping duty order on diamond sawblades from China.[3] In the *Final Determination,* Commerce found that diamond sawblades produced in Canada by Protech with cores and segments produced in China and subsequently exported from Canada by Protech to the United States were circumventing the antidumping duty order.[4] The *Final Determination* covers Category 1 exported through Channel 1.

Notification to Interested Parties

In accordance with 19 CFR 351.225(b), Commerce is hereby notifying interested parties that it has received the covered merchandise referral referenced above and will begin a new segment of the proceeding by initiating a scope inquiry concerning the merchandise covered under all categories and exported through either one of the two channels, with the exception of Category 1 exported through Channel 1, which is covered by the *Final Determination.* Based on our finding in the scope inquiry, we intend to notify CBP as to whether the merchandise subject to the referral is covered merchandise within the meaning of section 517(a)(3) of the Act. We will inform CBP of our *Final Determination* which covers merchandise under Category 1 exported through Channel 1.

Additionally, Commerce intends to provide interested parties with the opportunity to participate in this segment of the proceeding, including through the submission of comments, and, if appropriate, new factual information and verification. Specifically, Commerce will notify parties on the segment-specific service list for this segment of the proceeding of a schedule for comments. In addition, Commerce may request factual information from any party to assist in making its determination, including soliciting information directly from Protech and Gogo to conduct our analysis, and may verify submissions of factual information, if Commerce determines that such verification is appropriate. Commerce intends to issue a final determination within 120 days of the publication of this notice (this deadline may be extended if it is not practicable to complete the final determination within 120 days) and will promptly transmit its final determination to CBP, in accordance with section 517(b)(4)(B) of the Act.

Commerce may consider conducting a separate anti-circumvention inquiry regarding the merchandise described in CBP's covered merchandise referral, with the exception of the merchandise already determined to have been circumventing the order in the *Final Determination,* if parties submit the necessary information addressing the criteria for an anti-circumvention inquiry, in accordance with section 781 of the Act. Interested parties are requested to file such comments and information onto the record of this proceeding within 30 days of the publication of this notice in the **Federal Register**.

Interested parties that wish to participate in the scope inquiry being initiated now, and receive notice of the final determination, must submit their letters of appearance as discussed below. Further, any party desiring access to business proprietary information in this segment of the proceeding must file an application for access to business proprietary information under administrative protective order (APO), as discussed below.

Finally, we note that scope inquiries initiated in response to a CBP covered merchandise referral are a new type of proceeding at Commerce.[5] Commerce intends to develop its practice and procedures in this area as it gains more experience.

Scope of the Order

For a complete description of the scope of the order, *see* the Appendix to this notice.

Filing Requirements

All submissions to Commerce must be filed electronically using ACCESS.[6] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date of receipt by the applicable deadlines.

Letters of Appearance and APO

Interested parties that wish to participate in this segment of the proceeding and be added to the public service list for this segment of the proceeding must file a letter of appearance in accordance with 19 CFR 351.103(d)(1), with one exception: The parties publicly identified by CBP in the covered merchandise referral (referenced above) are not required to submit a letter of appearance, and will be added to the public service list for this segment of the proceeding by Commerce.

Within 24 hours of this notice being signed, Commerce placed a request for an APO segment on the record[7] and established an APO segment for use in this proceeding. Commerce intends to place the business proprietary versions of the documents contained in the covered merchandise referral on the record of this proceeding in ACCESS within five days of publication of this notice.

Interested parties must submit applications for disclosure under the APO in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to this segment of the proceeding, with one exception: APO applicants representing the parties that have been

[3] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Anti-Circumvention Inquiry,* 85 FR 9737 (February 20, 2020) (*Final Determination*).

[4] *Id., 85 FR* at 9738–39. As explained in the *Final Determination,* because Protech failed to cooperate with Commerce's request for information in that anti-circumvention inquiry, Commerce found that Protech is not currently able to identify diamond sawblades produced with non-Chinese origin cores and/or non-Chinese origin segments. Accordingly, Commerce did not implement a certification process for Protech and is requiring cash deposits on all entries of diamond sawblades produced and exported by Protech in Canada. *Id.,* 85 FR at 9739.

[5] *See Certain Hardwood Plywood from the People's Republic of China: Notice of Covered Merchandise Referral and Initiation of Scope Inquiry,* 85 FR 3024 (January 17, 2020); *Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Covered Merchandise Referral and Initiation of Scope Inquiry,* 85 FR 4947 (January 28, 2020).

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011), as amended in *Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[7] *See* Memorandum, ''Diamond Sawblades and Parts Thereof from the People's Republic of China: APO Request,'' dated concurrently with this notice.

identified by CBP as an importer in the covered merchandise referral (referenced above) are exempt from the additional filing requirements for importers pursuant to 19 CFR 351.305(d).

Dated: February 24, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semi-finished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order.

Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, Commerce included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by U.S. Customs and Border Protection.[8] Pursuant to requests by CBP, Commerce included to the customs case reference file the following HTSUS classification numbers: 8202.39.0040 and 8202.39.0070 on January 22, 2015, and 6804.21.0010 and 6804.21.0080 on January 26, 2015.[9]

The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

[FR Doc. 2020–04118 Filed 2–27–20; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See Diamond Sawblades and Parts Thereof from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 76128 (December 6, 2011).

[9] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 64331 (December 14, 2018) and accompanying Issues and Decision Memorandum at 3.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–106]

Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (Commerce) determines that wooden cabinets and vanities and components thereof (wooden cabinets and vanities) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The final weighted-average dumping margins are listed in the ''Final Determination Margins'' section of this notice.

DATES: Applicable February 28, 2020.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, Rachel Greenberg, or Eliza Siordia, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2593, (202) 482–0652, or (202) 482–3878, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 2019, Commerce published the *Preliminary Determination* in this investigation.[1] On November 14, 2019, Commerce published the *Amended Preliminary Determination.*[2] The petitioner is the American Kitchen Cabinet Alliance. The mandatory respondents in this investigation are The Ancientree Cabinet Co., Ltd. (Ancientree), Dalian Meisen Woodworking Co., Ltd. (Meisen), and Rizhao Foremost Woodwork Manufacturing Co., Ltd. (Foremost).

A summary of the events that occurred since Commerce published the *Amended Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, are discussed in the Issues and Decision Memorandum.[3] 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 to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum is available at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation is July 1, 2018 through December 31, 2018.

Scope of the Investigation

The scope of the investigation covers wooden cabinets and vanities from China. For a complete description of the scope of the investigation, *see* Appendix I.

Scope Comments

On October 2, 2019, Commerce issued a Preliminary Scope Decision

[1] *See Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 84 FR 54106 (October 9, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum, as corrected by *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 84 FR 56420 (October 22, 2019).

[2] *See Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value,* 84 FR 61875 (November 14, 2019) (*Amended Preliminary Determination*).

[3] *See* Memorandum, ''Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less Than Fair Value,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Memorandum.[4] Several interested parties submitted case and rebuttal briefs concerning the scope of this investigation. For a summary of the product coverage comments and rebuttal comments submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[5] Based on the comments received, Commerce is not modifying the scope language as it appeared in the *Preliminary Determination.* The scope in Appendix I remains unchanged from that which appeared in the *Preliminary Determination.*

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised in the Issues and Decision Memorandum is attached to this notice as Appendix II.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), Commerce conducted verification of the information submitted by Ancientree and Foremost for use in the final determination. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by the respondents.[6] Commerce did not verify the information submitted by Meisen.[7]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, minor corrections presented at verification, and our verification findings, we have made certain changes to the margin calculations for Ancientree and Foremost. For a discussion of these changes, *see* the ''Changes Since the Preliminary Determination'' section of the Issues and Decision Memorandum and the Final Calculation Memoranda.[8]

Adverse Facts Available

In determining Meisen's dumping margin, we find that the application of facts available with an adverse inference is appropriate under sections 776(a)(2)(A) through (C) and 776(b) of the Act as discussed in the Issues and Decision Memorandum.[9] Therefore, as adverse facts available (AFA), we have assigned Meisen the rate of 262.18 percent, which is the highest petition rate.[10]

For the reasons explained in the *Preliminary Determination,* we continue to find that the use of AFA, pursuant to sections 776(a) and (b) of the Act, is warranted in determining the rate for the China-wide entity.[11] In selecting the AFA rate for the China-wide entity, Commerce's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[12] For the final determination, we are also assigning the China-wide entity, as AFA, the rate of 262.18 percent, which is the highest petition rate.[13]

Separate Rates

Generally, Commerce looks to section 735(c)(5)(A) of the Act, which provides instructions for calculating the all-others rate in a market economy antidumping duty (AD) investigation, for guidance when calculating the rate for separate rate respondents that we did not individually examine in a non-market economy AD investigation. Section 735(c)(5)(A) of the Act states that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely on the basis of facts available.[14]

In this final determination, Commerce has calculated rates for Ancientree and Foremost that are not zero, *de minimis,* or based entirely on facts available. Thus, looking to section 735(c)(5)(A) of the Act for guidance, and consistent with our practice,[15] based on publicly ranged sales data, we are assigning the weighted-average of these mandatory respondents' rates as the rate for non-individually examined companies that have qualified for a separate rate, other than Meisen, whose rate is based entirely on section 776 of the Act as discussed above.

Final Determination

The final estimated weighted-average dumping margins are as follows:

[4] *See* Memorandum, ''Certain Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 2, 2019 (Preliminary Scope Decision Memorandum).

[5] *See* Memorandum, ''Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Final Scope Comments Decision Memorandum,'' dated concurrently with this notice (Final Scope Decision Memorandum).

[6] *See* Memorandum, ''Less-Than-Fair-Value Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Verification of the Export Price Sales and Factors of Production Response of The Ancientree Cabinet Co., Ltd,'' dated December 10, 2019; Memorandum, ''Verification of the Responses of Foremost Worldwide Company Ltd. In the Less-Than-Fair-Value Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China,'' dated January 10, 2020; Memorandum ''Verification of the Responses of Rizhao Foremost Woodwork Manufacturing Co. Ltd. in the Less-Than-Fair-Value Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China,'' dated January 10, 2020; and ''Verification of the Responses of Rizhao Foremost Woodwork Manufacturing Co. Ltd. in the Less-Than-Fair-Value Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China,'' dated January 10, 2020.

[7] *See* Commerce's Letter, ''Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Verification,'' dated December 27, 2019.

[8] *See* Memoranda, ''Antidumping Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Final Analysis Memorandum for The Ancientree Cabinet Co., Ltd.,'' and ''Antidumping Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Final Analysis Memorandum for Rizhao Foremost Woodwork Manufacturing Company Ltd.,'' both dated concurrently with this notice (collectively, Final Calculation Memoranda).

[9] *See* Issues and Decision Memorandum at Comment 22.

[10] *Id.*

[11] *See Preliminary Determination,* 84 FR at 54106.

[12] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethyl Cellulose from Finland,* 69 FR 77216 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethyl Cellulose from Finland,* 70 FR 28279 (May 17, 2005).

[13] *See* Issues and Decision Memorandum at ''Use of Adverse Facts Available.''

[14] *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

[15] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
The Ancientree Cabinet Co., Ltd	The Ancientree Cabinet Co., Ltd	4.37	0.00
Dalian Meisen Woodworking Co., Ltd	Dalian Meisen Woodworking Co., Ltd	262.18	251.64
Foremost Worldwide Company Limited	Rizhao Foremost Woodwork Manufacturing Company, Ltd.	101.46	90.92
Foremost Worldwide Company Limited	Henan AiDiJia Furniture Co., Ltd	101.46	90.92
Foremost Worldwide Company Limited	Suzhou Weiye Furniture Co., Ltd	101.46	90.92
Foremost Worldwide Company Limited	Changsha Minwan Furniture Manufacturing Co., Ltd.	101.46	90.92
ANHUI JIANLIAN WOOD PRODUCTS CO., LTD	ANHUI JIANLIAN WOOD PRODUCTS CO., LTD	48.50	37.96
Anhui Swanch Cabinetry Co., Ltd	Anhui Swanch Cabinetry Co., Ltd	48.50	37.96
ANHUI XINYUANDA CUPBOARD CO., LTD	ANHUI XINYUANDA CUPBOARD CO., LTD	48.50	37.96
Beijing Oulu Jinxin International Trade Co., Ltd	Beijing Oulu Jinxin International Trade Co., Ltd	48.50	37.96
Boloni Smart Home Decor (Beijing) Co., LTD	Boloni Smart Home Decor (Beijing) Co., LTD	48.50	37.96
BRENTRIDGE HOLDING CO., LTD	ZHOUSHAN FOR-STRONG WOOD CO., LTD	48.50	37.96
Caoxian Brothers Hengxin Wood Industry Co., Ltd	Caoxian Brothers Hengxin Wood Industry Co., Ltd	48.50	37.96
Changyi Zhengheng Woodwork Co., Ltd	Changyi Zhengheng Woodwork Co., Ltd	48.50	37.96
CHAOZHOU YAFENG BATHROOM EQUIPMENT CO., LTD.	CHAOZHOU YAFENG BATHROOM EQUIPMENT CO., LTD.	48.50	37.96
China Friend Limited	Dongming Sanxin Wood Industry Co., Ltd	48.50	37.96
Dalian Jiaye Wood Products Co., Ltd	Dalian Jiaye Wood Products Co., Ltd	48.50	37.96
Dalian Xingsen Wooden Products Co., Ltd	Dalian Xingsen Wooden Products Co., Ltd	48.50	37.96
Dandong City Anmin Wooden Products Group Co., Ltd.	Dandong City Anmin Wooden Products Group Co., Ltd.	48.50	37.96
Dandong Laroyal Cabinetry Co., Ltd	Dandong Laroyal Cabinetry Co., Ltd	48.50	37.96
DEHK LIMITED	DIAM DISPLAY (CHINA) CO., LTD	48.50	37.96
Deqing China-Africa Foreign Trade Port Co., Ltd	Suqian Welcomewood Products Co., Ltd	48.50	37.96
Dewell Wooden Products Haian Co., Ltd	Dewell Wooden Products Haian Co., Ltd	48.50	37.96
Dongguan American Parts Supplier Co., Ltd	Dongguan American Parts Supplier Co., Ltd	48.50	37.96
Dongguan Niusaiqu Wood Industry Co., Ltd	Dongguan Niusaiqu Wood Industry Co., Ltd	48.50	37.96
Dongguan Unique Life Furniture Co., Ltd. also known as Unique Life Furniture Co., Ltd (trade name).	Dongguan Unique Life Furniture Co., Ltd	48.50	37.96
Dorbest Ltd	Rui Feng Woodwork (Dongguan) Co., Ltd	48.50	37.96
EZIDONE DISPLAY CORPORATION LTD	EZIDONE DISPLAY CORPORATION LTD	48.50	37.96
EZIDONE DISPLAY CORPORATION LTD	EZIDONE DISPLAY INC	48.50	37.96
Forcer International Limited	QUFU XINYU FURNITURE CO., LTD	48.50	37.96
Forcer International Limited	LINYI RUNKANG CABINET CO., LTD	48.50	37.96
Forcer International Limited	BEIJING OULU JINXIN INTERNATIONAL TRADE CO., LTD.	48.50	37.96
Foshan City Shunde District Refined Furniture Co., Ltd. also known as Refined Furniture Co., Ltd. (trade name).	Foshan City Shunde District Refined Furniture Co., Ltd. also known as Refined Furniture Co., Ltd. (trade name).	48.50	37.96
Foshan Liansu building material Trading Co., Ltd	Guangdong Lesso Home Furnishing Co., Ltd	48.50	37.96
FOSHAN NANHAI HONGZHOU WOOD CO., LTD	FOSHAN NANHAI HONGZHOU WOOD CO., LTD	48.50	37.96
Foshan Shunde Yajiasi Kitchen Cabinet Co., Ltd	Foshan Shunde Yajiasi Kitchen Cabinet Co., Ltd	48.50	37.96
FOSHAN SOURCEVER (CN) CO., LIMITED	FOSHAN DIBIAO BATHROOM CO., LTD	48.50	37.96
FOSHAN SOURCEVER (CN) CO., LIMITED	FOSHAN MK HOME FURISHING CO., LTD	48.50	37.96
FOSHAN SOURCEVER (CN) CO., LIMITED	PROUDER INDUSTRIAL LIMITED	48.50	37.96
FOSHAN SOURCEVER (CN) CO., LIMITED	FOSHAN DEMAX SANITARY WARE CO., LTD	48.50	37.96
FOSHAN SOURCEVER (CN) CO., LIMITED	HEBEI SHUANGLI FURNITURE CO., LTD	48.50	37.96
FOSHAN SOURCEVER (CN) CO., LIMITED	ZHANGZHOU GUOHUI INDUSTRIAL & TRADE CO., LTD.	48.50	37.96
FOSHAN SOURCEVER (CN) CO., LIMITED	SHOUGUANG FUSHI WOOD CO., LTD	48.50	37.96
FOSHAN SOURCEVER (CN) CO., LIMITED	Foshan Virtu Bathroom Furniture Ltd	48.50	37.96
FOSHAN SOURCEVER (CN) CO., LIMITED	Guangdong Purefine Kitchen & Bath Technology Co., LTD.	48.50	37.96
FOSHAN SOURCEVER (CN) CO., LIMITED	KAIPING HONGITARYWARE TECHNOLOGY LTD	48.50	37.96
Foshan Sourcever Company Limited	FOSHAN DIBIAO BATHROOM CO., LTD	48.50	37.96
Foshan Sourcever Company Limited	FOSHAN MK HOME FURISHING CO., LTD	48.50	37.96
Foshan Sourcever Company Limited	PROUDER INDUSTRIAL LIMITED	48.50	37.96
Foshan Sourcever Company Limited	FOSHAN DEMAX SANITARY WARE CO., LTD	48.50	37.96
Foshan Sourcever Company Limited	HEBEI SHUANGLI FURNITURE CO., LTD	48.50	37.96
Foshan Sourcever Company Limited	ZHANGZHOU GUOHUI INDUSTRIAL & TRADE CO., LTD.	48.50	37.96
Foshan Sourcever Company Limited	SHOUGUANG FUSHI WOOD CO., LTD	48.50	37.96
Foshan Sourcever Company Limited	Foshan Virtu Bathroom Furniture Ltd	48.50	37.96
Foshan Sourcever Company Limited	Guangdong Purefine Kitchen & Bath Technology Co., LTD.	48.50	37.96
Foshan Sourcever Company Limited	KAIPING HONGITARYWARE TECHNOLOGY LTD	48.50	37.96
Foshan Xinzhongwei Economic & Trade Co., Ltd	Foshan Lihong Furniture Sanitary Ware Co., Ltd	48.50	37.96

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
FUJIAN DUSHI WOODEN INDUSTRY CO., LTD	FUJIAN DUSHI WOODEN INDUSTRY CO., LTD	48.50	37.96
FUJIAN LEIFENG CABINETRY CO., LTD	FUJIAN LEIFENG CABINETRY CO., LTD	48.50	37.96
Fujian Panda Home Furnishing Co., Ltd	Fujian Panda Home Furnishing Co., Ltd	48.50	37.96
Fujian Senyi Kitchen Cabinet Co., Ltd	Fujian Senyi Kitchen Cabinet Co., Ltd	48.50	37.96
Fuzhou Biquan Trading Co., Ltd	Biquan (Fujian) Group Co., Ltd	48.50	37.96
Fuzhou CBM Import & Export Co., Ltd	Fuzhou CBM Import & Export Co., Ltd	48.50	37.96
Fuzhou Desource Home Décor Co., Ltd	Fuzhou Desource Home Decor Co., Ltd	48.50	37.96
FUZHOU LIMIN STONE PRODUCTS CO., LTD	Fuzhou YST Cabinet Co., Ltd	48.50	37.96
FUZHOU MASTONE IMPORT & EXPORT CO., LTD.	Fuzhou Yuansentai Cabinet Co., Ltd	48.50	37.96
Fuzhou Minlian Wood Industry Co., Ltd	Fuzhou Minlian Wood Industry Co., Ltd	48.50	37.96
FUZHOU SUNRISING HOME DECO MANUFACTURING CO., LTD.	FUZHOU SUNRISING HOME DECO MANUFACTURING CO., LTD.	48.50	37.96
FUZHOU XINRUI CABINET CO., LTD	FUZHOU XINRUI CABINET CO., LTD	48.50	37.96
Gaomi City Haitian Wooden Ware Co., Ltd	Gaomi City Haitian Wooden Ware Co., Ltd	48.50	37.96
GAOMI HONGTAI HOME FURNITURE CO., LTD	GAOMI HONGTAI HOME FURNITURE CO., LTD	48.50	37.96
Guangde Bozhong Trade Company, Ltd	Guangde Bozhong Trade Company, Ltd	48.50	37.96
GUANGDONG CACAR KITCHEN TECHNOLOGY CO., LTD.	GUANGDONG CACAR KITCHEN TECHNOLOGY CO., LTD.	48.50	37.96
Guangdong G-Top Import and Export Co., Ltd	Foshan Shunde Rongao Furniture CO., LTD	48.50	37.96
Guangzhou Nuolande Import and Export Co., Ltd	Guangzhou Nuolande Import and Export Co., Ltd	48.50	37.96
Haiyang Kunlun Wood Co., Ltd	Haiyang Kunlun Wood Co., Ltd	48.50	37.96
Hangzhou Bestcraft Sanitary Equipments Co., Ltd	Hangzhou Bestcraft Sanitary Equipments Co., Ltd	48.50	37.96
Hangzhou Entop Houseware Co., Ltd	Jinhua Aonika Sanitary Ware Co., Ltd	48.50	37.96
Hangzhou Entop Houseware Co., Ltd	Hangzhou Bestcraft Sanitary Equipments Co., Ltd	48.50	37.96
Hangzhou Hansen Sanitary Ware Co., Ltd	Hangzhou Hansen Sanitary Ware Co., Ltd	48.50	37.96
Hangzhou Hoca Kitchen & Bath Products Co., Ltd	Hangzhou Hoca Kitchen & Bath Products Co., Ltd	48.50	37.96
Hangzhou Home Dee Sanitary Ware Co., Ltd	Hangzhou Home Dee Sanitary Ware Co., Ltd	48.50	37.96
Hangzhou Oulang Bathroom Equipment Co., Ltd	Hangzhou Oulang Bathroom Equipment Co., Ltd	48.50	37.96
Hangzhou Royo Import & Export Co., Ltd	Jinhua Aonika Sanitary Ware Co., Ltd	48.50	37.96
Hangzhou Royo Import & Export Co., Ltd	Hangzhou Yuxin Sanitary Ware Co., Ltd	48.50	37.96
Hangzhou Royo Import & Export Co., Ltd	Hangzhou Fuyang Beautiful Sanitary Ware Co., Ltd	48.50	37.96
Hangzhou Sunlight Sanitary Co., Ltd	Hangzhou Sunlight Sanitary Co., Ltd	48.50	37.96
Hangzhou Weinuo Sanitary Ware Co., Ltd	PINGHU AIPA SANITARY WARE CO., LTD	48.50	37.96
Hangzhou Weinuo Sanitary Ware Co., Ltd	HANGZHOU QILONG SANITARY WARE CO., LTD.	48.50	37.96
Hangzhou Xinhai Sanitary Ware Co., Ltd	Hangzhou Xinhai Sanitary Ware Co., Ltd	48.50	37.96
Hangzhou Yewlong Import & Export Co., Ltd	Hangzhou Yewlong Industry Co., Ltd	48.50	37.96
Hangzhou Zhuangyu Import & Export Co., Ltd	Hangzhou Zhuangyu Import & Export Co., Ltd	48.50	37.96
Henan Aotin Home Furnishing Co., Ltd	Henan Aotin Home Furnishing Co., Ltd	48.50	37.96
Heyond Cabinet Co., Ltd	Heyond Cabinet Co., Ltd	48.50	37.96
Homestar Corporation	Homestar Corporation	48.50	37.96
HONG KONG JIAN CHENG TRADING CO., LIMITED.	ZHONGSHAN YAYUE FURNITURE CO., LTD	48.50	37.96
Xiamen Honglei Imp. & Exp. Co., Ltd. also known as Honglei (Xiamen) Stone Co., Ltd.	Changtai Guanjia Industry & Trade Company Co., Ltd.	48.50	37.96
Xiamen Honglei Imp. & Exp. Co., Ltd. also known as Honglei (Xiamen) Stone Co., Ltd.	Zhangzhou Huihua Industry and Trade Co., Ltd	48.50	37.96
Xiamen Honglei Imp. & Exp. Co., Ltd. also known as Honglei (Xiamen) Stone Co., Ltd.	Fujian Xinanlong Wood Industry Co., Ltd	48.50	37.96
Honsoar New Building Material Co., Ltd	Shandong Honsoar Cabinet Materials Co., Ltd	48.50	37.96
Hua Yin Trading Development Co., Ltd of Jiangmen City.	Jianfa Wooden Co., Ltd	48.50	37.96
Hua Yin Trading Development Co., Ltd of Jiangmen City.	Heshan Yingmei Cabinets Co., Ltd	48.50	37.96
Hua Yin Trading Development Co., Ltd of Jiangmen City.	Hesha Feiqiu Cabinet Co., Ltd	48.50	37.96
Huimin Hanlong Furniture Co., Ltd	Huimin Hanlong Furniture Co., Ltd	48.50	37.96
HUISEN FURNITURE (LONG NAN) CO., LTD. also known as HUISEN FURNITURE (LONGNAN) CO., LTD.	HUISEN FURNITURE (LONG NAN) CO., LTD. also known as HUISEN FURNITURE (LONGNAN) CO., LTD.	48.50	37.96
HUIZHOU MANDARIN FURNITURE CO., LTD	HUIZHOU MANDARIN FURNITURE CO., LTD	48.50	37.96
Jiang Su Rongxin Cabinets Ltd	Jiang Su Rongxin Cabinets Ltd	48.50	37.96
Jiangmen Kinwai Furniture Decoration Co., Ltd	Jiangmen Kinwai Furniture Decoration Co., Ltd	48.50	37.96
Jiangmen Kinwai International Furniture Co., Ltd	Jiangmen Kinwai International Furniture Co., Ltd	48.50	37.96
Jiangsu Beichen Wood Co., Ltd	Jiangsu Beichen Wood Co., Ltd	48.50	37.96
Jiangsu Meijun Intelligent Home Co., Ltd	Jiangsu Meijun Intelligent Home Co., Ltd	48.50	37.96
Jiangsu Pusite Furniture Co., Ltd	Jiangsu Pusite Furniture Co., Ltd	48.50	37.96
Jiangsu Roc Furniture Industrial Co., Ltd	Jiangsu Roc Furniture Industrial Co., Ltd	48.50	37.96
JIANGSU SUNWELL CABINETRY CO., LTD	JIANGSU SUNWELL CABINETRY CO., LTD	48.50	37.96

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
JIANGSU WEISEN HOUSEWARE CO., LTD	JIANGSU WEISEN HOUSEWARE CO., LTD	48.50	37.96
Jiangsu Xiangsheng Bedtime Furniture Co., Ltd	Jiangsu Xiangsheng Bedtime Furniture Co., Ltd	48.50	37.96
Jiayuan (Xiamen) Industrial Co., Ltd	Jiayuan (Xiamen) Industrial Co., Ltd	48.50	37.96
JINJIANG PERFECT GENERATION IMP. & EXP. CO., LTD.	Homebi Technology Co., LTD	48.50	37.96
King's Group Furniture (Enterprises) Co., Ltd	Zhongshan King's Group Furniture (ENTERPRISES) Co., Ltd.	48.50	37.96
KM Cabinetry Co., Limited	Zhongshan KM Cabinetry Co., Ltd	48.50	37.96
Kunshan Baiyulan Furniture Co., Ltd	Kunshan Baiyulan Furniture Co., Ltd	48.50	37.96
Kunshan Home Right Trade Corporation	Kunshan Fangs Furniture Co., Ltd	48.50	37.96
LIANYUNGANG SUN RISE TECHNOLOGY CO., LTD.	LIANYUNGANG SUN RISE TECHNOLOGY CO., LTD.	48.50	37.96
Linshu Meibang Furniture Co., Ltd	Linshu Meibang Furniture Co., Ltd	48.50	37.96
Linyi Bomei Furniture Co., Ltd	Linyi Bomei Furniture Co., Ltd	48.50	37.96
LINYI BONN FLOORING MANUFACTURING CO., LTD.	LINYI BONN FLOORING MANUFACTURING CO., LTD.	48.50	37.96
Linyi Kaipu Furniture Co., Ltd	Linyi Kaipu Furniture Co., Ltd	48.50	37.96
Linyi Runkang Cabinet Co., Ltd	Linyi Runkang Cabinet Co., Ltd	48.50	37.96
Liu Shu Woods Product (Huizhou) Co., Ltd also known as Liu Shu Wood Products Co., Ltd (trade name) and Liu Shu Woods Product Co., Ltd (trade name).	Liu Shu Woods Product (Huizhou) Co., Ltd	48.50	37.96
Master Door & Cabinet Co., Ltd	Master Door & Cabinet Co., Ltd	48.50	37.96
Masterwork Cabinetry Company Limited	Shandong Compete Wood Co., Ltd	48.50	37.96
Masterwork Cabinetry Company Limited	Linyi Zhongsheng Jiaju Zhuangshi Co., Ltd	48.50	37.96
MEILIN WOOD PRODUCTS(DALIAN)CO., LTD	MEILIN WOOD PRODUCTS(DALIAN)CO., LTD	48.50	37.96
Minhou Beite Home Decor Co., Ltd	Minhou Beite Home Decor Co., Ltd	48.50	37.96
MJB Supply (Dalian) Co., Ltd	Mulin City Bamiantong Linyeju Jisen Wood	48.50	37.96
MOREWOOD CABINETRY CO., LTD	MOREWOOD CABINETRY CO., LTD	48.50	37.96
Nanjing Kaylang Co., Ltd	Nanjing Kaylang Co., Ltd	48.50	37.96
Nantong Aershin Cabinets Co., Ltd	Nantong Aershin Cabinets Co., Ltd	48.50	37.96
Nantong Ouming Wood Co., Ltd., also known as Nantong Ouming Wood Industry Co., Ltd.	Nantong Ouming Wood Co., Ltd., also known as Nantong Ouming Wood Industry Co., Ltd.	48.50	37.96
NANTONG YANGZI FURNITURE CO., LTD	NANTONG YANGZI FURNITURE CO., LTD	48.50	37.96
NINGBO KINGWOOD FURNITURE CO., LTD	NINGBO KINGWOOD FURNITURE CO., LTD	48.50	37.96
NINGBO ROVSA HOME FURNISHING CO., LTD	NINGBO ROVSA HOME FURNISHING CO., LTD	48.50	37.96
Ojans Company Limited	Foshan Shunde Ojans Intelligent Sanitary Ware Co., Ltd.	48.50	37.96
Oppein Home Group Inc.	Oppein Home Group Inc.	48.50	37.96
PIZHOU OUYME IMPORT & EXPORT TRADE CO., LTD.	XUZHOU OUMEC WOOD-BASED PANEL CO., LTD.	48.50	37.96
Pneuma Asia Sourcing & Trading Co. LIMITED	Dalian Tianxin Home Product Co., Ltd	48.50	37.96
Pneuma Asia Sourcing & Trading Co. LIMITED	Qingdao Haiyan Drouot Household Co., Ltd	48.50	37.96
Putian Jinggong Furniture Co., Ltd	Putian Jinggong Furniture Co., Ltd	48.50	37.96
Qingdao Coomex Sources Co., Ltd. also known as Coomex Sources Co., Ltd.	Nantong Aershin Cabinets Co., Ltd	48.50	37.96
Qingdao Haiyan Drouot Household Co., Ltd	Qingdao Haiyan Drouot Household Co., Ltd	48.50	37.96
Qingdao Liangmu Hongye Co., Ltd	Qingdao Liangmu Hongye Co., Ltd	48.50	37.96
Qingdao Liangmu Jinshan Woodwork Co., Ltd	Qingdao Liangmu Jinshan Woodwork Co., Ltd	48.50	37.96
Qingdao Northriver Wooden Resource Industry & Trading Co., Ltd.	Lankao Sanqiang Wooden Products Co., Ltd	48.50	37.96
Qingdao Northriver Wooden Resource Industry & Trading Co., Ltd.	Linyi Lanshan Chengxinli Woods Co., Ltd	48.50	37.96
Qingdao Northriver Wooden Resource Industry & Trading Co., Ltd.	Shouguang Shi Qifeng Woods Co., Ltd	48.50	37.96
Qingdao Northriver Wooden Resource Industry & Trading Co., Ltd.	Linyi Mingzhu Woods Co., Ltd	48.50	37.96
Qingdao Northriver Wooden Resource Industry & Trading Co., Ltd.	Yichun Senhai Woods Industry Co., Ltd	48.50	37.96
Qingdao Northriver Wooden Resource Industry & Trading Co., Ltd.	Linyi Jinde Arts & Crafts Co., Ltd	48.50	37.96
Qingdao Northriver Wooden Resource Industry & Trading Co., Ltd.	Qingdao Ruirong Woods Co., Ltd	48.50	37.96
Qingdao Shousheng Industry Co., Ltd	Qingdao Shousheng Industry Co., Ltd	48.50	37.96
Qingdao Yimei Wood Work Co., Ltd	Qingdao Yimei Wood Work Co., Ltd	48.50	37.96
QINGDAOHONGXINCHENGDA WOOD INDUSTRY CO., LTD.	QINGDAOHONGXINCHENGDA WOOD INDUSTRY CO., LTD.	48.50	37.96
QUFU XINYU FURNITURE CO., LTD	QUFU XINYU FURNITURE CO., LTD	48.50	37.96
Ronbow Hong Kong Limited	Wuxi Yusheng Kitchen-Bathroom Equipment Co., Ltd	48.50	37.96

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Sagarit Bathroom Manufacturer Limited	Shouguang Fushi Wood Co., Ltd	48.50	37.96
Sagarit Bathroom Manufacturer Limited	Zhangzhou Guohui Industrial & Trade Co., Ltd	48.50	37.96
Sagarit Bathroom Manufacturer Limited	Qingdao Runpeng Wood Industrial Co., Ltd	48.50	37.96
Sankok Arts Co., Ltd	Sankok Arts Co., Ltd	48.50	37.96
Senke Manufacturing Company	Qindao Yimei Wood Work Co., Ltd	48.50	37.96
Senke Manufacturing Company	Linyi Kaipu Furniture Co., Ltd	48.50	37.96
Senke Manufacturing Company	Shandon Honsoar Cabinetry Co., Ltd	48.50	37.96
Senke Manufacturing Company	Huimin Hanlong Furniture Co, Ltd	48.50	37.96
Shandong Cubic Alpha Timber Co., Ltd	Shandong Cubic Alpha Timber Co., Ltd	48.50	37.96
Shandong Fusheng Wood Co., Ltd	Shandong Fusheng Wood Co., Ltd	48.50	37.96
Shandong Huanmei Wood Co., Ltd	Shandong Huanmei Wood Co., Ltd	48.50	37.96
SHANDONG JINGYAO HOME DECORATION PRODUCTS CO., LTD.	SHANDONG JINGYAO HOME DECORATION PRODUCTS CO., LTD.	48.50	37.96
Shandong Longsen Woods Co., Ltd	Shandong Longsen Woods Co., Ltd	48.50	37.96
Shandong Sanfortune Home and Furniture Co., Ltd	Shandong Sanfortune Home and Furniture Co., Ltd	48.50	37.96
Shanghai Aiwood Home Supplies Co., Ltd	Jiangsu Gangxing Kitchen Cabinet Co., Ltd	48.50	37.96
Shanghai Aiwood Home Supplies Co., Ltd	Shanghai Homebase SanSheng Household Product Co., Ltd.	48.50	37.96
Shanghai Baiyulan Furniture Co., Ltd	Kunshan Baiyulan Furniture Co., Ltd	48.50	37.96
Shanghai Beautystar Cabinetry Co., Ltd	Jiangsu Sunwell Cabinetry Co., Ltd	48.50	37.96
Shanghai Beautystar Cabinetry Co., Ltd	Nantong Jiegao Furniture Co., Ltd	48.50	37.96
Shanghai Jiang Feng Furniture Co., Ltd	Shanghai Jiang Feng Furniture Co., Ltd	48.50	37.96
SHANGHAI LINE KING INTERNATIONAL TRADING CO., LTD.	SHANGHAI YAZHI WOODEN INDUSTRY CO., LTD.	48.50	37.96
Shanghai Mebo Industry Co. Ltd	Shanghai Mebo Industry Co. Ltd	48.50	37.96
Shanghai Qingzhou Woodenware Co., Ltd	Shanghai Qingzhou Woodenware Co., Ltd	48.50	37.96
Shanghai S&M Trade Co., Ltd	Anhui GeLun Wood Industry Co., Ltd	48.50	37.96
Shanghai S&M Trade Co., Ltd	Ning'an City Jiude Wood Co., Ltd	48.50	37.96
Shanghai S&M Trade Co., Ltd	Muling City Bamiantong Forestry Bureau Jisen Wood Co., Ltd.	48.50	37.96
Shanghai S&M Trade Co., Ltd	Dalian Ruiyu Mountain Wood Co., Ltd	48.50	37.96
Shanghai S&M Trade Co., Ltd	Linshu Meibang Furniture Co., Ltd	48.50	37.96
Shanghai S&M Trade Co., Ltd	Jiamusi City Quanhong Wood Industry Co., Ltd	48.50	37.96
Shanghai S&M Trade Co., Ltd	Kunshan Fangs Furniture Co., Ltd	48.50	37.96
Shanghai S&M Trade Co., Ltd	Dalian Chunyao Wood Industry Co., Ltd	48.50	37.96
Shanghai S&M Trade Co., Ltd	Anhui Juxin Wood Industry Co., Ltd	48.50	37.96
Shanghai Wang Lei Industries- Taicang Branch	Shanghai Wang Lei Industries- Taicang Branch	48.50	37.96
Shanghai Wen Bo Industries Co. Ltd	Shanghai Yinbo Manufacturing Co. Ltd	48.50	37.96
Shanghai Wen Bo Industries Co. Ltd	Dalian Jiaye Wood Products Co., Ltd	48.50	37.96
Shanghai Wen Bo Industries Co. Ltd	Shanghai Baiyulan Furniture Co., Ltd	48.50	37.96
Shanghai Xietong (Group) Co., Ltd	Nantong Jiegao Furniture Co., Ltd	48.50	37.96
Shanghai Xietong (Group) Co., Ltd	Jiangsu Senwei Smart Home Co., Ltd	48.50	37.96
SHANGHAI ZIFENG INTERNATIONAL TRADING CO., LTD.	SHANDONG GAINVAST WOODEN PRODUCTS CO., LTD.	48.50	37.96
SHANGHAI ZIFENG INTERNATIONAL TRADING CO., LTD.	SHANGHAI WENYI WOODEN CO., LTD	48.50	37.96
SHANGHAI ZIFENG INTERNATIONAL TRADING CO., LTD.	NAN TONG DI LIN FURNITURE CO., LTD	48.50	37.96
SHANGHAI ZIFENG INTERNATIONAL TRADING CO., LTD.	JIANGSU YANAN WOODEN CO., LTD	48.50	37.96
Sheen Lead International Trading (Shanghai) Co., Ltd.	SHANGHAI RUIYING FURNITURE CO., LTD	48.50	37.96
Shouguang Fushi Wood Co., Ltd	Shouguang Fushi Wood Co., Ltd	48.50	37.96
Shouguang Honsoar Imp. & Exp. Trading Co., Ltd	Shandong Honsoar Cabinet Materials Co., Ltd	48.50	37.96
SHOUGUANG JIAXIU WOOD CO., LTD	SHOUGUANG JIAXIU WOOD CO., LTD	48.50	37.96
SHOUGUANG JIAXIU WOOD CO., LTD	SHOUGUANG JIAXIU WOOD CO., LTD	48.50	37.96
Shouguang Jinxiangyuan Home Furnishing Co., Ltd	Shouguang Jinxiangyuan Home Furnishing Co., Ltd.	48.50	37.96
Shouguang Sanyang Wood Industry Co., Ltd	Shouguang Sanyang Wood Industry Co., Ltd	48.50	37.96
Silver Stone Group Co., Ltd	QINGDAO FAMILY CRAFTS CO., LTD	48.50	37.96
Silver Stone Group Co., Ltd	QingDao XiuZhen Furniture Co., Ltd	48.50	37.96
Smart Gift International	Anhui GeLun Wood Industry Co., Ltd	48.50	37.96
Smart Gift International	Ning'an City Jiude Wood Co., Ltd	48.50	37.96
Smart Gift International	Muling City Bamiantong Forestry Bureau Jisen Wood Co., Ltd.	48.50	37.96
Smart Gift International	Dalian Ruiyu Mountain Wood Co., Ltd	48.50	37.96
Smart Gift International	Jiamusi City Quanhong Wood Industry Co., Ltd	48.50	37.96
Smart Gift International	Dalian Chunyao Wood Industry Co., Ltd	48.50	37.96
SUNCO TIMBER(KUNSHAN) CO., LTD	SUNCO TIMBER(KUNSHAN) CO., LTD	48.50	37.96
Supree (Fujian) Wood Co., Ltd	Supree (Fujian) Wood Co., Ltd	48.50	37.96

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Supree (Fujian) Construction Materials Co., Ltd	Supree (Fujian) Construction Materials Co., Ltd	48.50	37.96
SUZHOU BAOCHENG INDUSTRIES CO., LTD	WALLBEYOND (SHUYANG) HOME DECOR CO., LTD.	48.50	37.96
Suzhou Five Cubic Wood Co., Ltd	Suzhou Geda Office Equipment Manufacturing Co., Ltd.	48.50	37.96
Suzhou Oriental Dragon Import and Export Co., Ltd. also known as Suzhou Oriental Dragon Import and Export Corp., Ltd.	Lingbi Xianghe Wood Co., Ltd	48.50	37.96
Tai Yuan Trading Co., Ltd also known as Heshan Tai Yuan Trading Co., Ltd.	Heshan Yingmei Cabinet Co., Ltd	48.50	37.96
Taishan Changfa Wood Industry Co., Ltd	Taishan Changfa Wood Industry Co., Ltd	48.50	37.96
TAISHAN HONGXIANG TRADING CO., LTD	Chang He Xing Wood Manufacturer Co., Ltd	48.50	37.96
TAISHAN HONGXIANG TRADING CO., LTD	Heshan Yingmei Cabinets Co., Ltd	48.50	37.96
TAISHAN HONGXIANG TRADING CO., LTD	Heshan Feiqiu Cabinet Co., Ltd	48.50	37.96
TAISHAN HONGXIANG TRADING CO., LTD	Yuanwang Wood Product Factory Dajiang Taishan	48.50	37.96
TAISHAN HONGXIANG TRADING CO., LTD	Can-Am Cabinet Ltd	48.50	37.96
Taishan Hongzhou Cabinet Co., Ltd	Taishan Hongzhou Cabinet Co., Ltd	48.50	37.96
Taishan Jiahong Trade Co., Ltd	Taishan Dajiang Town Dutou Wood Furniture Factory.	48.50	37.96
Taishan Jiahong Trade Co., Ltd	Foshan Nanhai Jinwei Cabinet Furniture Co., Ltd	48.50	37.96
Taishan Jiahong Trade Co., Ltd	Taishan Huali Kitchen Cabinet Co., Ltd	48.50	37.96
Taishan Jiahong Trade Co., Ltd	Taishan Empire Wood Co., Ltd	48.50	37.96
TAISHAN OVERSEA TRADING COMPANY LTD	TAISHAN GANHUI STONE KITCHEN CO., LTD	48.50	37.96
TAISHAN OVERSEA TRADING COMPANY LTD	Can-Am Cabinet Ltd	48.50	37.96
TAISHAN OVERSEA TRADING COMPANY LTD	TAISHAN QUANMEI KITCHEN WARE CO., LTD	48.50	37.96
TAISHAN OVERSEA TRADING COMPANY LTD	TAISHAN JIAFU CABINET CO., LTD	48.50	37.96
TAISHAN OVERSEA TRADING COMPANY LTD	TAISHAN DAJIANG TOWN DUTOU FURNITURE FACTORY.	48.50	37.96
TAISHAN OVERSEA TRADING COMPANY LTD	Feiteng Kitchen Cabinets Taishan Corporation	48.50	37.96
Taizhou Overseas Int'l Ltd	Zhejiang Royal Home Co., Ltd	48.50	37.96
TANGSHAN BAOZHU FURNITURE CO., LTD	TANGSHAN BAOZHU FURNITURE CO., LTD	48.50	37.96
Tech Forest Cabinetry Co., Ltd	Tech Forest Cabinetry Co., Ltd	48.50	37.96
The Frame Manufacturing Co. Ltd	HUIZHOU DIWEIXIN JIATINGYONGPIN CO., LTD	48.50	37.96
Top Goal International Group Ltd. (Hong Kong)	Dongguan City Top Goal Furniture Co., Ltd	48.50	37.96
Tradewinds Furniture Ltd	Tradewinds Furniture Ltd	48.50	37.96
Wa Fok Art Craft Furniture (MACAO) Co., Ltd	Zhongshan Huafu Art Craft Furniture Co., Ltd	48.50	37.96
Weifang Fuxing Wood Co., Ltd	Weifang Fuxing Wood Co., Ltd	48.50	37.96
WEIFANG KITCHINET CORPORATION	WEIFANG KITCHINET CORPORATION	48.50	37.96
Weifang Lan Gu Wood Industry Co., Ltd	Weifang Lan Gu Wood Industry Co., Ltd	48.50	37.96
Weifang Master Wood Industry Co., Ltd	Weifang Master Wood Industry Co., Ltd	48.50	37.96
Weifang Yuanlin Woodenware Co., Ltd	Weifang Yuanlin Woodenware Co., Ltd	48.50	37.96
Weihai Adornus Cabinetry Manufacturing Co., Ltd	Weihai Adornus Cabinetry Manufacturing Co., Ltd	48.50	37.96
WEIHAI JARLIN CABINETRY MANUFACTURE CO., LTD.	WEIHAI JARLIN CABINETRY MANUFACTURE CO., LTD.	48.50	37.96
Wellday International Company Limited also known as Dongguan Wellday Household Co., Ltd.	Wellday International Company Limited also known as Dongguan Wellday Household Co., Ltd.	48.50	37.96
Wenzhou Youbo Industrial Co., Ltd	Wenzhou Youbo Industrial Co., Ltd	48.50	37.96
Wuxi Yushea Furniture Co., Ltd	Wuxi Yushea Furniture Co., Ltd	48.50	37.96
Wuxi Yusheng Kitchen-Bathroom Equipment Co., Ltd.	Wuxi Yusheng Kitchen-Bathroom Equipment Co., Ltd.	48.50	37.96
Xiamen Adler Cabinetry Co., Ltd	Xiamen Adler Cabinetry Co., Ltd	48.50	37.96
XIAMEN GOFOR STONE CO., LTD	KAICHENG (FUJIAN) KITCHEN CABINET CO., LTD.	48.50	37.96
XIAMEN GOLDEN HUANAN IMP. & EXP. CO., LTD.	Changtai Guanjia Industrial Co., Ltd	48.50	37.96
XIAMEN GOLDENHOME CO., LTD	XIAMEN GOLDENHOME CO., LTD	48.50	37.96
XIAMEN KAICHENG TRADING LIMITED COMPANY.	KAICHENG (FUJIAN) KITCHEN CABINET CO., LTD.	48.50	37.96
Xiamen Sintop Display Fixtures Co., Ltd	Xiamen Sintop Display Fixtures Co., Ltd	48.50	37.96
XINGZHI INTERNATIONAL TRADE LIMITED	XUZHOU YIHE WOOD CO., LTD	48.50	37.96
XUZHOU JIA LI DUO IMPORT & EXPORT CO., LTD.	XUZHOU OUMEC WOOD-BASED PANEL CO., LTD.	48.50	37.96
XUZHOU YIHE WOOD CO., LTD	XUZHOU YIHE WOOD CO., LTD	48.50	37.96
YEKALON INDUSTRY, INC	DONGGUAN TODA FURNITURE CO., LTD	48.50	37.96
YEKALON INDUSTRY, INC	GUANGZHOUSHI BAISEN DECORATIVE MATERIALS COMPANY LIMITED.	48.50	37.96
YEKALON INDUSTRY, INC	DONGGUAN FANYANUO FURNITURE CO., LTD	48.50	37.96
YEKALON INDUSTRY, INC	DONGGUANSHI ANKE BUILDING MATERIALS CO., LTD.	48.50	37.96
YEKALON INDUSTRY, INC	Oriental Chic Furniture Company Limited	48.50	37.96

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
YEKALON INDUSTRY, INC	DONGGUAN FRANCISS FURNITURE CO., LTD	48.50	37.96
YEKALON INDUSTRY, INC	SHANGHAI YUANYANG WOODEN CO., LTD	48.50	37.96
Yi Sen Wood Industry Limited Company of Ning An City.	Yi Sen Wood Industry Limited Company of Ning An City.	48.50	37.96
Yichun Dongmeng Wood Co., Ltd	Yichun Dongmeng Wood Co., Ltd	48.50	37.96
Yichun Dongmeng Wood Co., Ltd	Qingdao Dimei Wood Co., Ltd	48.50	37.96
Yichun Sunshine Wood Products Co., Ltd	Yichun Sunshine Wood Products Co., Ltd	48.50	37.96
Yixing Pengjia Cabinetry Co. Ltd	Yixing Pengjia Cabinetry Co. Ltd	48.50	37.96
Zhangjiagang Daye Hotel Furniture Co., Ltd	Zhangjiagang Daye Hotel Furniture Co., Ltd	48.50	37.96
ZHANGJIAGANG PRO-FIXTURE CO., LTD	Zhangjiagang Yuanjiahe Home Furniture Co., Ltd	48.50	37.96
ZHANGZHOU CITY XIN JIA HUA FURNITURE CO., LTD.	ZHANGZHOU CITY XIN JIA HUA FURNITURE CO., LTD.	48.50	37.96
Zhangzhou Guohui Industrial & Trade Co., Ltd	Zhangzhou Guohui Industrial & Trade Co., Ltd	48.50	37.96
Zhangzhou OCA Furniture Co., Ltd	Zhangzhou OCA Furniture Co., Ltd	48.50	37.96
Zhaoqing Centech Decorative Material Company Ltd.	Zhaoqing Centech Decorative Material Company Ltd.	48.50	37.96
Zhejiang Jindi Holding Group Co., Ltd	Zhejiang Jindi Holding Group Co., Ltd	48.50	37.96
Zhong Shan Shi Yicheng Furniture & Craftwork Co., Ltd.	Zhong Shan Shi Yicheng Furniture & Craftwork Co., Ltd.	48.50	37.96
Zhong Shan Yue Qin Imp. & Exp. Co., Ltd	Zhongshan Jinpeng Furniture Co., Ltd	48.50	37.96
Zhongshan City Shenwan Meiting Furniture Factory	Zhongshan City Shenwan Meiting Furniture Factory.	48.50	37.96
Zhongshan Fookyik Furniture Co., Ltd	Zhongshan Fookyik Furniture Co., Ltd	48.50	37.96
ZHONGSHAN GAINWELL FURNITURE CO., LTD	ZHONGSHAN GAINWELL FURNITURE CO., LTD	48.50	37.96
Zhongshan Guanda Furniture Manufacturing Co., Ltd also known as Guanda Furniture Co., Ltd.	Zhongshan Guanda Furniture Manufacturing Co., Ltd.	48.50	37.96
ZHONGSHAN HENGFU FURNITURE COMPANY LIMITED.	ZHONGSHAN HENGFU FURNITURE COMPANY LIMITED.	48.50	37.96
Zhongshan King's Group Furniture (ENTERPRISES) Co., Ltd.	Zhongshan King's Group Furniture (ENTERPRISES) Co., Ltd.	48.50	37.96
Zhoushan For-strong Wood Co., Ltd	Zhoushan For-strong Wood Co., Ltd	48.50	37.96
Zhoushan For-strong Wood Co., Ltd	Shanghai Wanmuda Furniture Co., Ltd	48.50	37.96
Zhucheng Tonghe Woodworks Co., ltd	Zhucheng Tonghe Woodworks Co., ltd	48.50	37.96
Zhuhai Seagull Kitchen and Bath Products Co., Ltd	Zhuhai Seagull Kitchen and Bath Products Co., Ltd	48.50	37.96
ZIEL INTERNATIONAL CO., LIMITED	DONGGUAN FANG CHENG FURNITURE LTD	48.50	37.96
ZIEL INTERNATIONAL CO., LIMITED	ZhongShan PRO-YEARN Crafts Product Co., Ltd	48.50	37.96
ZIEL INTERNATIONAL CO., LIMITED	FUJIAN NEWMARK INDUSTRIAL CO., LTD	48.50	37.96
ZIEL INTERNATIONAL CO., LIMITED	Fuzhou Zhonghe Houseware CO., LTD	48.50	37.96
ZIEL INTERNATIONAL CO., LIMITED	MING LIANG FURNITURE PRODUCT CO., LTD	48.50	37.96
ZIEL INTERNATIONAL CO., LIMITED	XIANJU JUNYANG HOUSEHOLD PRODUCTS CO., LTD.	48.50	37.96
ZIEL INTERNATIONAL CO., LIMITED	DongGuan HeTai Homewares CO., LTD	48.50	37.96
ZIEL INTERNATIONAL CO., LIMITED	CHENG TONG HARDWARE RPODUCT LTD	48.50	37.96
ZIEL INTERNATIONAL CO., LIMITED	Nantong Jon Ergonomic office Co., Ltd	48.50	37.96
China-Wide Entity [16]		262.18	251.64

Disclosure

We intend to disclose to parties the calculations performed in this proceeding within five days of any public announcement of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of wooden cabinets and vanities from China, as described in the ''Scope of the Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after October 9, 2019, the date of publication of the *Preliminary Determination* notice in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act, Commerce will instruct CBP to require a cash deposit [17] equal to the weighted-average amount by which normal value exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combination listed in the table above will be the rate identified for that combination in the table; (2) for all combinations of China exporters/producers of merchandise under consideration that have not received their own separate rate above,

[16] Commerce preliminarily determined that BRENTRIDGE HOLDING CO., LTD., Harbin Hongsen Wood Co., Ltd., SAICG International Trading Co., Ltd, Shanghai East Best Foreign Trade Co., Ltd., SHANGHAI TIMBER IMPORT & EXPORT CORP., and ZHONG SHAN KING YUANDUN WOOD PRODUCTS CO., LTD. also known as CHIN-SHU WOODEN LTD each failed to establish their eligibility for a separate rate and, therefore, we preliminarily determined that these companies are part of the China-wide entity. *See* Preliminary Decision Memorandum. We continue to find these entities, except for BRENTRIDGE HOLDING CO., LTD., as ineligible for separate rate status for our final determination. *See* Issues and Decision Memorandum at Comment 3. For this final determination, except for BRENTRIDGE HOLDING CO., LTD., we continue to find that these companies are part of the China-wide entity. For further discussion with respect to certain of these companies, *see* the Issues and Decision Memorandum accompanying this notice at Comment 3.

[17] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

the cash-deposit rate will be the cash deposit rate established for the China-wide entity; and (3) for all non-China exporters of the merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the China exporter/producer combination that supplied that non-China exporter. These suspension of liquidation instructions will remain in effect until further notice.

We normally adjust AD cash deposit rates by the amount of export subsidies, where appropriate. In the companion countervailing duty (CVD) investigation, with respect to the mandatory respondents individually examined in the CVD investigation, and the separate-rate companies, we find that an export subsidy adjustment of 10.54 percent to the cash deposit rate is warranted because this is the export subsidy rate included in the CVD all-others rate to which the separate-rate companies are subject. As part of our determination in this final determination to apply AFA the China-wide entity, Commerce has adjusted the China-wide entity's AD cash deposit rate by the lowest export subsidy rate determined for any party in the companion CVD proceeding, *i.e.,* 10.54 percent.[18] [19]

Pursuant to section 777A(f) of the Act, we normally adjust cash deposit rates for estimated domestic subsidy pass-through, where appropriate. However, in this case there is no basis to grant a domestic subsidy pass-through adjustment.[20]

International Trade Commission Notification

In accordance with section 735(d) of the Act, we notified the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. As Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wooden cabinets and vanities for sale from China, or sales (or the likelihood of sales) for importation, of wooden cabinets and vanities from China. If the ITC determines that such injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders (APO)

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Importers

This notice also serves as an initial reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: February 21, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to this investigation consists of wooden cabinets and vanities that are for permanent installation (including floor mounted, wall mounted, ceiling hung or by attachment of plumbing), and wooden components thereof. Wooden cabinets and vanities and wooden components are made substantially of wood products, including solid wood and engineered wood products (including those made from wood particles, fibers, or other wooden materials such as plywood, strand board, block board, particle board, or fiberboard), or bamboo. Wooden cabinets and vanities consist of a cabinet box (which typically includes a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves) and may or may not include a frame, door, drawers and/or shelves. Subject merchandise includes wooden cabinets and vanities with or without wood veneers, wood, paper or other overlays, or laminates, with or without non-wood components or trim such as metal, marble, glass, plastic, or other resins, whether or not surface finished or unfinished, and whether or not completed.

Wooden cabinets and vanities are covered by the investigation whether or not they are imported attached to, or in conjunction with, faucets, metal plumbing, sinks and/or sink bowls, or countertops. If wooden cabinets or vanities are imported attached to, or in conjunction with, such merchandise, only the wooden cabinet or vanity is covered by the scope.

Subject merchandise includes the following wooden component parts of cabinets and vanities: (1) Wooden cabinet and vanity frames (2) wooden cabinet and vanity boxes (which typically include a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves), (3) wooden cabinet or vanity doors, (4) wooden cabinet or vanity drawers and drawer components (which typically include sides, backs, bottoms, and faces), (5) back panels and end panels, (6) and desks, shelves, and tables that are attached to or incorporated in the subject merchandise.

Subject merchandise includes all unassembled, assembled and/or ''ready to assemble'' (RTA) wooden cabinets and vanities, also commonly known as ''flat packs,'' except to the extent such merchandise is already covered by the scope of antidumping and countervailing duty orders on *Hardwood Plywood from the People's Republic of China. See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018); *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 83 FR 513 (January 4, 2018). RTA wooden cabinets and vanities are defined as cabinets or vanities packaged so that at the time of importation they may include: (1) Wooden components required to assemble a cabinet or vanity (including drawer faces and doors); and (2) parts (*e.g.,* screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a cabinet or vanity. RTAs may enter the United States in one or in multiple packages.

Subject merchandise also includes wooden cabinets and vanities and in-scope components that have been further processed in a third country, including but not limited to one or more of the following: Trimming,

[18] *See, e.g., Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination,* 80 FR 4250 (January 27, 2015), and accompanying Issues and Decision Memorandum at 35.

[19] *See Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* dated concurrently with this notice, and accompanying Issues and Decision Memorandum. The final determination in this companion CVD proceeding is being issued on the same day as this final AD determination.

[20] *See* Issues and Decision Memorandum at ''Adjustment Under Section 777A(f) of the Act.''

cutting, notching, punching, drilling, painting, staining, finishing, assembly, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

Excluded from the scope of this investigation, if entered separate from a wooden cabinet or vanity are:

(1) Aftermarket accessory items which may be added to or installed into an interior of a cabinet and which are not considered a structural or core component of a wooden cabinet or vanity. Aftermarket accessory items may be made of wood, metal, plastic, composite material, or a combination thereof that can be inserted into a cabinet and which are utilized in the function of organization/accessibility on the interior of a cabinet; and include:

• Inserts or dividers which are placed into drawer boxes with the purpose of organizing or dividing the internal portion of the drawer into multiple areas for the purpose of containing smaller items such as cutlery, utensils, bathroom essentials, *etc.etc.*

• Round or oblong inserts that rotate internally in a cabinet for the purpose of accessibility to foodstuffs, dishware, general supplies, *etc.*

(2) Solid wooden accessories including corbels and rosettes, which serve the primary purpose of decoration and personalization.

(3) Non-wooden cabinet hardware components including metal hinges, brackets, catches, locks, drawer slides, fasteners (nails, screws, tacks, staples), handles, and knobs.

(4) Medicine cabinets that meet all of the following five criteria are excluded from the scope: (1) Wall mounted; (2) assembled at the time of entry into the United States; (3) contain one or more mirrors; (4) be packaged for retail sale at time of entry; and (5) have a maximum depth of seven inches.

Also excluded from the scope of this investigation are:

(1) All products covered by the scope of the antidumping duty order on *Wooden Bedroom Furniture from the People's Republic of China. See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China,* 70 FR 329 (January 4, 2005).

(2) All products covered by the scope of the antidumping and countervailing duty orders on *Hardwood Plywood from the People's Republic of China. See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018); *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 83 FR. 513 (January 4, 2018).

Imports of subject merchandise are classified under Harmonized Tariff Schedule of the United States (HTSUS) statistical numbers 9403.40.9060 and 9403.60.8081. The subject component parts of wooden cabinets and vanities may be entered into the United States under HTSUS statistical number 9403.90.7080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

Issues and Decision Memorandum

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XI. Recommendation

[FR Doc. 2020–04121 Filed 2–27–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–107]

Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and/or exporters of wooden cabinets and vanities and componets thereof (wooden cabinets and vanities) from the People's Republic of China (China).

DATES: Applicable February 28, 2020.

FOR FURTHER INFORMATION CONTACT: Justin Neuman or Benito Ballesteros, 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) 482–0486 or (202) 482–7425, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2019, Commerce published the *Preliminary Determination* in this investigation.[1] The petitioner is the American Kitchen Cabinet Alliance. In addition to the Government of China (GOC), the mandatory respondents in this investigation are The Ancientree Cabinet Co., Ltd. (Ancientree), Dalian Meisen Woodworking Co., Ltd. (Meisen), and Rizhao Foremost Woodwork Manufacturing Co., Ltd. (Foremost).

A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, are discussed in the Issues and Decision Memorandum, which is hereby adopted by this notice.[2] The Issues and Decision

[1] *See Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 84 FR 39798 (August 12, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Fabricated Structural Steel from the People's Republic of China,'' dated concurrently with, and

Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation (POI) is July 1, 2018 through December 31, 2018.

Scope of the Investigation

The products covered by this investigation are wooden cabinets and vanities from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

Commerce issued a Preliminary Scope Decision Memorandum.[3] Several interested parties submitted case and rebuttal briefs concerning the scope of this investigation. For a summary of the product coverage comments and rebuttal comments submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[4] Based on the comments received, Commerce is not modifying the scope language as it appeared in the *Preliminary Determination.* The scope in Appendix I remains unchanged from that which appeared in the *Preliminary Determination.*

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs submitted by parties in this investigation, are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised is attached to this notice as Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated individual estimated subsidy rates for Ancientree, Foremost and Meisen. Additionally, consistent with the *Preliminary Determination,* we relied on adverse facts available (AFA) to assign subsidy rates to Henan AiDiJia Furniture Co., Ltd (AiDiJia) and Deway International Trade Co., Ltd (Deway), because they failed to respond to Commerce's requests for information.[6]

Verification

As provided for under section 782(i) of the Act, Commerce verified the information reported by Ancientree, Foremost, and Meisen. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by the respondents.[7]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, minor corrections presented at verification, and our verification findings, we made certain changes to the subsidy rate calculations for the respondents. As a result of the changes to the respondents' calculated rates, Commerce has revised the all-others rate. Commerce has also revised the total AFA rate. For a discussion of these changes, *see* the Issues and Decision Memorandum and the Final Calculation Memoranda.[8]

Final Determination

As noted above, we calculated individual estimated subsidy rates for Ancientree, Foremost and Meisen, and relied on AFA to assign subsidy rates to AiDiJia and Deway, because they failed to respond to Commerce's requests for information.

Section 705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, Commerce will determine an all-others rate equal to the weighted-average countervailable subsidy rates established for exporters and/or producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. However, as we do not have publicly-ranged sales data for all three of the participating company respondents, we are using a simple average of the calculated subsidy rates to establish the all-others rate.

Commerce determines the total estimated net countervailable subsidy rates to be the following:

Company	Subsidy rate (percent)
The Ancientree Cabinet Co., Ltd[9]	13.33
Dalian Meisen Woodworking Co., Ltd[10]	18.27

hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Certain Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 2, 2019 (Preliminary Scope Decision Memorandum).

[4] *See* Memorandum, ''Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Final Scope Comments Decision Memorandum,'' dated concurrently with this notice (Final Scope Decision Memorandum).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] *See Preliminary Determination* PDM at 10–11 (noting that Commerce relied on AFA to assign a subsidy rate to Deway, because it failed to respond to our quantity and value questionnaire, and also relied on AFA to assign a subsidy rate to AiDiJia, because it failed to respond to our full questionnaire).

[7] *See* Memorandum, ''Verification of the Questionnaire Responses of Dalian Meisen Woodworking Co., Ltd.,'' dated January 3, 2020; Memorandum, ''Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Verification of the Questionnaire Responses of The Ancientree Cabinet Co., Ltd.,'' dated January 7, 2020; and Memorandum, ''Verification of the Questionnaire Responses of Rizhao Foremost Woodwork Manufacturing Co., Ltd.,'' dated January 7, 2020.

[8] *See* Memorandum, ''Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Ancientree Final Determination Calculation Memorandum,'' dated concurrently with this notice; Memorandum, ''Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Foremost Final Determination Calculation Memorandum,'' dated concurrently with this notice; and Memorandum, ''Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Meisen Final Determination Calculation Memorandum,'' dated concurrently with this notice (collectively, Final Calculation Memoranda).

[9] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Ancientree: Jiangsu Hongjia Wood Co., Ltd., Jiangsu Hongjia Wood Co., Ltd. Shanghai Branch, and Shanghai Hongjia Wood Co., Ltd.

[10] As discussed in the Preliminary Decision Memorandum, Commerce has found the following company to be cross-owned with Dalian Meisen: Dalian Hechang Technology Development Co., Ltd.

[11] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Rizhao Foremost: Foremost Worldwide Co., Ltd., and Rizhao Foremost Landbridge Wood Industries Co., Ltd.

Company	Subsidy rate (percent)
Rizhao Foremost Woodwork Manufacturing Company Ltd[11]	31.18
Deway International Trade Co., Ltd	293.45
Henan AiDiJia Furniture Co., Ltd	293.45
All Others	20.93

Disclosure

We intend to disclose to parties the calculations performed in this proceeding within five days of any public announcement of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 12, 2019, the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for subject merchandise entered, or withdrawn from warehouse, on or after December 9, 2019, but to continue the suspension of liquidation of all entries from August 12, 2019 through December 8, 2019.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we intend to issue a countervailing duty (CVD) order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wooden cabinets and vanities from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a CVD order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Order (APO)

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act, and 19 CFR 351.210(c).

Dated: February 21, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to this investigation consists of wooden cabinets and vanities that are for permanent installation (including floor mounted, wall mounted, ceiling hung or by attachment of plumbing), and wooden components thereof. Wooden cabinets and vanities and wooden components are made substantially of wood products, including solid wood and engineered wood products (including those made from wood particles, fibers, or other wooden materials such as plywood, strand board, block board, particle board, or fiberboard), or bamboo. Wooden cabinets and vanities consist of a cabinet box (which typically includes a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves) and may or may not include a frame, door, drawers and/or shelves. Subject merchandise includes wooden cabinets and vanities with or without wood veneers, wood, paper or other overlays, or laminates, with or without non-wood components or trim such as metal, marble, glass, plastic, or other resins, whether or not surface finished or unfinished, and whether or not completed.

Wooden cabinets and vanities are covered by the investigation whether or not they are imported attached to, or in conjunction with, faucets, metal plumbing, sinks and/or sink bowls, or countertops. If wooden cabinets or vanities are imported attached to, or in conjunction with, such merchandise, only the wooden cabinet or vanity is covered by the scope.

Subject merchandise includes the following wooden component parts of cabinets and vanities: (1) Wooden cabinet and vanity frames (2) wooden cabinet and vanity boxes (which typically include a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves), (3) wooden cabinet or vanity doors, (4) wooden cabinet or vanity drawers and drawer components (which typically include sides, backs, bottoms, and faces), (5) back panels and end panels, (6) and desks, shelves, and tables that are attached to or incorporated in the subject merchandise.

Subject merchandise includes all unassembled, assembled and/or ''ready to assemble'' (RTA) wooden cabinets and vanities, also commonly known as ''flat packs,'' except to the extent such merchandise is already covered by the scope of antidumping and countervailing duty orders on *Hardwood Plywood from the People's Republic of China. See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018); *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 83 FR 513 (January 4, 2018). RTA wooden cabinets and vanities are defined as cabinets or vanities packaged so that at the time of importation they may include: (1) Wooden components required to assemble a cabinet or vanity (including drawer faces and doors); and (2) parts *(e.g.,* screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a cabinet or vanity. RTAs may enter the United States in one or in multiple packages.

Subject merchandise also includes wooden cabinets and vanities and in-scope components that have been further processed in a third country, including but not limited to one or more of the following: trimming, cutting, notching, punching, drilling, painting, staining, finishing, assembly, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

Excluded from the scope of this investigation, if entered separate from a wooden cabinet or vanity are:

(1) Aftermarket accessory items which may be added to or installed into an interior of a cabinet and which are not considered a structural or core component of a wooden cabinet or vanity. Aftermarket accessory

items may be made of wood, metal, plastic, composite material, or a combination thereof that can be inserted into a cabinet and which are utilized in the function of organization/accessibility on the interior of a cabinet; and include:

• Inserts or dividers which are placed into drawer boxes with the purpose of organizing or dividing the internal portion of the drawer into multiple areas for the purpose of containing smaller items such as cutlery, utensils, bathroom essentials, etc.

• Round or oblong inserts that rotate internally in a cabinet for the purpose of accessibility to foodstuffs, dishware, general supplies, etc.

(2) Solid wooden accessories including corbels and rosettes, which serve the primary purpose of decoration and personalization.

(3) Non-wooden cabinet hardware components including metal hinges, brackets, catches, locks, drawer slides, fasteners (nails, screws, tacks, staples), handles, and knobs.

(4) Medicine cabinets that meet all of the following five criteria are excluded from the scope: (1) Wall mounted; (2) assembled at the time of entry into the United States; (3) contain one or more mirrors; (4) be packaged for retail sale at time of entry; and (5) have a maximum depth of seven inches.

Also excluded from the scope of this investigation are:

(1) All products covered by the scope of the antidumping duty order on *Wooden Bedroom Furniture from the People's Republic of China. See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China,* 70 FR 329 (January 4, 2005).

(2) All products covered by the scope of the antidumping and countervailing duty orders on *Hardwood Plywood from the People's Republic of China. See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018); *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 83 FR. 513 (January 4, 2018).

Imports of subject merchandise are classified under Harmonized Tariff Schedule of the United States (HTSUS) statistical numbers 9403.40.9060 and 9403.60.8081. The subject component parts of wooden cabinets and vanities may be entered into the United States under HTSUS statistical number 9403.90.7080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Scope Comments
V. Use of Adverse Facts Available
VI. Subsidies Valuation Information
VII. Analysis of Programs
VIII. Analysis of Comments
Comment 1: Initiation of the Investigation
Comment 2: Whether Commerce Should Apply AFA to the Provision of Electricity for Less than Adequate Remuneration (LTAR) Program
Comment 3: Whether Commerce Should Apply AFA to Find the Export Buyer's Credit (EBC) Program Countervailable
Comment 4: Whether the Policy Loans to the Wooden Cabinet and Vanity Industry Program Is Countervailable
Comment 5: Whether Land Prices in Thailand Provide a Suitable Benchmark for Land Prices in China
Comment 6: Whether Commerce Should Apply AFA to the Provision of Inputs for LTAR
Comment 7: Whether Commerce Should Apply AFA to Self-Reported Subsidies
Comment 8: Whether Commerce Should Adjust Its Plywood Benchmark
Comment 9: Whether Commerce Should Apply AFA to Meisen
Comment 10: Whether Commerce Should Continue to Find that Meisen Was Uncreditworthy
Comment 11: Whether Commerce Should Countervail Subsidies Received by Foremost's Tolling Companies
Comment 12: Whether Commerce Should Continue to Find that Foremost Was Uncreditworthy
IX. Recommendation

[FR Doc. 2020–04120 Filed 2–27–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–891, A–580–904]

Forged Steel Fittings From India and the Republic of Korea: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

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

DATES: Applicable February 28, 2020.

FOR FURTHER INFORMATION CONTACT: Caitlin Monks at (202) 482–2670, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 2019, the Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of forged steel fittings from India and the Republic of Korea.[1] Currently, the preliminary determinations are due no later than March 31, 2020.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On February 5, 2020, the petitioners[2] submitted timely requests that Commerce postpone the preliminary determinations in these LTFV investigations.[3] The petitioners request postponement because ''based on the complexity of the process for selecting mandatory respondents in this investigation, Commerce will not have complete questionnaire responses and sufficient information to issue preliminary determinations if the deadlines are not extended.''[4]

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations by 50 days (*i.e.,* 190 days after the date on which these investigations were initiated). As a result, Commerce will issue its preliminary determinations no later than May 20, 2020. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the

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[1] *See Forged Steel Fittings from India and the Republic of Korea: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 64265 (November 21, 2019).

[2] The petitioners are Bonney Forge Corporation and the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW).

[3] *See* Petitioner's Letters, ''Forged Steel Fittings from India: Request for Extension of Preliminary Determination,'' and ''Forged Steel Fittings from Korea: Request for Extension of Preliminary Determination,'' both dated February 5, 2020.

[4] *Id.*

final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

Notification to Interested Parties

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: February 25, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–04122 Filed 2–27–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open public meeting and request for comments.

SUMMARY: The Hydrographic Services Review Panel (HSRP) will hold a meeting that will be open to the public, April 28–30, 2020, in Oahu, Hawaii. Public comments are requested in advance and/or during the meeting. Information about the HSRP meeting, agenda, presentations, webinar registration, and background documents will be posted and updated online. To promote zero waste, all meeting documents will be available for downloading the week prior to the meeting at: *https://www.nauticalcharts.noaa.gov/hsrp/hsrp.htm* and *https://www.nauticalcharts.noaa.gov/hsrp/meetings.htm.*

DATES: The meeting is two and a half days during April 28–30, 2020, in Oahu, HI. The agenda, speakers and times are subject to change. The draft agenda will be posted online in January 2020 and the meeting location will be announced in April 2020. For updates, please check online, sign up for emails, or contact the organizers. To receive the meeting announcements by email including the agenda, venue, and to inform the attendance estimate, please sign up below or email: *https://docs.google.com/forms/d/1SHBr5gDqpBHildSGbymFgMqckHLmKEry7bLi0L_N1SQ/edit?vc=0&c=0&w=1.*

FOR FURTHER INFORMATION CONTACT: Lynne Mersfelder-Lewis, HSRP program manager, National Ocean Service, Office of Coast Survey, NOAA (N/CS), 1315 East-West Highway, SSMC3 #6413, Silver Spring, Maryland 20910; email: *Lynne.Mersfelder@noaa.gov* and *Virginia.Dentler@noaa.gov;* telephone: 240–533–0064.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. To receive meeting updates and inform the participant list, please sign up as noted above, or you can email your name, organization and email address contact. Seating will be available on a first-come, first-served basis. Public comment is encouraged on the topics of the HSRP meeting and there are public comment periods scheduled each day noted in the agenda. Each individual or group making verbal or written comments will be limited to one comment per public comment period and a total time of five (5) minutes, will be recorded and transcribed, and comments will become part of the meeting record. For those not onsite, comments can be submitted in writing via email prior to the meeting or by email during the meeting. Public comments are encouraged and individuals or groups who would like to submit advance written statements should email their comments to *Lynne.Mersfelder@noaa.gov, Virginia.Dentler@noaa.gov* and *hydrographic.services@noaa.gov.* The HSRP will provide webinar capability. Pre-registration is required to access the webinar: *https://register.gotowebinar.com/rt/6546237546550851853.*

The Hydrographic Services Review Panel (HSRP) is a Federal Advisory Committee established to advise the Under Secretary of Commerce for Oceans and Atmosphere, the NOAA Administrator, on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, as amended, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice. The charter, issue papers with recommendations, and other information are located online at: *https://www.nauticalcharts.noaa.gov/hsrp/CharterBylawsHSIAStatute.htm.*

Past recommendations and issue papers are at: *https://www.nauticalcharts.noaa.gov/hsrp/recommendations.htm.*

Past HSRP public meeting summary reports, agendas, presentations, transcripts, and other information is available online at: *https://www.nauticalcharts.noaa.gov/hsrp/meetings.htm.*

Matters to be Considered: The panel is convening on issues relevant to NOAA's navigation services, Hawaii and the Pacific and elsewhere, including stakeholder use of navigation services data, products and services, flooding, inundation and sea level rise, hydrographic survey and nautical charting, the National Spatial Reference System (NSRS), legislative priorities and other topics. Navigation services include the data, products, and services provided by the NOAA programs and activities that undertake geodetic observations, gravity modeling, shoreline mapping, bathymetric mapping, hydrographic surveying, nautical charting, tide and water level observations, current observations, marine modeling, and related topics. This suite of NOAA products and services support safe and efficient navigation, resilient coasts and communities, and the nationwide positioning information infrastructure to support America's commerce. The Panel will hear from state and federal agencies, non-federal organizations and associations, local, regional and national stakeholders and partners about their missions and use of NOAA's navigation services, the value these services bring, and what improvements could be made. Other administrative matters may be considered. The agenda and speakers are subject to change, please refer to the website for the most updated information.

Special Accommodations: This meeting is physically accessible to people with disabilities. Please direct requests for sign language interpretation or other auxiliary aids to *Lynne.Mersfelder@noaa.gov* by March 31, 2020.

Elizabeth I. Kretovic,

Deputy Hydrographer, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–03892 Filed 2–27–20; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR098]

Marine Mammals; File No. 23283

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that NMFS' Marine Mammal Laboratory, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115 (Responsible Party: John Bengtson, Ph.D.), has applied in

due form for a permit to conduct research on northern fur seals (*Callorhinus ursinus*).

DATES: Written, telefaxed, or email comments must be received on or before March 30, 2020.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 23283 from the list of available applications.

These documents are also available upon written request or by appointment in the 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.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Shasta McClenahan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests a research permit to investigate population status and trends, demographics, health and disease, and foraging ecology of northern fur seals. Up to 38,491 northern fur seals may be taken annually from the California stock at San Miguel Island and the Farallon Islands in California, including 1,580 by capture and handle, 36,900 by incidental disturbance and 11 by unintentional mortality. Up to 375,431 northern fur seals may be taken annually from the Eastern Pacific stock at the Pribilof Islands and Bogoslof Island in Alaska, including 18,200 by capture and handle, 357,220 by incidental disturbance, and 11 by unintentional mortality. Unlimited numbers of samples may be salvaged from dead animals, received, and/or exported for analysis. Take activities involve ground survey, aerial survey, observation, photograph/video, capture/handling, and collection of scat/spew. Procedures to be performed on handled animals include: Administration of drugs and anesthesia, stomach lavage, external and internal instrumentation, marking, measuring, restraint, biological sampling and swabs, stable isotopes and serial blood samples, ultrasound, and weighing. Up to 150 Western Steller sea lions (*Eumetopias jubatus*) and 200 Aleutian Islands and Pribilof Island stock harbor seals (*Phoca vitulina*) may be incidentally disturbed annually in Alaska. 36,500 California sea lions (*Zalophus californianus*) may be incidentally disturbed annually in California. The requested duration of this permit is 5 years from June 1, 2020 to May 31, 2025.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 24, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–04080 Filed 2–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XW019]

U.S. Stakeholder Meeting on Pacific Bluefin Tuna Fishery Management Framework; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS is holding a meeting to discuss the future management of the U.S. West Coast Pacific bluefin tuna (PBF) fishery, including management objectives and a management framework.

DATES: The meeting will be held April 23, 2020, from 9 a.m. to 4:30 p.m. PST, or until business concludes.

ADDRESSES: The meeting will be held in Room 3400 at the Glenn M. Anderson Federal Building, 501 W Ocean Blvd., Long Beach, California 90802. Please notify Eric Poncelet (meeting facilitator), at *eponcelet@kearnswest.com* or (415) 697–0566 by April 9, 2020, if you plan to attend. If interested members of the public cannot reasonably attend the meeting in person, NMFS may provide for a teleconference phone line or webinar for such members if a request is made to the meeting facilitator; however, participation by teleconference or webinar may be limited in a reasonable manner to facilitate discussion. See **SUPPLEMENTARY INFORMATION** for additional information on attendance, participation instructions, and meeting materials.

FOR FURTHER INFORMATION CONTACT: Celia Barroso, West Coast Region, NMFS, at *Celia.Barroso@noaa.gov,* or at (562) 432–1850.

SUPPLEMENTARY INFORMATION:

Stakeholders have expressed an interest in developing management objectives and a long-term management framework for PBF. In September 2018, the Pacific Fishery Management Council (PFMC) recommended that its Highly Migratory Species Management Team develop a long-term management strategy for PBF (see the PFMC's ''September 2018 Decision Summary Document'' at *https://www.pcouncil.org/wp-content/uploads/2018/09/0918_Decision_Summary_DocumentV2.pdf*). On May 2, 2019, NMFS held a stakeholder meeting in which participants discussed potential management objectives and strategies to achieve those objectives for the domestic commercial PBF fishery (see the NMFS report to the June PFMC meeting at *https://www.pcouncil.org/wp-content/uploads/2019/06/J2b_Sup_NMFS_Rpt3_JUN2019BB.pdf*). The upcoming meeting scheduled for April 23, 2020, is intended to follow up the discussion from the 2019 stakeholder meeting as well as provide an opportunity for early comments on how to implement a new Inter-American Tropical Tuna Commission (IATTC) resolution on PBF conservation and management for 2021–2022 that NMFS anticipates the IATTC will adopt at its annual meeting in August 2020. In order to facilitate discussion, NMFS strongly encourages in-person participation at

the meeting location described in the **ADDRESSES** section if possible. NMFS will email attendance instructions and background materials to the meeting participants who notify the meeting facilitator as described in the **ADDRESSES** section.

PBF U.S. Stakeholder Meeting Topics

The PBF U.S. stakeholder meeting topics will include, but are not limited to, the following:

(1) An overview of international management of PBF and current management of the U.S. PBF fishery; and,

(2) Potential management options for 2021–2022 and in the long-term.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Celia Barroso, at *Celia.Barroso@noaa.gov* or (562) 432–1850, by April 2, 2020.

Authority: 16 U.S.C. 951 *et seq.,* 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 6901 *et seq.*

Dated: February 25, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–04095 Filed 2–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Meeting of the Advisory Committee on Commercial Remote Sensing

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Commercial Remote Sensing (''ACCRES'' or ''the Committee'') will meet March 18, 2020.

DATES: The meeting is scheduled as follows: March 18, 2020, 9 a.m.–4 p.m. There will be a one hour lunch break from 12 p.m.–1 p.m.

ADDRESSES: The meeting will be held at the George Washington University's Elliott School of International Relations located at 1957 E Street NW, Room 505, Washington, DC 20052.

FOR FURTHER INFORMATION CONTACT: Tashaun Pierre, NOAA/NESDIS/CRSRA, 1335 East West Highway, G–101, Silver Spring, Maryland 20910; (301) 713–7047 or *Tashaun.pierre@noaa.gov.*

SUPPLEMENTARY INFORMATION: As required by Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 (FACA) and its implementing regulations, *see* 41 CFR 102–3.150, notice is hereby given of the meeting of ACCRES. ACCRES was established by the Secretary of Commerce (Secretary) on May 21, 2002, to advise the Secretary of Commerce through the Under Secretary of Commerce for Oceans and Atmosphere on matters relating to the U.S. commercial remote sensing space industry and on the National Oceanic and Atmospheric Administration's activities to carry out the responsibilities of the Department of Commerce set forth in the National and Commercial Space Programs Act of 2010 (51 U.S.C. 60101 *et seq.*).

Purpose of the Meeting and Matters To Be Considered

The meeting will be open to the public pursuant to Section 10(a)(1) of the FACA. During the meeting, the Committee will receive updates on NOAA's Commercial Remote Sensing Regulatory Affairs activities and discuss updates to the commercial remote sensing regulatory regime. The Committee will be available to receive public comments on its activities.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for special accommodations may be directed to Tashaun Pierre, NOAA/NESDIS/CRSRA, 1335 East West Highway, G–101, Silver Spring, Maryland 20910; (301) 713–7047 or *Tashaun.pierre@noaa.gov.*

Additional Information and Public Comments

In accordance with 41 CFR 102–3.140(b), the meeting room is sufficient to accommodate advisory committee members, agency staff, and a reasonable number of interested members of the public. However, to avoid overcrowding should an unexpected number of members of the public attend the meeting, ACCRES invites interested members of the public to RSVP through the following link: *https://forms.gle/sfvLt8Rfj7e8C2WNA* directly to Tashaun Pierre at (301) 713–7047, or by email at *Tashaun.pierre@noaa.gov,* by March 13, 2020. Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Tahara Dawkins, Designated Federal Officer for ACCRES, NOAA/NESDIS/CRSRA, 1335 East West Highway, G–101, Silver Spring, Maryland 20910; (301) 713–3385 or *tahara.dawkins@noaa.gov.* Copies of the draft meeting agenda will be posted on the Commercial Remote Sensing Regulatory Affairs Office at *https://www.nesdis.noaa.gov/CRSRA/accresMeetings.html* .

ACCRES expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. In general, each individual or group making an oral presentation may be limited to a total time of five minutes. Written comments sent to NOAA/NESDIS/CRSRA on or before March 12, 2020 will be provided to Committee members in advance of the meeting. Comments received too close to the meeting date will normally be provided to Committee members at the meeting.

Stephen M. Volz,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 2020–04059 Filed 2–27–20; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Ocean Exploration Advisory Board

AGENCY: Office of Ocean Exploration and Research (OER), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Solicitation of Applications.

SUMMARY: NOAA is soliciting applications to fill up to six membership vacancies on the Ocean Exploration Advisory Board (OEAB). The new OEAB members will serve initial three-year terms, renewable once.

DATES: Application materials must be received no later than March 30, 2020.

ADDRESSES: Submit application materials to Christa Rabenold via mail or email. Mail: NOAA/OER, 1315 East West Highway, SSMC3 Rm 10310, Silver Spring, MD, 20910; Email: *christa.rabenold@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: David McKinnie, OEAB Designated Federal Officer, NOAA/OER, 7600 Sand Point Way NE, Seattle, WA 98115; 206–526–6950; *david.mckinnie@noaa.gov.*

SUPPLEMENTARY INFORMATION: NOAA is soliciting applications to fill up to six vacancies on the OEAB with individuals demonstrating expertise in areas relevant to the statutory purpose of the OEAB and the ocean exploration act established under 33 U.S.C. 3401 *et seq.* The new OEAB members will serve initial three-year terms, renewable once.

The purpose of the OEAB is to advise the NOAA Administrator on matters pertaining to ocean exploration. The OEAB functions as an advisory body in accordance with the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App., with the exception of section 14. It reports to the NOAA Administrator, as directed by 33 U.S.C. 3405.

The OEAB consists of approximately ten members, including a chair and co-chair(s), designated by the NOAA Administrator in accordance with FACA requirements and the terms of the approved OEAB Charter.

The OEAB was established:

(1) To advise the Administrator on priority areas for survey and discovery;

(2) To assist the program in the development of a five-year strategic plan for the fields of ocean, marine, and Great Lakes science, exploration, and discovery;

(3) To annually review the quality and effectiveness of the proposal review process established under section 12003(a)(4); and

(4) To provide other assistance and advice as requested by the Administrator.

OEAB members are appointed as special government employees (SGEs) and will be subject to the ethical standards applicable to SGEs. Members are reimbursed for actual and reasonable expenses incurred in performing such duties but will not be reimbursed for their time. All OEAB members serve at the discretion of the NOAA Administrator.

The OEAB meets three to four times each year, exclusive of subcommittee, task force, and working group meetings.

As a Federal Advisory Committee, the OEAB's membership is required to be balanced in terms of viewpoints represented and the functions to be performed as well as including the interests of geographic regions of the country and the diverse sectors of our society.

For more information about the OEAB, please visit *https://oeab.noaa.gov.*

Although the OEAB reports directly to the NOAA Administrator, OER, which is part of the NOAA Office of Oceanic and Atmospheric Research, provides staffing and other support for the OEAB. OER's mission is to explore the ocean for national benefit.

OER:

- Explores the ocean to make discoveries of scientific, economic, and cultural value, with priority given to the U.S. Exclusive Economic Zone and Extended Continental Shelf;
- Promotes technological innovation to advance ocean exploration;
- Provides public access to data and information;
- Encourages the next generation of ocean explorers, scientists, and engineers; and,
- Expands the national ocean exploration program through partnerships.

For more information about OER, please visit *https://oceanexplorer.noaa.gov.*

Applications: An application is required to be considered for OEAB membership. To apply, please submit (1) your full name, title, institutional affiliation, and contact information (mailing address, email address, telephone and fax numbers); (2) a short description of your qualifications relative to the statutory purpose of the OEAB and the ocean exploration act established under 33 U.S.C. 3401 *et seq.;* (3) a resume or curriculum vitae (maximum length four pages); and (4) a cover letter stating your interest in serving on the OEAB and highlighting specific areas of expertise relevant to the purpose of the OEAB.

Dated: February 10, 2020.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–04125 Filed 2–27–20; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA057

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a one-day meeting of its Shrimp Advisory Panel (AP).

DATES: The meeting will convene on Tuesday, March 24, 2020, 8:30 a.m.–3 p.m., EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Gulf Council Headquarters office.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Matt Freeman, Economist, Gulf of Mexico Fishery Management Council; *matt.freeman@gulfcouncil.org,* telephone: (813) 348–1630. The Council's website, *www.gulfcouncil.org* also has details on the meeting location, proposed agenda, webinar listen-in access, and other materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Tuesday, March 24, 2020

Meeting will begin with adoption of agenda, approval of minutes from the March 21, 2019 meeting; and, a review of the scope of work with its members. National Marine Fisheries Service (NMFS) will provide the AP with updated stock assessments, 2018 + preliminary 2019 Gulf shrimp fishery effort and landings, the preliminary 2019 Royal Red index, and the biological review of the Texas closure. NMFS will also discuss the 2019 final rule on modifications to skimmer trawl turtle excluder device (TED) regulations. Gulf Council staff will review Shrimp Fishery Management Plans (FMP) Objectives. The AP will discuss first-hand accounts of changes in the shrimp fishery environment, trends in sales of state shrimp licenses, and any other business items.

—Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the listen-in access by visiting *www.gulfcouncil.org* and clicking on the AP meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for

sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council office (see **ADDRESSES**), at least 5 working days prior to the meeting.

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

Dated: February 25, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–04140 Filed 2–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA056

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a webinar meeting of its Groundfish Management Team (GMT) to discuss items on the Pacific Council's March 2020 meeting agenda. The meeting is open to the public.

DATES: The webinar meeting will be held Tuesday, March 24, 2020, from 1 p.m. to 4 p.m., Pacific Daylight Time. The scheduled ending time for the GMT webinar is an estimate, the meeting will adjourn when business for the day is completed.

ADDRESSES: This meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join the meeting by using this link: *https://meetings.ringcentral.com/join,* (2) enter the Meeting ID, 5038202426, and click JOIN, (3) you will be prompted to either download the RingCentral meetings application or join the meeting without a download via your web browser, and (4) enter your name and click JOIN. NOTE: We require all participants to use a telephone or cell phone to participate. (1) You must use your telephone for the audio portion of the meeting by dialing the TOLL number provided on your screen followed by the meeting ID and participant ID, also provided on the screen. (2) Once connected, you will be in the meeting, seeing other participants and a shared screen, if applicable. Technical Information and System Requirements: PC-based attendees are required to use Windows® 10, 8; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (see the *RingCentral mobile apps* in your app store). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2280, extension 412 for technical assistance.

Council Address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Todd Phillips, Staff Officer; telephone: (503) 820–2426; email: *todd.phillips@noaa.gov.*

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT webinar is to prepare for the Pacific Council's March 2020 agenda items. The GMT will discuss items related to groundfish management and administrative Pacific Council agenda items. A detailed agenda for the webinar will be available on the Pacific Council's website prior to the meeting. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, (503) 820–2412, *kris.kleinschmidt@noaa.gov,* at least 10 days prior to the meeting date.

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

Dated: February 25, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–04143 Filed 2–27–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request; Secrecy and License To Export

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Secrecy and License to Export.

OMB Control Number: 0651–0034.

Form Number(s): There are no forms in this information collection.

Type of Request: Revision of a currently approved information collection.

Number of Respondents: 4,434.

Average Hours per Response: The USPTO estimates that it will take the public from 30 minutes (0.50 hours) to 4 hours to gather the necessary information, prepare the appropriate document, and submit the information to the USPTO.

Burden Hours: 2,798 hours.

Hourly Cost Burden: $1,225,524.

Non-hourly Cost Burden: $788,287.

Needs and Uses:

In the interest of national security, patent laws and regulations place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patents in foreign countries.

The filing of a patent application is considered a request for a foreign filing license. However, in some instances an applicant may need a license for filing patent applications in foreign countries prior to a filing in the USPTO or sooner than the anticipated licensing of a pending patent application.

Responses to this information collection are necessary to obtain a permit to disclose, modify, or rescind a secrecy order; to obtain general or group permits; to obtain foreign filing licenses, including retroactive foreign filing licenses; to expedite the handling of a license; or to change the scope of a license.

Affected Public: Individuals or households; private sector.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through *reginfo.gov.* Follow the instructions to view Department of Commerce information collections currently under review by OMB.

Further information can be obtained by:

• *Email: InformationCollection@uspto.gov.* Include ''0651–0034 information request'' in the subject line of the message.

• *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before March 30, 2020 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Kimberly Hardy,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2020–04134 Filed 2–27–20; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; Law School Clinic Certification Program

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Law School Clinic Certification Program.

OMB Control Number: 0651–0081.

Form Number(s): (SB = Specimen Book, LS = Law School)

- PTO/SB/419: (Certification and Request to Make Special Under the Law School Program)
- PTO–158LS: (Application for Limited Recognition in USPTO Law School Program)

Type of Request: Revision of a currently approved information collection.

Number of Respondents: 812.

Average Hours per Response: The USPTO estimates that it will take the public from 30 minutes (0.5 hours) to 40 hours to gather the necessary information, prepare the appropriate documents, and submit the information to the USPTO.

Burden Hours: 690 hours.

Hourly Cost Burden: $145,213.

Non-Hourly Cost Burden: $1,721.

Needs and Uses: The USPTO Office of Enrollment and Discipline (OED) uses the information in this information collection to determine whether the applicants are of good moral character and reputation as well as whether said applicants have the necessary legal, scientific, and technical qualifications required for admittance to the Law School Clinic Certification Program. The USPTO uses student-applicant information to determine whether an applicant may be admitted to, or an existing student-practitioner may remain in, the Law School Clinic Certification Program. Information collected from applications submitted by law schools for admission into the program is used to evaluate those law schools and determine whether they are qualified to be admitted as member law schools into the Law School Clinic Certification Program. These qualifications are reevaluated through the law schools' provision of reports as well as their completion of the required biennial reapplication process.

Affected Public: Individuals or households; private sector.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through *reginfo.gov.* Follow the instructions to view Department of Commerce information collections currently under review by OMB.

Further information can be obtained by:

• *Email: InformationCollection@uspto.gov.* Include ''0651–0081 information request'' in the subject line of the message.

• *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before March 30, 2020 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Kimberly Hardy,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2020–04135 Filed 2–27–20; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Notice of Availability

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice of availability.

SUMMARY: Pursuant to *Executive Order 13891* and OMB Memorandum M–20–02, the U.S. AbilityOne Commission (Commission) is announcing the February 28, 2020, launch of a single, searchable, indexed database containing all Commission guidance documents currently in effect.

DATES: Applicable February 28, 2020.

ADDRESSES: *www.abilityone.gov/guidance.*

FOR FURTHER INFORMATION CONTACT: Brian Hoey, 703.603.2114, *guidanceportal@abilityone.gov.*

SUPPLEMENTARY INFORMATION: Section 3 of Executive Order 13891 requires each federal agency to ''establish or maintain on its website a single, searchable, indexed database that contains or links to all guidance documents in effect from such agency or component.'' Exec. Order No. 13,891, 84 FR 55,235 (Oct. 15, 2019).

OMB Memorandum M–20–02 further requires agencies to ''send to the **Federal Register** a notice announcing the existence of the new guidance portal and explaining that all guidance documents remaining in effect are contained on the new guidance portal.'' OMB Memorandum M–20–02, Guidance Implementing Executive Order 13891, titled ''Promoting the Rule of Law Through Improved Agency Guidance Documents'' (Oct. 31, 2019).

In compliance with the above, the Commission is announcing the availability of a single, searchable, indexed database containing all Commission guidance documents currently in effect, which may be accessed at *www.abilityone.gov/guidance* on or after February 28, 2020.

(Authority: E.O. 13891; OMB Memorandum M–20–02.)

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2020–04112 Filed 2–27–20; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and a service from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* March 29, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

On 1/3/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

NSNs—Product Names:

7530–00–NIB–1274—Surface Safe Sign Label, Removable, Laser/Inkjet, White, 3–1/2″ x 5″, 15 Sheets

7530–00–NIB–1275—Surface Safe Sign Label, Removable, Laser/Inkjet, White, 5″ x 7″, 15 Sheets

7530–00–NIB–1276—Surface Safe Sign Label, Removable, Laser/Inkjet, White, 7″ x 10″, 15 Sheets

7530–00–NIB–1277—Surface Safe Sign Label, Removable, Laser/Inkjet, White, 8″ x 8″, 15 Sheets

7530–00–NIB–1220—Labels, Self-Laminating, Laser/Inkjet, White, 2–5/16″ x 3–5/16″, 25 Sheets

7530–00–NIB–1223—Labels, Self-Laminating, Laser/Inkjet, White, 1–1/32″ x 3–1/2″, 25 Sheets

7530–00–NIB–1278—Business Cards, Uncoated, Two-Sided Printing, White, 2″ x 3–1/2″, 200 Cards

7530–00–NIB–1287—Business Cards, Uncoated, Two-Sided Printing, White, 2″ x 3–1/2″, 1000 Cards

7530–00–NIB–1279—Tent Cards, Uncoated, Embossed, Two-Sided Printing, White, 3–1/2″ x 11″, 50 Cards

7530–00–NIB–1280—Tent Cards, Uncoated, Embossed, Two-Sided Printing, White, 2–1/2″ x 8–1/2″, 100 Cards

7530–00–NIB–1270—Name Badge, Laser/Inkjet, 2–1/3″ x 3–3/8″, White, 50 Sheets

Mandatory Source of Supply: North Central Sight Services, Inc., Williamsport, PA

Mandatory For: Total Government Requirement

Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FAS ADMIN SVCS ACQUISITION BR(2

Deletions

On 1/17/2020 and 1/24/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service deleted from the Procurement List.

End of Certification

Accordingly, the following products and service are deleted from the Procurement List:

Products

NSN—Product Name:

3990CAAA9243—Pallet, Demo, Sideboard, 30″ x 44''

Mandatory Source of Supply: Bona Vista Programs, Inc., Kokomo, IN

Contracting Activity: W39Z STK REC ACCT–CRANE AAP, CRANE, IN

NSNs—Product Names:

8125–00–NIB–0041—Spray Bottle, BioRenewables Restroom Cleaner, Silk Screened, 8 oz, 12/BX

8125–00–NIB–0024—Tribase multi purpose silk screened 8oz bottle, 12/BX

8125–00–NIB–0025—Glass cleaner silk screened 8oz bottle, 12/BX

8125–00–NIB–0026—Neutral Disinfectant silk screened 8oz bottle, 12/BX

8125–00–NIB–0027—Industrial cleaner silk screened 8oz bottle, 12/BX

Mandatory Source of Supply: VisionCorps, Lancaster, PA

Contracting Activity: CENTRAL OFFICE, WASHINGTON, DC

Services

Service Type: Janitorial/Custodial

Mandatory for: Veterans Administration Medical Center: 2600 M. L. King, Jr. Parkway, Des Moines, IA

Mandatory Source of Supply: Goodwill Solutions, Inc., Johnston, IA

Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2020–04114 Filed 2–27–20; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a product and services previously furnished by such agencies.

DATES: *Comments must be received on or before:* March 29, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service is proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service

Service Type: Mess Attendant Service
Mandatory for: U.S. Air Force, Dyess Air Force Base, TX
Mandatory Source of Supply: Work Services Corporation, Wichita Falls, TX
Contracting Activity: DEPT OF THE AIR FORCE, Air Force Nonappropriated Funds Purchasing Office, San Antonio, TX

Deletions

The following product and services are proposed for deletion from the Procurement List:

Product

NSN—Product Name: 7920–00–926–5146—Extension, Handle, Telescoping, Aluminum, 5′ to 10′L
Mandatory Source of Supply: Arizona Industries for the Blind, Phoenix, AZ
Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

Services

Service Type: Form/Publication Storage & Distribution
Mandatory for: Department of Agriculture, Landover, MD
Contracting Activity: AGRICULTURE, DEPARTMENT OF, PROCUREMENT OPERATIONS DIVISION

Service Type: Mailing Services
Mandatory for: Bureau of Public Debt: 200 Third Street, Parkersburg, WV
Mandatory Source of Supply: SW Resources, Inc., Parkersburg, WV
Contracting Activity: TREASURY, DEPARTMENT OF THE, DEPT OF TREAS/

Service Type: Grounds Maintenance
Mandatory for: Social Security Administration: 300 North Greene Street, Metro West Complex, Baltimore, MD
Mandatory Source of Supply: The Arc Baltimore, Inc., Baltimore, MD
Contracting Activity: SOCIAL SECURITY ADMINISTRATION, SOCIAL SECURITY ADMINISTRATION

Service Type: Janitorial/Custodial
Mandatory for: Defense Logistics Agency: Depot, Somerville, NJ
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA SUPPORT SERVICES—DSS

Service Type: Janitorial/Custodial
Mandatory for: Agriculture Cotton Annex: 14th and Independence Avenue, Washington, DC
Mandatory Source of Supply: Melwood Horticultural Training Center, Inc., Upper Marlboro, MD
Contracting Activity: DEPT OF THE NAVY, U S FLEET FORCES COMMAND

Service Type: File Maintenance
Mandatory for: VA Medical Center, Northport, NY
Mandatory Source of Supply: The Corporate Source, Inc., Garden City, NY
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Service Type: Mailing Services
Mandatory for: Various Government Agencies in the DC Metro Area
Contracting Activity: COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED, CONTRACTING

Service Type: Metal Machining
Mandatory Source of Supply: ServiceSource, Inc., Oakton, VA
Contracting Activity: COMMERCE, DEPARTMENT OF, COMMERCE, DEPARTMENT OF

Service Type: Microfilm Stripping
Mandatory Source of Supply: Navigations, Incorporated, Battle Creek, MI
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA SUPPORT SERVICES—DSS

Service Type: Grounds Maintenance
Mandatory for: Auburn Field Office-BoR: Auburn Field Office, Auburn, CA
Contracting Activity: OFFICE OF POLICY, MANAGEMENT, AND BUDGET, NBC ACQUISITION SERVICES DIVISION

Service Type: Janitorial/Custodial
Mandatory for: National Weather Service: Los Angeles International Airport, Los Angeles, CA
Contracting Activity: COMMERCE, DEPARTMENT OF, COMMERCE, DEPARTMENT OF

Service Type: Food Service Attendant
Mandatory for: Tucson Air National National Guard Base: Arizona National Guard, Tucson, AZ
Contracting Activity: DEPT OF THE AIR FORCE, FA7014 AFDW PK

Service Type: Grounds Maintenance
Mandatory for: Defense Finance and Accounting Service: Building 951, San Bernadino, CA
Mandatory Source of Supply: Lincoln Training Center and Rehabilitation Workshop, South El Monte, CA
Contracting Activity: DEPT OF THE ARMY, W40M RHCO–ATLANTIC USAHCA

Service Type: Janitorial/Custodial
Mandatory for: U.S. Coast Guard, Ketchikan, AK

Service Type: Janitorial/Custodial
Mandatory for: Veterans Affairs: Greater Los Angeles Healthcare System, East Los Angeles, CA
Mandatory Source of Supply: Job Options, Inc., San Diego, CA
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Service Type: Laundry Service
Mandatory for: Everett Naval Station, Everett, WA
Mandatory Source of Supply: Northwest Center, Seattle, WA
Contracting Activity: DEPT OF THE NAVY, U S FLEET FORCES COMMAND

Service Type: Janitorial/Custodial
Mandatory for: GSA, Warehouses: WA0815KA, WA0816KA, WA0817KA, WA0821KA, WA0822KA, WA0823KA, WA0824KA, WA0825KA, WA0831KA, WA0832KA, Auburn, WA
Mandatory Source of Supply: Northwest Center, Seattle, WA
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Grounds Maintenance
Mandatory for: Lewiston Levee Parkway, Nez Perce County, ID
Mandatory Source of Supply: Opportunities Unlimited, Inc.—Deleted, Lewiston, ID
Contracting Activity: DEPT OF THE ARMY, W40M RHCO–ATLANTIC USAHCA

Service Type: Janitorial/Custodial
Mandatory for: Airport Building: 9120 NE 47th, Portland, OR
Mandatory Source of Supply: Relay Resources, Portland, OR
Contracting Activity: ENERGY, DEPARTMENT OF, HEADQUARTERS PROCUREMENT SERVICES

Service Type: Janitorial/Custodial
Mandatory for: Social Security Administration Building: 175 East 100

North, Provo, UT
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Grounds Maintenance
Mandatory for: Naval Station, Treasure Island, CA
Contracting Activity: DEPT OF THE NAVY, U.S. FLEET FORCES COMMAND

Service Type: Mailing Services
Mandatory for: Government Printing Office: 710 North Capitol & H Street NW, Washington, DC
Mandatory Source of Supply: MVLE, Inc., Springfield, VA
Contracting Activity: Government Printing Office

Service Type: Janitorial/Custodial
Mandatory for: U.S. Army Reserve Center: 360 West California Avenue, Memphis, TN
Mandatory Source of Supply: Shelby Residential and Vocational Services, Inc.—Deleted, Memphis, TN
Contracting Activity: DEPT OF THE ARMY, W40M RHCO–ATLANTIC USAHCA

Service Type: Facility Support Services
Mandatory for: Internal Revenue Service: Martinsburg Computing Center, Kearneysville, KW

Service Type: Janitorial/Custodial
Mandatory for: Federal Complex: 1500 East Bannister Road and 9240 Troost, Kansas City, MO
Mandatory Source of Supply: JobOne, Independence, MO
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Janitorial/Custodial
Mandatory for: U.S. Post Office and Courthouse Dubuque, IA
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Janitorial/Custodial
Mandatory for: Lock and Dam 19, Keokuk, IA
Contracting Activity: DEPT OF THE ARMY, W07V ENDIST ROCK ISLAND

Service Type: Janitorial/Custodial
Mandatory for: U.S. Army Reserve Center: General J. Summer Jones, Wheeling, WV
Contracting Activity: DEPT OF THE ARMY, W40M RHCO–ATLANTIC USAHCA

Service Type: Administrative Services
Mandatory for: Internal Revenue Service, Constellation Centre Building, Oxon Hill, MD
Mandatory Source of Supply: Melwood Horticultural Training Center, Inc., Upper Marlboro, MD
Contracting Activity: INTERNAL REVENUE SERVICE, DEPT OF TREAS/INTERNAL REVENUE SERVICE

Service Type: Grounds Maintenance
Mandatory for: Veterans Affairs Medical Center, Salisbury, NC
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Service Type: Grounds Maintenance
Mandatory for: USDA–ARS–SEFTNRL, Byron, GA
Contracting Activity: AGRICULTURAL RESEARCH SERVICE, DEPT OF AGRIC/AGRICULTURAL RESEARCH SERVICE

Service Type: Operation of Self Service Supply Store
Mandatory for: U.S. Army Space & Missile Defense Command, Arlington, VA
Mandatory Source of Supply: ServiceSource, Inc., Oakton, VA
Contracting Activity: DEPT OF THE ARMY, W40M RHCO–ATLANTIC USAHCA

Service Type: Repair of Toolbox & Rollaway Repair
Mandatory for: Robins Air Force Base, Robins AFB, GA
Contracting Activity: DEPT OF THE AIR FORCE, FA8501 AFSC PZIO

Service Type: Laundry Service
Mandatory for: Bangor Naval Subase BOQ & BEQ, Bremerton, WA
Mandatory for: Puget Sound Naval Shipyard: Galley and Bachelor Officers' Quarters (BOQ), Bremerton, WA
Mandatory Source of Supply: Northwest Center, Seattle, WA
Contracting Activity: DEPT OF THE NAVY, NAVSUP FLT LOG CTR PUGET SOUND

Service Type: Administrative Services
Mandatory for: Department of Energy: 1000 Independence Avenue SW, Forrestal Building, Washington, DC
Mandatory Source of Supply: Didlake, Inc., Manassas, VA
Contracting Activity: ENERGY, DEPARTMENT OF, HEADQUARTERS PROCUREMENT SERVICES

Service Type: Vehicle Maintenance Services
Mandatory for: Aberdeen Proving Ground, Aberdeen, MD
Mandatory Source of Supply: Alliance, Inc., Baltimore, MD
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FTS ACQUISITION SERVICES DIVISION

Service Type: Janitorial/Custodial
Mandatory for: U.S. Geological Survey: Klamath Field Station, 2795 Anderson Ave., Suite 106, Klamath Falls, OR
Mandatory Source of Supply: Klamath County Mental Health—Deleted, Klamath Falls, OR
Contracting Activity: OFFICE OF POLICY, MANAGEMENT, AND BUDGET, NBC ACQUISITION SERVICES DIVISION

Service Type: Parts Sorting—Hardware/Small Handtool&Denumbering, Parts Sorting—Denumbering of Common Handheld Tools
Mandatory for: Robins Air Force Base, Robins AFB, GA
Contracting Activity: DEPT OF THE AIR FORCE, FA8501 AFSC PZIO

Service Type: Laundry Service
Mandatory for: U.S. Army, Asymmetric Warfare Training Center, Fort A.P. Hill, VA
Mandatory Source of Supply: Rappahannock Goodwill Industries, Inc., Fredericksburg, VA
Contracting Activity: DEPT OF THE ARMY, W6QK ACC–APG DIR

Service Type: Janitorial/Custodial
Mandatory for: Government Printing Office: 7701 Southern Drive, Springbelt Warehouse, Springfield, VA
Mandatory Source of Supply: Davis Memorial Goodwill Industries, Washington, DC
Contracting Activity: Government Printing Office

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2020–04115 Filed 2–27–20; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No CFPB–2020–0011]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (Bureau), gives notice of the establishment of a Privacy Act System of Records. The Federal Document Management System (FDMS) provides the Bureau with the ability to electronically access and manage its rulemaking dockets and other dockets related to documents published in the **Federal Register** requesting public comment, including public comments or supporting materials and allows the public to find and review such materials on *Regulations.gov.*

DATES: Comments must be received no later than *March 30, 2020.* The new system of records will be effective on February 28, 2020, with the exception of the routine uses. The routine uses will not be effective until March 30, 2020, pending public comment.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2020–0011, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Tannaz Haddadi, Acting Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

All submissions must include the agency name and docket number for this notice. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You

can make an appointment to inspect comments by telephoning (202) 435–9169. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Tannaz Haddadi, Acting Chief Privacy Officer, (202) 435–7058. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, title X, established the Bureau. The Bureau will maintain the records covered by this notice. The system of records described in this notice, ''CFPB.028—Federal Document Management System'' will collect information to enable the Bureau to electronically access and manage its rulemaking dockets, or other dockets, related to documents published in the **Federal Register** requesting public comment, including public comments or supporting materials and allows the public to find and review such materials on *Regulations.gov.*

The report of a new system of records has been submitted to the Committee on Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act'' (December 23, 2016),[1] and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled ''CFPB.028—Federal Docket Management System'' is published in its entirety below.

SYSTEM NAME AND NUMBER:

CFPB.028—Federal Docket Management System.

SECURITY CLASSIFICATION:

This system does not contain any classified information or data.

SYSTEM LOCATION:

Primary location: Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Third-Party Service Provider: General Services Administration, 1800 F Street NW, Washington, DC 20405.

SYSTEM MANAGER(S):

Associate Executive Secretariat, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552; (202) 435–9169.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–203, title X, sections 1013, 1021, 1022, codified at 12 U.S.C. 5492, 5511, 5512.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to maintain and organize comments submitted to the Bureau in response to Bureau documents published in the **Federal Register** requesting public comment. It permits the Bureau to identify submitters in order to potentially communicate with them as appropriate and necessary, such as seeking clarification, providing a direct response if warranted, or other such needs associated with a rulemaking or notice process. The system also provides the public with a central online location, via *www.Regulations.gov,* to search, view, download, and comment on Bureau documents published in the **Federal Register** requesting public comment and view other comments the Bureau may have received.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers individuals who provide personal information while submitting a public comment, potentially including attachments, to a Bureau docket.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information submitted by public comment may include full name, affiliated organization, postal address, email address, phone and fax number, and name of any individual serving as a representative for the individual submitting the comment.

RECORD SOURCE CATEGORIES:

Information in this system is posted by the Bureau or submitted by individuals and organizations who file public comments, including supporting materials, in response to Bureau documents published in the **Federal Register** requesting public comment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070, to:

(1) Appropriate agencies, entities, and persons when (a) the Bureau suspects or has confirmed that there has been a breach of the system of records; (b) the Bureau has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Bureau (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Bureau's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(2) Another Federal agency or Federal entity, when the Bureau determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(3) Another Federal or State agency to: (a) Permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(4) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(5) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the Bureau or Federal Government and who have a need to access the information in the performance of their duties or activities;

(7) The U.S. Department of Justice (DOJ) for its use in providing legal advice to the Bureau or in representing the Bureau in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the Bureau to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The Bureau;

[1] Although pursuant to section 1017(a)(4)(E) of the Consumer Financial Protection Act, Public Law 111–203, the Bureau is not required to comply with OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

(b) Any employee of the Bureau in his or her official capacity;

(c) Any employee of the Bureau in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Bureau determines that litigation is likely to affect the Bureau or any of its components;

(8) A grand jury pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(9) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(10) Appropriate Federal, State, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy, or license;

(11) The public or certain stakeholders in the form of Bureau documents, including final rules or reports, that use, consider, or discuss comments received by the Bureau; or

(12) The General Services Administration (GSA) for its use in management of the e-Rulemaking Program.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in paper and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by a variety of fields including, but not limited to, Name of the individual or entity submitting a comment or supporting material, Contact Information submitted in or as part of a comment, Agency, Docket Type, Docket Sub-Type, Agency Docket ID, Docket Title, Docket Category, Document Type, CFR Part, Date Comment Received, and **Federal Register** Published Date.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Dockets are considered permanent records and transferred to the National Archives and Records Administration after fifteen years. Individual comments on rulemaking are temporary records that are destroyed after being uploaded into the FDMS and validated. Hard copies of comments that are mailed to the Bureau are transferred to an offsite location for destruction after they are scanned, uploaded to the FDMS, and validated.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Hard copies of records received directly by the Bureau are properly safeguarded and maintained in controlled access storage on-site at the Bureau or at an offsite location before destruction.

RECORD ACCESS PROCEDURES:

An individual seeking access to any record pertaining to him or her contained in this system of records may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Instructions are also provided on the Bureau website: *https://www.consumerfinance.gov/foia-requests/submit-request/.*

CONTESTING RECORD PROCEDURES:

An individual seeking to contest the content of any record pertaining to him or her contained in this system of records may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

NOTIFICATION PROCEDURES:

An individual seeking notification whether any record contained in this system of records pertains to him or her may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This is a new system of records.

Dated: January 24, 2020.

Kate Fulton,

Senior Agency Official for Privacy, Bureau of Consumer Financial Protection.

[FR Doc. 2020–02629 Filed 2–27–20; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20–0D]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, and Transmittal 20–0D.

Dated: February 25, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

FEB 1 1 2020

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 20-0D. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 14-16 of June 16, 2014.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal

Transmittal No. 20-0D

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) *Prospective Purchaser*: Republic of Singapore

(ii) *Sec. 36(b)(1), AECA Transmittal No.*: 14-16

Date: June 16, 2014

Military Department: Air Force

(iii) *Description*: On June 16, 2014, Congress was notified by Congressional Notification Transmittal Number 14-16, of the possible sale under Section 36(b)(1) of the Arms Export Control Act, to the Government of Singapore of follow-on support and services for Singapore's Continental United States (CONUS) detachment PEACE CARVIN II (F-16) based at Luke Air Force Base (AFB) for a five-year period. It included 80 CATM-9M Captive Air Training Missiles, jet fuel, containers, publications and technical documentation, tactics manuals and academic instruction, maintenance, clothing and individual equipment, execution and support of CONUS exercise deployments, airlift and aerial refueling, support equipment, spare and repair parts, repair and return, personnel training and training equipment, U.S. Government and contractor technical and logistics support services, and other related elements of logistical and program support. The estimated total cost was $251 million.

This transmittal reports the extension of the PEACE CARVIN II detachment at Luke Air Force Base for an additional three and a half years (3.5 years). It includes the following non-MDE items: eight (8) CATM-9M Captive Air Training Missiles, jet fuel, containers, publications and technical documentation, tactics manuals and academic instruction, maintenance, clothing and individual equipment, execution and support of CONUS exercise deployments, airlift and aerial refueling, support equipment, spare and repair parts, repair and return, personnel training and training equipment, U.S. Government and contractor technical and logistics

support services, and other related elements of logistical and program support. The estimated additional non-MDE cost is $200 million, increasing the total program value to $451 million.

(iv) *Significance*: This notification is being provided for an additional 3.5 years of training for the PEACE CARVIN II detachment at Luke Air Force Base, AZ. Continued training will maintain the decades-long U.S.-Singapore partnership. By maintaining this relationship, the U.S. ensures it will have a well-trained and more interoperable partner to contribute to regional stability in Southeast Asia. Additionally, Singapore will have the ability to deploy to other regions to support U.S. and Singapore goals as they have demonstrated numerous times with other aircraft deployments in support of coalition operations.

(v) *Justification*: This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a friendly country that is an important force for economic progress in Southeast Asia. The continuation of this training program will enable Singapore to develop mission-ready and experienced F-16 pilots and enhance operational interoperability with U.S. forces.

(vi) *Sensitivity of Technology*: The Sensitivity of Technology statement contained in the original notification applies to items reported here.

(vii) *Date Report Delivered to Congress*: February 11, 2020

[FR Doc. 2020–04144 Filed 2–27–20; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20–02]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 20–02, Policy Justification and Sensitivity of Technology.

Dated: February 25, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

FEB 07 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 20-02 concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost $990 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–03–P

Transmittal No. 20-02

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Australia

(ii) *Total Estimated Value*:

Major Defense Equipment * ..	$690 million
Other	$300 million
Total	$990 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

Major Defense Equipment (MDE):
Up to two hundred (200) AGM-158C, Long Range Anti-Ship Missiles (LRASMs)
Up to eleven (11) ATM-158C LRASMs Telemetry Variant (Inert)

Non-MDE:
Also included are DATM-158C LRASM, Captive Air Training Missiles (CATM-158C LRASM), containers, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor representatives technical assistance, engineering and logistics support services, and other related elements of logistics support.

(iv) *Military Department*: Navy (AT-P-ANT)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex.

(viii) *Date Report Delivered to Congress*: February 7, 2020

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia—Long Range Anti-Ship Missiles (LRASMs)

The Government of Australia has requested to buy up to two hundred (200) AGM-158C, Long Range Anti-Ship Missiles (LRASMs); and up to eleven (11) ATM-158C LRASM Telemetry Variant (Inert). Also included are DATM-158C LRASM, Captive Air Training Missiles (CATM-158C LRASM), containers, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor representatives technical assistance, engineering and logistics support services, and other related elements of logistics support. The total estimated cost is $990 million.

This proposed sale will support the foreign policy and national security objectives of the United States. Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region.

Australia intends to use the missiles on its F–18 aircraft and will provide enhanced capabilities in defense of critical sea-lanes. The proposed sale of the missiles and support will increase the Australian Navy's maritime partnership potential and align its capabilities with existing regional baselines. This is Australia's first purchase of the missiles. Australia will not have any difficulty absorbing these weapons into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Lockheed Martin, Orlando, Florida. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require annual trips to Australia involving U.S. Government and contractor representatives for technical reviews, support, and oversight for approximately five years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 20–02

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The AGM-158C, Long Range Anti-Ship Missile (LRASM) system is classified SECRET. The LRASM is a non-nuclear tactical weapon system. It provides a day, night, and adverse weather, standoff air-to-surface capability and is an effective AntiSurface Warfare missile. The LRASM incorporates components, software, and technical design information that are considered sensitive. The following components being conveyed by the proposed sale that are considered sensitive include:

a. RF Seeker
b. GPS/INS System
c. Datalink
d. Warhead
e. IR Seeker

2. These elements are essential to the ability of the LRASM missile to selectively engage hostile targets under a wide range of operations, tactical and environmental conditions.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures, which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary to further the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed on this transmittal have been authorized for release and export to the Government of Australia.

[FR Doc. 2020–04142 Filed 2–27–20; 8:45 am]

BILLING CODE 5001–06–C

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Notice of Public Hearing

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of Public Hearing.

SUMMARY: Notice is hereby given that the Defense Nuclear Facilities Safety Board (DNFSB) will hold a Public Hearing regarding the status of the Savannah River Site (SRS). The purpose of this Public Hearing is to gather information and discuss Department of Energy (DOE) and National Nuclear Security Administration (NNSA) actions that could impact the safety posture of particular operations at SRS.

DATES: The Public Hearing will be held on March 19, 2020, from 3:00 p.m. to 9:30 p.m.

ADDRESSES: The Public Hearing will be held in the Etherredge Center at the University of South Carolina Aiken. The Etherredge Center is located at 340 Scholar Loop, Aiken, South Carolina 29801.

FOR FURTHER INFORMATION CONTACT: Tara Tadlock, Manager of Board Operations, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: This Public Hearing will be composed of four sessions. In Session 1, Board Members will address DOE's past actions and future plans for addressing Recommendation 2012–1 regarding Building 235–F. The Board's objective for this session is to gather information related to the proposed changes to DOE's Implementation Plan and deactivation strategy, the actions and steps for deactivation of Building 235–F, and the plans for decommissioning, including the end state of Building 235–F.

In Session 2, Board Members will address Federal oversight and technical staffing needs. The Board will pay particular attention to the adequacy of current Office of Environmental Management (EM) and NNSA staffing to conduct oversight missions. This will include discussions of shortages in both facility representative positions for existing facilities and engineering positions with regard to personnel who review safety bases and perform safety system oversight, and the subsequent approach of delegating inherently federal functions to the contractor as a substitute for federal oversight. Session 2 will also include discussions of future technical staffing needs as new site missions, such as Savannah River Plutonium Production Facility operations and Surplus Plutonium blend-down, ramp up.

In Session 3, Board Members will address the safety poster of the Savannah River Tritium Enterprise (SRTE) facilities. The Board's objective for this session is to discuss the SRTE safety basis, completed improvements, and ongoing and planned actions to

address the high radiological dose consequences to the workers for accident scenarios. In particular, the Board will focus on the ongoing actions at the SRTE that DOE cited as a basis to not accept Board Recommendation 2019–2.

In Sessions 1, 2, and 3, the DNFSB Technical Director will offer testimony presenting the perspective of the DNFSB Staff. Participants representing DOE and NNSA will be announced at *https://www.dnfsb.gov* as soon as possible.

In Session 4, Board Members will hear testimony from interested members of the public. Persons interested in speaking during Session 4 are encouraged to pre-register by submitting a request in writing to the Board's address listed above, emailing *hearing@dnfsb.gov,* or calling the Office of the General Counsel at (202) 694–7062 or (800) 788–4016 prior to close of business on March 17, 2020. The Board asks that commenters describe the nature and scope of their oral presentations. Those who pre-register will be scheduled to speak first. Individual oral comments may be limited by the time available, depending on the number of persons who register.

At the beginning of the hearing, the Board will post a list of speakers at the entrance to the hearing room. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Written comments and documents will be accepted at the hearing or may be sent to the Board's Washington, DC office. The Board will hold the hearing record open until April 20, 2020, for the receipt of additional materials. Additional details, including the detailed agenda for the hearing, are available at *https://www.dnfsb.gov.*

The hearing will be presented live through internet video streaming. A link to the presentation will be available on the Board's website, and a recording will be posted soon after. A transcript of these sessions and the associated correspondence will be made available on the Board's website. The Board specifically reserves its right to further schedule and otherwise regulate the course of the hearing, to recess, reconvene, postpone, or adjourn the hearing, conduct further reviews, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Authority: 42 U.S.C. 2286b(a).

Dated: February 25, 2020.

Bruce Hamilton,

Chairman.

[FR Doc. 2020–04133 Filed 2–27–20; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0041]

Agency Information Collection Activities; Comment Request; RSA–509, Annual Protection and Advocacy of Individual Rights Program Performance Report

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 28, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0041. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Samuel Pierre, 202–245–6488.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: RSA–509, Annual Protection and Advocacy of Individual Rights Program Performance Report.

OMB Control Number: 1820–0627.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 912.

Abstract: The Annual Protection and Advocacy of Individual Rights (PAIR) Program Performance Report (Form RSA–509) will be used to analyze and evaluate the PAIR Program administered by eligible systems in states. These systems provide services to eligible individuals with disabilities to protect their legal and human rights. RSA uses the form to meet specific data collection requirements of Section 509 of the Rehabilitation Act of 1973, as amended (the Act), and its implementing federal regulations at 34 CFR part 381. PAIR programs must report annually using the RSA–509, which is due on or before December 30 each year.

The collection of information through Form RSA–509 has enabled RSA to furnish the President and Congress with data on the provision of protection and advocacy services and has helped to establish a sound basis for future funding requests. Data from the form have been used to evaluate the

effectiveness of eligible systems within individual states in meeting annual priorities and objectives. These data also have been used to indicate trends in the provision of services from year-to-year.

The respondents to the RSA–509 is the protection and advocacy system in each state. These organizations are private not-for-profit organizations. RSA included the respondents and the national organization that represents them (National Disability Rights Network (NDRN)) in the initial development of this collection of information in an effort to ensure that the information requested could be provided with minimal burden to the respondents.

The collection of information through Form RSA–509 has enabled RSA to furnish the President and Congress with data on the provision of protection and advocacy services and has helped to establish a sound basis for future funding requests. Data from the form have been used to evaluate the effectiveness of eligible systems within individual states in meeting annual priorities and objectives. These data also have been used to indicate trends in the provision of services from year-to-year.

The respondents to the RSA–509 is the protection and advocacy system in each state. These organizations are private not-for-profit organizations. RSA included the respondents and the national organization that represents them (National Disability Rights Network (NDRN)) in the initial development of this collection of information in an effort to ensure that the information requested could be provided with minimal burden to the respondents.

Dated: February 25, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–04123 Filed 2–27–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–828–001; ER11–4535–001; ER16–2271–002; ER16–581–003; ER16–582–003; ER17–1370–002.

Applicants: Solomon Forks Wind Project, LLC, ENGIE Energy Marketing NA, Inc., ENGIE Portfolio Management, LLC, ENGIE Resources LLC, ENGIE Retail, LLC, Plymouth Rock Energy, LLC.

Description: Notice of Change in Status of the ENGIE MBR Sellers.

Filed Date: 2/21/20.

Accession Number: 20200221–5218.

Comments Due: 5 p.m. ET 3/13/20.

Docket Numbers: ER19–2276–003.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: Compliance re: 1/23/20 Order Distributed Energy Resourcess to be effective 12/31/9998.

Filed Date: 2/24/20.

Accession Number: 20200224–5087.

Comments Due: 5 p.m. ET 3/16/20.

Docket Numbers: ER19–2747–002.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3593 Frontier Windpower II GIA—Deficiency Response to be effective 8/23/2019.

Filed Date: 2/24/20.

Accession Number: 20200224–5010.

Comments Due: 5 p.m. ET 3/16/20.

Docket Numbers: ER19–2748–002.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3595 Skeleton Creek Wind, LLC GIA—Deficiency Response to be effective 8/23/2019.

Filed Date: 2/24/20.

Accession Number: 20200224–5015.

Comments Due: 5 p.m. ET 3/16/20.

Docket Numbers: ER19–2773–002.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3594 Wheatbelt Wind, LLC GIA—Deficiency Response to be effective 8/23/2019.

Filed Date: 2/24/20.

Accession Number: 20200224–5030.

Comments Due: 5 p.m. ET 3/16/20.

Docket Numbers: ER19–2813–002.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3597SO Chilocco Wind Farm GIA—Deficiency Response to be effective 9/6/2019.

Filed Date: 2/24/20.

Accession Number: 20200224–5031.

Comments Due: 5 p.m. ET 3/16/20.

Docket Numbers: ER20–807–000.

Applicants: Ruff Solar LLC.

Description: Supplement to January 15, 2020 Ruff Solar LLC tariff filing.

Filed Date: 2/24/20.

Accession Number: 20200224–5033.

Comments Due: 5 p.m. ET 3/16/20.

Docket Numbers: ER20–1059–000.

Applicants: Southwest Power Pool, Inc.

Description: Baseline eTariff Filing: Western Energy Imbalance Service Tariff to be effective 2/1/2021.

Filed Date: 2/21/20.

Accession Number: 20200221–5114.

Comments Due: 5 p.m. ET 3/13/20.

Docket Numbers: ER20–1060–000.

Applicants: Southwest Power Pool, Inc.

Description: Baseline eTariff Filing: Western Energy Imbalance Service Rate Schedule Tariff to be effective 2/1/2021.

Filed Date: 2/21/20.

Accession Number: 20200221–5118.

Comments Due: 5 p.m. ET 3/13/20.

Docket Numbers: ER20–1061–000.

Applicants: Turquoise Nevada LLC.

Description: § 205(d) Rate Filing: Turquoise Nevada LLC First Amendment to Shared Facilities Agreement to be effective 2/22/2020.

Filed Date: 2/21/20.

Accession Number: 20200221–5135.

Comments Due: 5 p.m. ET 3/13/20.

Docket Numbers: ER20–1062–000.

Applicants: Garden Wind, LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 4/24/2020.

Filed Date: 2/24/20.

Accession Number: 20200224–5009.

Comments Due: 5 p.m. ET 3/16/20.

Docket Numbers: ER20–1065–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, SA No. 3255; Queue No. W4–073 (consent and amend) to be effective 11/2/2016.

Filed Date: 2/24/20.

Accession Number: 20200224–5056.

Comments Due: 5 p.m. ET 3/16/20.

Docket Numbers: ER20–1066–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX—Monte Alto Windpower GIA to be effective 2/13/2020.

Filed Date: 2/24/20.

Accession Number: 20200224–5063.

Comments Due: 5 p.m. ET 3/16/20.

Docket Numbers: ER20–1067–000.

Applicants: Diamond State Generation Partners, LLC.

Description: § 205(d) Rate Filing: Amendment of Diamond State MBR Tariff to be effective 2/25/2020.

Filed Date: 2/24/20.

Accession Number: 20200224–5088.

Comments Due: 5 p.m. ET 3/16/20.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES20–17–000.

Applicants: Trans Bay Cable LLC.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Trans Bay Cable LLC.

Filed Date: 2/21/20.

Accession Number: 20200221–5223.

Comments Due: 5 p.m. ET 3/13/20.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC20–4–000.

Applicants: Energy Center Caguas LLC.

Description: Notice of Self-Certification of Foreign Utility Company Status.

Filed Date: 2/21/20.

Accession Number: 20200221–5136.

Comments Due: 5 p.m. ET 3/13/20.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD20–4–000.

Applicants: North American Electric Reliability Corporation.

Description: Application of the North American Electric Reliability Corporation for approval of proposed Reliability Standards developed Standards Alignment with Registration.

Filed Date: 2/21/20.

Accession Number: 20200221–5221.

Comments Due: 5 p.m. ET 3/23/20.

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: February 24, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–04127 Filed 2–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–21–000]

Complaint of Michael Mabee Related to Critical Infrastructure Reliability Standard; Notice of Supplemented Complaint

Take notice that on February 19, 2020, pursuant to section 215(d) of the Federal Power Act, 16 U.S.C. 824o(d) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2019), Michael Mabee, (Complainant) filed supplemental information and additional recommendations for the record, as a supplement to the formal complaint filed on January 30, 2020, as more fully explained in the supplement to the complaint.

Complainant certifies that copies of the Complaint were served on the contacts as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. All interventions, or protests must be filed on or before the comment date.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is 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.

Comment Date: 5:00 Eastern Time on March 10, 2020.

Dated: February 24, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–04126 Filed 2–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–533–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement—Arsenal Correction to be effective 2/1/2020.

Filed Date: 2/20/20.

Accession Number: 20200220–5000.

Comments Due: 5 p.m. ET 3/3/20.

Docket Numbers: RP20–534–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 022020 Negotiated Rates—Mercuria Energy America, LLC R–7540–02 to be effective 3/1/2020.

Filed Date: 2/20/20.

Accession Number: 20200220–5003.

Comments Due: 5 p.m. ET 3/3/20.

Docket Numbers: RP20–535–000.

Applicants: Kern River Gas Transmission Company.

Description: § 4(d) Rate Filing: 2020 Permanent Release RRI to Morgan Stanley to be effective 4/1/2020.

Filed Date: 2/20/20.

Accession Number: 20200220–5013.

Comments Due: 5 p.m. ET 3/3/20.

Docket Numbers: RP20–536–000.

Applicants: Anadarko Energy Services Company, Sequent Energy Management, L.P.

Description: Petition to Amend Temporary Waivers of Capacity Release Regulations and Policies, et al. of Anadarko Energy Services Company, et al. under RP20–536.

Filed Date: 2/19/20.

Accession Number: 20200219–5163.

Comments Due: 5 p.m. ET 2/26/20.

Docket Numbers: RP20–537–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Filing—Macquarie to be effective 4/1/2020.

Filed Date: 2/21/20.

Accession Number: 20200221–5000.

Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: RP20–538–000.

Applicants: ANR Pipeline Company.

Description: § 4(d) Rate Filing: Housekeeping Early 2020 to be effective 3/23/2020.

Filed Date: 2/21/20.

Accession Number: 20200221–5030.

Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: RP20–539–000.

Applicants: Midship Pipeline Company, LLC.

Description: Compliance filing Baseline Compliance Filing CP17–458 to be effective 4/1/2020.

Filed Date: 2/21/20.

Accession Number: 20200221–5067.

Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: RP20–540–000.

Applicants: Columbia Gulf Transmission, LLC.

Description: Compliance filing TRA 2020 Waiver.

Filed Date: 2/21/20.

Accession Number: 20200221–5099.

Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: RP20–541–000.

Applicants: Eastern Shore Natural Gas Company.

Description: § 4(d) Rate Filing: Negotiated Rate—DCRC—April 1, 2020 to be effective 4/1/2020.

Filed Date: 2/21/20.

Accession Number: 20200221–5106.

Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: RP20–542–000.

Applicants: Rockies Express Pipeline LLC.

Description: Annual Fuel and Lost & Unaccounted Reimbursement Percentages and Power Cost Charges of Rockies Express Pipeline LLC under RP20–542.

Filed Date: 2/21/20.

Accession Number: 20200221–5197.

Comments Due: 5 p.m. ET 3/4/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 24, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–04129 Filed 2–27–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3947–015]

Kaweah River Power Authority, Terminus Hydroelectric, LLC; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On February 4, 2020, Kaweah River Power Authority (transferor) and Terminus Hydroelectric, LLC (transferee) filed an application for the transfer of license of the Terminus Power Project No. 3947. The project is located on the Kaweah River in Tulare County, California and uses surplus water from the U.S. Army Corps of Engineer's Terminus Dam.

The applicants seek Commission approval to transfer the license for the Terminus Power Project from the transferor to the transferee.

Applicants Contact: For transferor: Mark Larsen, Kaweah River Power Authority, 2975 N Farmersville Blvd., Farmersville, CA 93223, Phone: (559) 747–5601, Email: *Mlarsen@kdwcd.com* Copy to: Andrew McClure, Minasian Law Firm, 1681 Bird St., Oroville, CA 95965, Phone: (530) 533–2885, Email: *amcclure@minasianlaw.com.*

For transferee: Joshua E. Adrian, Donald H. Clarke, Duncan, Weinberg, Genzer & Pembroke, P.C., 1667 K Street NW, Suite 700, Washington, DC 20006, Phone: (202) 467–6370, Email: *jea@dwgp.com, dhc@dwgp.com.*

FERC Contact: Anumzziatta Purchiaroni, (202) 502–6191, *Anumzziatta.purchiaroni@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. 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–3947–015.

Dated: February 24, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–04130 Filed 2–27–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0340; FRL—10005–24–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Stationary Reciprocating Internal Combustion Engines (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Stationary Reciprocating Internal Combustion Engines (EPA ICR Number 1975.11, OMB Control Number 2060–0548), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through April 30, 2020. Public comments were previously requested, via the **Federal Register**, on May 6, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before March 30, 2020.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0340, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.*

Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Stationary Reciprocating Internal Combustion Engines (40 CFR part 63, subpart ZZZZ) apply to owners and operators of a stationary reciprocating internal combustion engines (RICE) at either a major or area source of hazardous air pollutant (HAP) emissions, except if the stationary RICE is being tested at a stationary RICE test cell/stand. A stationary RICE is any internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. New facilities include those that commenced construction, modification or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart ZZZZ.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: Owners or operators of stationary reciprocating internal combustion engines (RICE).

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart ZZZZ).

Estimated number of respondents: 910,177 (total).

Frequency of response: Initially, quarterly, semiannually, and annually.

Total estimated burden: 3,620,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $461,000,000 (per year), which includes $41,700,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. The increase in burden from the most recently approved ICR is due to an increase in the number of respondents. EPA estimates a linear growth in the industry sector with an additional of 1,284 new sources per year that become subject to the NESHAP, plus there is another 755,430 respondents which are responsible for only recordkeeping requirements. The capital/startup and operation and maintenance (O&M) costs have increased compared with the costs in the previous ICR due to an increase in the number of existing sources operating portable CO monitors.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–04062 Filed 2–27–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2019–0566; FRL–10005–90–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Water Quality Certification Regulations (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Water Quality Certification Regulations (EPA ICR No. 2603.03, OMB Control No. 2040–0295) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). This is a proposed revision of an ICR, which is currently approved through February 29, 2020. Public comments were previously requested via the **Federal Register** on November 27, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before March 30, 2020.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OW–2019–0566, to (1) EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Lauren Kasparek, Oceans, Wetlands, and Communities Division, Office of Wetlands, Oceans, and Watersheds, (MC 4504T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–3351; email address: *cwa401@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This ICR describes the cost and burden associated with 40 CFR 121, the regulations that implement Clean Water Act (CWA) section 401. Under

section 401, a federal agency may not issue a permit or license that may result in any discharge into waters of the United States unless the certifying authority where the discharge would originate issues a section 401 water quality certification verifying that the discharge will comply with certain water quality requirements or waives the certification requirement. CWA section 401 requires project proponents to submit project specific information to certifying authorities. Certifying authorities may act on project specific information by either granting, granting with conditions, denying, or waiving section 401 certification. CWA section 401 requires certifying authorities to submit information to the relevant federal licensing or permitting agency to indicate the action taken on a request for certification. If the certifying authority fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. The EPA is also responsible for providing notification to certain neighboring or downstream states and tribes affected by a discharge from a federally licensed or permitted project under section 401(a)(2). Information collected directly collected by the EPA under section 401 in support of the section 402 permit program is already captured under an existing ICR (OMB Control Number 2040–0004, EPA ICR Number 0229.23) and therefore is not included in this analysis.

Form Numbers: None.

Respondents/affected entities: Applicants (Project Proponents) for certain federal licenses and permits; Certifying Authorities including states, territories, and authorized tribes.

Respondent's obligation to respond: Project Proponents: Required to obtain or retain a benefit (33 U.S.C. 1341). Certifying Authorities: Not mandatory.

Estimated number of respondents: 97,119 (total).

Frequency of response: Per Federal Application.

Total estimated burden: 1,067,000 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $64 million (per year), includes $8 million annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 739,000 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. There is an increase in the total estimated respondent burden, number of respondents, and number of responses compared with the ICR currently approved by OMB due to refinements in how the estimates are calculated. See the Supporting Statement in the docket for more information on the changes in estimates.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–04063 Filed 2–27–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9049–6]

Environmental Impact Statements; Notice of Availability

Weekly receipt of Environmental Impact Statements filed February 17, 2020, 10 a.m. EST through February 24, 2020, 10 a.m. EST pursuant to 40 CFR 1506.9.

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/*.

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search*.

EIS No. 20200050, Final, BLM, USFS, ID, Proposed East Smoky Panel Mine Project at Smoky Canyon Mine, Review Period Ends: 04/28/2020, Contact: Kyle Free 208–478–6352

EIS No. 20200051, Final, USAF, WI, United States Air Force F–35A Operational Beddown Air National Guard, Review Period Ends: 03/30/2020, Contact: Ramon Ortiz 240–612–7042

EIS No. 20200052, Draft, BR, BPA, USACE, OR, Columbia River System Operations,Comment Period Ends: 04/13/2020, Contact: Rebecca Weiss 800–290–5033

EIS No. 20200053, Final Supplement, BR, CA, Final Supplement to the Final Environmental Impact Statement/Environmental Impact Report for Los Vaqueros Reservoir Expansion, Contra Costa County, California, Review Period Ends: 03/30/2020, Contact: Jamie LeFevre 916–802–4880

EIS No. 20200054, Draft, BIA, BLM, NM, Farmington Mancos-Gallup Resource Management Plan Amendment and Environmental Impact Statement, Comment Period Ends: 05/28/2020, Contact: Jillian Aragon 505–564–7722

EIS No. 20200055, Draft, CHSRA, CA, California High-Speed Rail: Bakersfield to Palmdale Section Draft Environmental Impact Report/Environmental Impact Statement, Comment Period Ends: 04/13/2020, Contact: Dan McKell 916–501–8320

EIS No. 20200056, Final, USACE, CT, New Haven Harbor Connecticut, Navigation Improvement Project, Final Integrated Feasibility Report and Environmental Impact Statement, Review Period Ends: 03/30/2020, Contact: Todd Randall 978–318–8518

EIS No. 20200057, Final, FHWA, NH, I–93 Exit 4A, Contact: Jamison S. Sikora 603–410–4870, Pursuant to 23 U.S.C. 139(n)(2), FHWA has issued a single FEIS and ROD. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

Dated: February 25, 2020.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020–04107 Filed 2–27–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10005–84–OP]

Notice of Public Guidance Portal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a web portal that allows the public to search for agency guidance documents. The purpose of this portal is to increase transparency of EPA guidance documents and to provide a mechanism for the public to request modification or withdrawal of such documents.

DATES: This web portal is available on or about February 28, 2020.

ADDRESSES: The web portal is available via the internet at *https://epa.gov/guidance.*

FOR FURTHER INFORMATION CONTACT: Mary Manibusan, Office of Policy (1803A), Environmental Protection Agency, 1200 Pennsylvania Ave NW, Washington, DC 20460; telephone number: (202) 564–7267; fax number: (202) 564–8601; email address: *manibusan.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Background

On October 9, 2019, the President signed Executive Order (E.O.) 13891, ''Promoting the Rule of Law Through

Improved Agency Guidance Documents.'' E.O. 13891 provides that agencies shall develop a central web portal for interested parties to review active guidance documents and provide a means for requesting their modification or withdrawal.

B. EPA Guidance Portal

Today's notice provides announcement of public access to the EPA Guidance Portal, allowing for the search of active guidance documents as defined under E.O. 13891. Guidance documents listed on the EPA Guidance Portal do not construe any obligations or binding requirements on regulated parties, nor threat of enforcement action if the regulated public does not comply. The EPA Guidance Portal comports with all statutory and Federal web policies. Information available about each guidance document listed on the EPA Guidance Portal includes:

- A concise name for the guidance document;
- The date on which the guidance document was issued;
- The date on which the guidance document was posted to the web portal
- An agency unique identifier;
- A hyperlink to the guidance document;
- The general topic addressed by the guidance document; and
- A summary of the guidance document's content.

EPA intends to augment its list of guidance documents on the EPA Guidance Portal as additional such documents become available that the agency may cite, use, or rely upon. Similarly, should EPA determine that a guidance document should be modified or withdrawn, these documents shall be updated or removed as appropriate.

Dated: February 21, 2020.

Andrew R. Wheeler,

Administrator.

[FR Doc. 2020–04034 Filed 2–27–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201333.

Agreement Name: North Carolina-Virginia Port Terminal Cooperative Working Agreement.

Parties: North Carolina State Port Authority; Virginia Port Authority; and Virginia International Terminals, LLC.

Filing Party: David Monroe; GKG Law.

Synopsis: The Agreement authorizes the parties to discuss and agree on matters relating to their respective operations, and joint or cooperative operations at common-use facilities, including inland intermodal facilities. The parties request expedited review.

Proposed Effective Date: 4/9/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/27474.

Dated: February 25, 2020.

Rachel Dickon,

Secretary.

[FR Doc. 2020–04090 Filed 2–27–20; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0161; Docket No. 2019–0003; Sequence No. 34]

Submission for OMB Review; Reporting Purchases From Sources Outside the United States

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding reporting purchases from sources outside the United States.

DATES: Submit comments on or before March 30, 2020.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503 or at *Oira_submission@omb.eop.gov.* Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0161, Reporting Purchases from Sources Outside the United States.

Instructions: All items submitted must cite Information Collection 9000–0161, Reporting Purchases from Sources Outside the United States. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. *OMB Control Number, Title, and any Associated Form(s)*: 9000–0161, Reporting Purchases from Sources Outside the United States.

B. Need and Uses

This clearance covers the information that offerors must submit to comply with the Federal Acquisition Regulation (FAR) provision 52.225–18, Place of Manufacture. This provision requires offerors of manufactured end products to provide information as to whether the offered end products are predominantly manufactured in the United States or outside the United States.

Contracting officers use the information as the basis for entry into the Federal Procurement Data System for further data on the rationale for purchasing foreign manufactured items. The data is necessary for analysis of the application of the Buy American statute and the trade agreements.

C. Annual Burden

Respondents: 30,740.

Total Annual Responses: 2,908,096.
Total Burden Hours: 29,081.

D. Public Comment

A. A 60-day notice was published in the **Federal Register** at 84 FR 68455, on December 16, 2019. One comment was received; however, it did not change the estimate of the burden.

Comment: The commenter expressed support for the collection of data and stated that it should be maintained and enhanced given its essential role in informing policy decisions surrounding procurement and trade policy.

Response: This comment supports the collection of information as necessary for the proper performance of the functions of Federal Government acquisitions. It did not express an opinion on whether the stated number of burden hours is accurate for what they believe to be the actual number of hours an offeror expends to comply with the provision.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0161, Reporting Purchases from Sources Outside the United States, in all correspondence.

Dated: February 25, 2020.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2020–04110 Filed 2–27–20; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice–CX–2020–01; Docket No. 2020–0002; Sequence No. 8]

Office of Human Resources Management; SES Performance Review Board

AGENCY: Office of Human Resources Management (OHRM), General Services Administration (GSA).

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of new members to the General Services Administration Senior Executive Service Performance Review Board. The Performance Review Board assures consistency, stability, and objectivity in the performance appraisal process.

DATES: *Applicable:* February 28, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Shonna James, Director, Executive Resources HR Services Center, Office of Human Resources Management, General Services Administration, 1800 F Street NW, Washington, DC 20405, 202–230–7005.

SUPPLEMENTARY INFORMATION: Section 4314 (c) (1) through (5) of title 5 U.S.C requires each agency to establish, in accordance with regulation prescribed by the Office of Personnel Management, one or more SES performance review board(s). The board is responsible for making recommendations to the appointing and awarding authority on the performance appraisal ratings and performance awards for employees in the Senior Executive Service.

The following have been designated as members of the Performance Review Board of GSA:

- Allison Azevedo, Acting Deputy Commissioner, Public Buildings Service.
- Allison Brigati, Deputy Administrator—PRB Chair.
- Giancarlo Brizzi, Regional Commissioner, Public Buildings Service, Greater Southwest Region.
- Tiffany Hixson, Regional Commissioner, Federal Acquisition Service, Northwest, Arctic Region.
- Thomas Howder, Deputy Commissioner, Federal Acquisition Service.
- Merrick Krause, Acting Chief Human Capital Officer, Office of Human Resources Management.
- Jeffrey Lau, Regional Commissioner, Federal Acquisition Service, Northeast and Caribbean Region.
- Jessica Salmoiraghi, Associate Administrator for Governmentwide Policy.
- Jack St. John, General Counsel.

Dated: February 21, 2020.

Emily W. Murphy,

Administrator, General Services Administration.

[FR Doc. 2020–04105 Filed 2–27–20; 8:45 am]

BILLING CODE 6820–FM–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–20IT; Docket No. CDC–2020–0022]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Understanding Long-term Respiratory Morbidity in Former Styrene-Exposed Workers. The purpose of the interviews and medical testing is to determine the prevalence of respiratory symptoms and lung function abnormalities among a cohort of former styrene-exposed workers with different exposure levels to evaluate the long-term impacts of styrene exposure on the respiratory system.

DATES: CDC must receive written comments on or before April 28, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0022 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: *Submit all Federal comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office,

Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Understanding Long-term Respiratory Morbidity in Former Styrene-Exposed Workers—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Styrene is used in the production of automobile parts, boats, computer housings, food containers, wind energy components, and many other products. An estimated 90,000 U.S. workers are potentially exposed to styrene at more than 5,000 U.S. manufacturing plants. Occupational exposure to styrene has been associated with deleterious health effects, including changes in color vision, mucous membrane irritation, hearing loss, and neurocognitive impairment. Workplace exposure to styrene has also been associated with cases of non-malignant respiratory disease (NMRD), including COPD and obliterative bronchiolitis. However, little is understood about the long-term respiratory effects on styrene-exposed workers. NIOSH is requesting a three year OMB approval.

The goal of this project is to understand the prevalence of long-term respiratory morbidity in styrene-exposed workers. The objectives of the proposed study are: (1) To characterize work exposures by acquiring job histories and comparing with historical exposure levels obtained from a past industrial hygiene survey, (2) to examine prevalence of respiratory morbidity by duration and level of styrene exposure and other characteristics, (3) to apply research biomarkers of lung injury to a styrene-exposed workforce, and (4) to describe the prevalence of color vision impairment with the presence of respiratory morbidity. Our hypothesis is that workers previously exposed to high concentrations of styrene (≥5 ppm), even those with short tenure (<1 year), will have a higher prevalence of respiratory symptoms and lung function abnormalities compared with workers exposed to low concentration of styrene (<5 ppm).

We will conduct face-to-face interviews with members of a cohort of workers from two reinforced plastic boatbuilding plants that closed in 1989 and 1993. The purpose of the interviews is to collect demographic information, detailed job history during and after the worker's tenure at the boatbuilding plant, upper and lower respiratory symptoms, physician diagnoses of respiratory diseases, cigarette smoking history, and medication use. A NIOSH employee will conduct the interviews. We will also conduct several lung function tests including: Exhaled nitric oxide, impulse oscillometry, multiple-breath washout, spirometry, bronchodilator reversibility testing, and high-resolution computed tomography (HRCT) scan.

The purpose of the lung function testing is to identify small and large airway abnormalities that are consistent with NMRD. With the exception of the HRCT scans, NIOSH technicians will perform the lung function testing. An accredited imaging center will be hired to perform the HRCT scans. We will collect blood to analyze for biomarkers associated with lung injury caused by obliterative bronchiolitis. A NIOSH phlebotomist will collect the blood samples. Finally, we will assess cohort members for color vision abnormalities using the Lanthony D–15 Color Test. Color vision assessment will be completed by a NIOSH technician. The total estimated burden hours are 1,449. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Boatbuilder Cohort Members	Questionnaire and medical survey consent form.	676	1	15/60	169
Boatbuilder Cohort Members	Questionnaire	676	1	45/60	507
Boatbuilder Cohort Members	Exhaled Nitric Oxide—no form	676	1	5/60	56
Boatbuilder Cohort Members	Impulse Oscillometry—no form	676	1	10/60	113
Boatbuilder Cohort Members	Spirometry—no form	676	1	10/60	113
Boatbuilder Cohort Members	Bronchodilator Test—no form	50	1	20/60	17
Boatbuilder Cohort Members	Multiple-Breath Washout—no form	676	1	30/60	338
Boatbuilder Cohort Members	Color vision test—no form	676	1	5/60	56
Boatbuilder Cohort Members	Blood test—no form	676	1	5/60	56
Boatbuilder Cohort Members	HRCT consent form	70	1	5/60	6
Boatbuilder Cohort Members	HRCT Imaging—no form	70	1	15/60	18

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Total					1,449

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–04081 Filed 2–27–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–20JC; Docket No. CDC–2020–0023]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Delta Impact Cooperative Agreement Evaluation Data Collection Instruments'', to collect information from recipients related to program evaluation activities for cooperative agreement CDC–RFA–CE18–1801: Domestic Violence Prevention Enhancement and Leadership Through Alliances (DELTA) Impact.

DATES: Written comments must be received on or before April 28, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0023 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please Note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Delta impact Cooperative Agreement Evaluation Data Collection Instruments—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) seeks OMB approval for three years for a new information collection request to collect information from all 10 recipients (State Domestic Violence Coalitions) and all 17 subrecipients (Coordinated Community Response teams) funded through CDC's Domestic Violence Prevention Enhancements and Leadership Through Alliances (DELTA) Impact Program cooperative agreement (NOFO CDC–RFA–CE18–1801). CDC will collect information from DELTA Impact recipients as part of its program evaluation to assess the implementation and impact of the NOFO and further understand the facilitators, barriers, and critical factors to implement specific violence prevention strategies and conduct program evaluation activities.

The findings from this data collection will be used for implementing and evaluating DELTA Impact prevention efforts, and will inform technical assistance provided to recipients to assist them in achieving the goals of the DELTA Impact program. This data collection will supplement other data to highlight recipient and subrecipients' experiences implementing their primary prevention efforts to prevent intimate partner violence and their related program evaluation activities. CDC requests approval for 47 burden hours annually. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondent	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
DELTA Impact Program Recipients State Domestic Violence Coalitions.	Key Informant Interview—Project Lead (Att. 3).	10	1	1	10
	Key Informant Interview—Evaluator (Att. 4).	10	1	45/60	8
	Subrecipient Survey (Att. 5)	17	1	30/60	9
	Prevention Infrastructure Assessment (Att. 6).	10	2	1	20
Total					47

Jeffrey M. Zirger,
Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–04082 Filed 2–27–20; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–20JE; Docket No. CDC–2020–0025]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Distribution of Traceable Opioid Material* Kits (TOM Kits*) across U.S. Laboratories.'' CDC will use a brief web-based survey to collect information from laboratories submitting requests for TOM Kits*. CDC will use this information to prioritize which laboratories will receive kits when quantities are limited.

* TRACEABLE OPIOID MATERIAL, TOM KITS, and the TOM KITS logo are marks of the U.S. Department of Health and Human Services.

DATES: CDC must receive written comments on or before April 28, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0025 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Distribution of Traceable Opioid Material* Kits (TOM Kits*) across U.S. Laboratories—NEW—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

For the first time in U.S. history, a drug class has been declared a national public health emergency; each day more than 140 Americans die from drug overdoses, 91 specifically because of opioids. Since 2013, there have been significant increases in overdose deaths involving synthetic opioids—particularly those involving illicitly-manufactured fentanyl. The U.S. Drug Enforcement Administration (DEA) estimates that 75 percent of all opioid identifications are illicit fentanyls. Laboratories are routinely asked to confirm which fentanyl or other opioids

are involved in an overdose or encountered by first responders, as it is critical to identify and classify the types of drugs involved in an overdose, how often they are involved, and how that involvement may change over time. By understanding which drugs are present, appropriate prevention and response activities can be implemented.

The Centers for Disease Control and Prevention (CDC) is leading the development of Traceable Opioid Material* Kits (TOM Kits*) to support detection of emerging opioids. CDC maintains the contents of the TOM Kits* based on new needs identified, in part, through DEA Emerging Threat Reports. The DEA 2018 mid-year data indicate that fentanyl and fentanyl-related compounds account for approximately 75 percent of their opioid identifications. These kits are reference materials and do not eliminate the need to meet analytical method requirements of other federal agencies. TOM Kits* are not intended for diagnostic use. The kits are free to laboratories in the public, private, clinical, law enforcement, research, and public health domains.

To equitably distribute these TOM Kits*, the CDC conducted an emergency information collection, titled ''Distribution of Traceable Opioid Material* Kits (TOM Kits*) across U.S. Laboratories,'' under the Health and Human Services (HHS) Secretary's Public Health Emergency Paperwork Reduction Act (PHE PRA) Waiver mechanism for the period from 03/20/2019 to 05/10/2019. From 05/10/2019, CDC continued distributing kits using a generic information collection (GenIC) under ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' (OMB Control No. 0923–0047; expiration date 01/31/2022). To continue this collection, the CDC is currently requesting a three-year PRA clearance for a new information collection request (ICR) under the same title.

CDC is currently distributing a product line of TOM Kits*. Examples of products in this line include the: (1) Opioid Certified Reference Material Kit (Opioid CRM Kit); and (2) Fentanyl Analog Screening Kit (FAS Kit). Respondent laboratories requesting the TOM Kits* can be from any sector (academic, public, or private), must be located in the U.S., must have a verifiable business address, must have a current DEA registration, must comply with respective state and local regulations, and must submit requests directly to the respective vendor.

As the number of laboratories requesting TOM Kits* is high, the information collection will be used to prioritize which laboratories will receive kits when quantities are limited. The brief six-minute web-based survey will allow the CDC to (1) determine what service the recipient laboratory performs and the volume of samples the laboratory processes, and to (2) equitably distribute TOM Kits* based on the analysis techniques, matrix, and sample size used by the recipient laboratory.

The annual number of respondents (n=1,200) was based on the number of 2019 requests. The total time burden requested is 120 hours per year. There is no burden on the respondents other than their time.

*TRACEABLE OPIOID MATERIAL, TOM KITS, and the TOM KITS logo are marks of the U.S. Department of Health and Human Services.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Federal Laboratories	TOM Kits* Questions	400	1	6/60	40
State, Local, and Tribal Government Laboratories.	TOM Kits* Questions	400	1	6/60	40
Private or Not-for-Profit Institutions	TOM Kits* Questions	400	1	6/60	40
Total					120

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–04083 Filed 2–27–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–CE–20–001, Evaluating Practiced-based Programs, Policies, and Practices from CDC's Rape Prevention Education Program.

Date: April 29–30, 2020.

Time: 8:30 a.m.–5:30 p.m., EDT.

Place: Embassy Suites Buckhead, 3285 Peachtree Road NE, Atlanta, Georgia 30305.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Kimberly Leeks, Ph.D., M.P.H., Scientific Review Official, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway NE, Building 106, MS S106–9, Atlanta, Georgia 30341, Telephone (770) 488–6562, *KLeeks@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–04098 Filed 2–27–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Clinical Laboratory Improvement Advisory Committee (CLIAC). This meeting is open to the public, limited only by the space available. The meeting room accommodates approximately 100 people. The public is also welcome to view the meeting by webcast. Check the CLIAC website on the day of the meeting for the webcast link *www.cdc.gov/cliac.*

DATES: The meeting will be held on April 16, 2020, 8:30 a.m. to 5:00 p.m., EDT and April 17, 2020, 8:30 a.m. to 11:30 a.m., EDT.

ADDRESSES: Food and Drug Administration (FDA), White Oak Campus, 10903 New Hampshire Avenue, Building 31, Great Room, Silver Spring, Maryland 20993 and via webcast at *www.cdc.gov/cliac.*

FOR FURTHER INFORMATION CONTACT: Nancy Anderson, MMSc, MT(ASCP), Senior Advisor for Clinical Laboratories, Division of Laboratory Systems, Center for Surveillance, Epidemiology and Laboratory Services, Office of Public Health Scientific Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24–3, Atlanta, Georgia 30329–4018, telephone (404) 498–2741; *NAnderson@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services (HHS); the Assistant Secretary for Health; the Director, Centers for Disease Control and Prevention; the Commissioner, Food and Drug Administration (FDA); and the Administrator, Centers for Medicare and Medicaid Services (CMS). The advice and guidance pertain to general issues related to improvement in clinical laboratory quality and laboratory medicine practice and specific questions related to possible revision of the Clinical Laboratory Improvement Amendment (CLIA) standards. Examples include providing guidance on studies designed to improve safety, effectiveness, efficiency, timeliness, equity, and patient-centeredness of laboratory services; revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards on medical and laboratory practice; and the modification of the standards and provision of non-regulatory guidelines to accommodate technological advances, such as new test methods, the electronic transmission of laboratory information, and mechanisms to improve the integration of public health and clinical laboratory practices.

All people attending the CLIAC meeting in-person are required to register for the meeting online at least five business days in advance for U.S. citizens and at least 10 business days in advance for international registrants. Register at: *www.cdc.gov/cliac.* Register by scrolling down and clicking the ''Register for this Meeting'' button and completing all forms according to the instructions given. Please complete all the required fields before submitting your registration and submit no later than April 8, 2020, for U.S. registrants and April 1, 2020, for international registrants.

It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments on agenda items. Public comment periods for each agenda item are scheduled immediately prior to the Committee discussion period for that item. In general, each individual or group requesting to make oral comments will be limited to a total time of five minutes (unless otherwise indicated). To assure adequate time is scheduled for public comments, speakers should notify the contact person below at least 5 business days prior to the meeting date. For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, it is requested that comments be submitted at least 5 business days prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments should be provided to the contact person at the mailing or email address below, and will be included in the meeting's Summary Report.

The CLIAC meeting materials will be made available to the Committee and the public in electronic format (PDF) on the internet instead of by printed copy. Check the CLIAC website on the day of the meeting for materials: *www.cdc.gov/cliac.*

Matters to be Considered: The agenda will include agency updates from CDC, CMS, and FDA. Presentations and discussions will focus on an update on CLIAC recommendations; an update on the Genetic Testing Reference Materials Coordination Program (GeT–RM); an update of the December 2019 CDC's Board of Scientific Counselors, Deputy Director for Infectious Diseases meeting; a report from the Office of the National Coordinator for Health Information Technology (ONC) Health Information Technology Advisory Committee; the laboratory response to the COVID–19 coronavirus disease outbreak; and technological advances in digital imaging. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–04068 Filed 2–27–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–0493; Docket No. CDC–2020–0015]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the

general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled 2021 and 2023 National Youth Risk Behavior Surveys (YRBS). CDC is requesting a three-year approval to reinstate, with changes, the data collection for the national YRBS, a biennially school-based survey of high school students in the United States.

DATES: CDC must receive written comments on or before April 28, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0015 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

2021 and 2023 National Youth Risk Behavior Surveys (OMB Contrtol No. 0920–0493)—Reinstatement with change—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this request is to obtain OMB approval to reinstate with change, the data collection for the National Youth Risk Behavior Survey (YRBS), a school-based survey that has been conducted biennially since 1991. OMB approval for the 2017 YRBS and 2019 YRBS expired September 30, 2019 (OMB Control No. 0920–0493). CDC seeks a three-year approval to conduct the YRBS in Spring 2021 and Spring 2023. Minor changes incorporated into this reinstatement request include: An updated title for the information collection to accurately reflect the years in which the survey will be conducted, minor changes to the data collection instrument, and the use of a tablet-based data collection methodology starting in 2023.

The YRBS assesses priority health risk behaviors related to the major preventable causes of mortality, morbidity, and social problems among both youth and young adults in the United States. Data on health risk behaviors of adolescents are the focus of approximately 65 national health objectives in Healthy People 2030, an initiative of the U.S. Department of Health and Human Services (HHS). The YRBS provides data to measure 13 of the proposed health objectives and one of the Leading Health Indicators currently under public comment to establish Healthy People 2030 objectives. In addition, the YRBS can identify racial and ethnic disparities in health risk behaviors. No other national source of data measures as many of the Healthy People 2030 objectives addressing adolescent health risk behaviors as the YRBS. The data also will have significant implications for policy and program development for school health programs nationwide.

In Spring 2021 and Spring 2023, the YRBS will be conducted among nationally representative samples of students attending public and private schools in grades 9–12. Information supporting the YRBS also will be collected from state-, district-, and school-level administrators and teachers. The table below reports the number of respondents annualized over the three-year project period. There are no costs to respondents except their time. The total estimated annualized burden hours are 6,259.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
State Administrators	State-level Recruitment Script for the Youth Risk Behavior Survey.	17	1	30/60	9
District Administrators	District-level Recruitment Script for the Youth Risk Behavior Survey.	80	1	30/60	40
School Administrators	District-level Recruitment Script for the Youth Risk Behavior Survey.	133	1	30/60	67

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Teachers	Data Collection Checklist for the Youth Risk Behavior Survey.	440	1	15/60	110
Students	Youth Risk Behavior Survey	8,045	1	45/60	6,034
Total					6,259

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–04084 Filed 2–27–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Personal Responsibility Education Program (PREP) Performance Measures and Adulthood Preparation Subjects (PMAPS) Studies—Data Collection Related to the Performance Measures Study—Extension (OMB #0970–0497).

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: A goal of the Performance Measures and Adulthood Preparation Subjects (PMAPS) studies is to collect, analyze, and report on performance measure data for the Personal Responsibility Education Program (PREP) programs. The Office of Planning, Research, and Evaluation (OPRE) and the Family and Youth Services Bureau (FYSB) in the Administration for Children and Families (ACF) request a revision to a currently approved information collection (OMB No. 0970–0497; expiration date: 04/30/2020). The purpose of the request is to make adaptions to the participant entry and exit surveys, and continue the ongoing data collection of the performance measures from PREP grantees.

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: The PMAPS studies consist of two components: The Performance Measures Study and the Adulthood Preparation Subjects Study. The data collection for the Adulthood Preparation Subjects Study is complete. This notice is specific to a request for an extension of data collection activities for the Performance Measures Study only. The Performance Measures Study component includes collection and analysis of performance measure data from State PREP (SPREP), Tribal PREP (TPREP), Competitive PREP (CPREP), and Personal Responsibility Education Innovative Strategies (PREIS) grantees. Data will be used to determine if PREP and PREIS grantees are meeting performance benchmarks related to the program's mission and priorities.

This request includes the development of adapted participant entry and exit surveys for middle school students (6th, 7th, and 8th grade youth) that exclude the most sensitive questions pertaining to sexual behavior. This is because some of the PREP middle school curricula do not include topics on sexual behavior, *i.e.,* focus only on healthy relationship education. The adapted surveys will be used by all grantees that serve middle school youth. In addition, some minor edits have been made to the high school surveys.

Respondents: Performance measurement data collection instruments will be administered to individuals representing SPREP, TPREP, CPREP, and PREIS grantees, their sub-awardees, and program participants.

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
PREP Participant Entry Survey	319,673	106,558	1	0.15	15,984
PREP Participant Exit Survey	291,624	97,208	1	0.13333	12,961
Performance Reporting System Data Form—State grantees	153	51	2	18	1,836
Performance Reporting System Data Form—TPREP grantees	28	9	2	18	324
Performance Reporting System Data Form—CPREP grantees	75	25	2	14	700
Performance Reporting System Data Form—PREIS grantees	38	13	2	14	364
Performance Reporting System Data Form—State sub-awardees	987	329	2	14	9,212

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Performance Reporting System Data Form—TPREP sub-awardees	85	28	2	14	784
Performance Reporting System Data Form—CPREP sub-awardees	110	37	2	12	888
Performance Reporting System Data Form—PREIS sub-awardees	66	22	2	12	528

Estimated Total Annual Burden Hours: 43,581.

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: Sec. 50503, Pub. L. 115–123.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–04085 Filed 2–27–20; 8:45 am]

BILLING CODE 4184–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Form ACF–196T, Tribal TANF Financial Report (OMB #0970–0345)

AGENCY: Office of Family Assistance; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: Form ACF–196T is used by tribes to report expenditures for the Tribal Temporary Assistance for Needy Families (TANF) grant. The Administration for Children and Families (ACF) will use the financial data provided by tribes to estimate quarterly funding needs, calculate award amounts, and assess compliance with statutory and regulatory requirements. ACF is requesting an extension with no changes to the form and minor updates to the instructions.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Tribes use Form ACF–196T to report expenditures for the Tribal TANF grant. Authority to collect and report this information is found in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193. Tribal entities with approved tribal plans for implementation of the TANF program are required under Section 412(h) of the Social Security Act to report financial data. Form ACF–196T provides for the collection of data regarding federal expenditures. Failure to collect this data would seriously compromise ACF's ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress. Financial management of the program would be seriously compromised if the expenditure data were not collected. 45 CFR part 286 subpart E requires the strictest controls on funding requirements, which necessitates review of documentation in support of tribal expenditures for reimbursement. Comments received from previous efforts to implement a similar Tribal TANF Report Form ACF–196T were used to guide ACF in the development of the product presented with this submittal.

Respondents: All Tribal TANF Agencies.

ANNUAL BURDEN ESTIMATES

Form	Total number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
ACF–196T	75	4	1.5	450

Estimated Total Annual Burden Hours: 450.

Authority: U.S.C. Section 402 of the Social Security Act (42 U.S.C. 602).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–04067 Filed 2–27–20; 8:45 am]

BILLING CODE 4184–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Office of Refugee Resettlement Unaccompanied Refugee Minors Program Application and Withdrawal of Application or Declination of Placement Form (Previous OMB #0970–0498)

AGENCY: Office of Refugee Resettlement; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Refugee Resettlement (ORR) is requesting a 3-year extension of the application and Withdrawal of Application or Declination of Placement Form for the Unaccompanied Refugee Minors (URM) Program. Proposed revisions to each instrument are minimal. These forms were previously approved under OMB #0970–0498, expiration 7/31/2020. ORR is currently seeking a new OMB number specific to these forms, as they were previously approved as part of another information collection package for ORR's Unaccompanied Alien Children's program.

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 *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The URM Program Application is completed on behalf of unaccompanied children in the United States who are applying for entry into the URM Program. The application includes biographical data and information on the child's needs to support placement efforts. The Withdrawal of Application or Declination of Placement Form is completed when a child is no longer interested in entering the URM program.

Respondents: Case managers, attorneys, or other representatives working with unaccompanied children who are eligible for the URM Program.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Unaccompanied Refugee Minors Program Application	350	3	1.50	1,575	525
Withdrawal of Application or Declination of Placement Form	30	3	0.20	18	6

Estimated Total Annual Burden Hours: 531.

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: 8 U.S.C. 1522(d).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–04136 Filed 2–27–20; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Charter Amendment National Advisory Council on the National Health Service Corps

AGENCY: Health Resources and Service Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), HHS is hereby giving notice that the National Advisory Council on the National Health Service Corps (NACNHSC) Charter is amended. The effective date is February 20, 2020.

FOR FURTHER INFORMATION CONTACT: Diane Fabiyi-King, Designated Federal Official (DFO), Division of National Health Service Corps (NHSC), HRSA. Address: 5600 Fishers Lane, Room 14N110, Rockville, Maryland 20857; phone (301) 443–3609; or email *DFabiyi-King@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

The NACNHSC consults, advises, and makes annual recommendations to the Secretary of HHS and the Administrator, HRSA, with respect to their NHSC related responsibilities under Subpart II, Part D of Title III of the PHS Act (42 U.S.C. 254d–254k), as amended, to designate areas of the United States with health professional shortages and assign NHSC clinicians to improve the delivery of health services in health professional shortage areas.

The amended charter for NACNHSC was approved on February 20, 2020, which will also stand as the filing date. NACNHSC is exempt from Section 14 of the FACA, as stated in section 337(c) of the Public Health Service (PHS) Act. This amended charter will remain in effect until amended or section 337 of the PHS Act is repealed by law.

A copy of the NACNHSC amended charter is available on the NACNHSC website at *https://nhsc.hrsa.gov/nac-charter.html.* A copy of the amended

charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The website address for the FACA database is *http://www.facadatabase.gov/.*

Maria G. Button,

Executive Secretariat.

[FR Doc. 2020–04088 Filed 2–27–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel NIAAA Review Subcommittee Member Conflict Panel.

Date: March 23, 2020.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2114, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 2114, Bethesda, MD 20892, (301) 451–2067, *srinivar@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Review Subcommittee Member Conflict Panel.

Date: March 27, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Rockville, MD 20817, (Telephone Conference Call).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Bethesda, MD 20892, (301) 443–8599, *espinozala@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Investigational New Drug (IND)-Enabling Development of Medications to Treat Alcohol Use Disorder and Alcohol-Related Disorders Review Group.

Date: March 31, 2020.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2114, Rockville, MD 20817, (Telephone Conference Call).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 2114, Bethesda, MD 20892, (301) 451–2067, *srinivar@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: February 24, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–04066 Filed 2–27–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Avenir Award Program for Research on Substance Abuse and HIV/AIDS (DP2).

Date: March 13, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–402–6020, *hiromi.ono@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; SEP II: Medications Development.

Date: March 19, 2020.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building, 6001 Executive Boulevard, Room 4236, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 6001 Executive Boulevard, Room 4242, MSC 9550, Bethesda, MD 20892, 301–827–5833 *ivan.navarro@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA SEP for Medications Development.

Date: March 19, 2020.

Time: 2:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building, 6001 Executive Boulevard, Room 4236, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 6001 Executive Boulevard, Room 4242, MSC 9550, Bethesda, MD 20892, 301–827–5833, *ivan.navarro@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Modeling HIV Neuropathology Using Microglia from Human iPSC and Cerebral Organoids (R01 Clinical Trial Not Allowed).

Date: March 25, 2020.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room

4235 MSC 9550, Bethesda, MD 20892–9550, 301–827–5819, *gm145a@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Avenir Award Program for Genetics or Epigenetics of Substance Use Disorders (DP1 Clinical Trial Optional).

Date: March 26, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 6001 Executive Boulevard, Room 4242, MSC 9550, Bethesda, MD 20892, 301–827–5833, *ivan.navarro@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 24, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–04060 Filed 2–27–20; 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; Research Training.

Date: March 11, 2020.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative; Data Archives, Integration, and Standards.

Date: March 20, 2020.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Secondary Analysis and Archiving of BRAIN Initiative Data.

Date: March 24, 2020.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Tools to Facilitate High-Throughput Microconnectivity Analysis (R01).

Date: March 26, 2020.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Erin E. Gray, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Boulevard, NSC 6152B, Bethesda, MD 20892, 301–402–8152, *erin.gray@nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Computational Approaches for Validating Dimensional Constructs of Relevance to Psychopathology (R01).

Date: March 30, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 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: February 24, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–04061 Filed 2–27–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council (NAC) will meet on March 26, 2020, 1:00 p.m.–5:00 p.m. (EDT).

The meeting is open to the public and will include consideration of the minutes from the SAMHSA CSAT NAC meeting of August 21, 2019; budget update; DATA wavier update; State Opioid Response update; Substance Abuse Prevention and Treatment Block Grant update; discretionary portfolio update; discussion on Tip 63; and a discussion on Technology Transfer Centers Program Peer Support.

The meeting will be held via WebEx and telephone only, and not in person. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Written submissions should be forwarded to the contact person on or before March 20, 2020. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations must notify the contact person on or before March 20, 2020. Up to five minutes may be allotted for each presentation.

Registration is required to participate during this meeting. To attend virtually, or to obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with

disabilities, please register on-line at *http://snacregister.samhsa.gov/MeetingList.aspx,* or communicate with the CSAT National Advisory Council Designated Federal Officer; Tracy Goss (see contact information below).

Meeting information and a roster of Council members may be obtained by accessing the SAMHSA Committee website at *http://www.samhsa.gov/about-us/advisory-councils/csat-national-advisory-council* or by contacting the CSAT National Advisory Council Designated Federal Officer; Tracy Goss (see contact information below).

Council Name: SAMHSA's Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type: March 26, 2020, 1:00 p.m.–5:00 p.m. EDT, Open.

Place: SAMHSA, 5600 Fishers Lane, Rockville, Maryland 20857.

Contact: Tracy Goss, Designated Federal Officer, CSAT National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail). Telephone: (240) 276–0759.

Fax: (240) 276–2252.

Email: tracy.goss@samhsa.hhs.gov.

Dated: 25 February 2020.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2020–04138 Filed 2–27–20; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0083]

Agency Information Collection Activities: United States-Caribbean Basin Trade Partnership Act (CBTPA)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than April 28, 2020) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0083 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: United States-Caribbean Basin Trade Partnership Act.

OMB Number: 1651–0083.

Form Number: CBP Form 450.

Abstract: The provisions of the United States-Caribbean Basin Trade Partnership Act (CBTPA) were adopted by the U.S. with the enactment of the Trade and Development Act of 2000 (Pub. L.106–200). The objective of the CBTPA is to expand trade benefits to countries in the Caribbean Basin. For preferential duty treatment under CBTPA, CBP requires under 19 CFR 10.234 and 10.236 that importers have a CBTPA Certification of Origin (CBP Form 450) in their possession at the time of the claim and that importers provide it to CBP upon request. CBP Form 450 collects data such as contact information for the exporter, importer and producer, and information about the goods being claimed.

This collection of information is provided for by 19 CFR 10.224. CBP Form 450 is accessible at *https://www.cbp.gov/newsroom/publications/forms?title=450&=Apply.*

Current Actions: This submission is being made to extend the expiration date with no change to the estimated burden hours. There are no changes to CBP Form 450 or to the data collected on this form.

Type of Review: Extension without change.

Affected Public: Businesses.

Estimated Number of Respondents: 15.

Estimated Number of Responses per Respondent: 286.

Estimated Total Annual Responses: 4,292.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 8,584.

Dated: February 24, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–04048 Filed 2–27–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2019–0004; OMB No. 1660–0011]

Agency Information Collection Activities: Proposed Collection; Comment Request; Submission for OMB Review; Comment Request; Debt Collection Financial Statement

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a reinstatement, without change, of a previously approved information collection for which approval has expired. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments on the collection of information related to disaster program accounts and debts owed to FEMA by individuals.

DATES: Comments must be submitted on or before April 28, 2020.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–XXXX–XXXX. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov* or Zita Zduoba, FEMA Finance Center, Office of the Chief Financial Officer, at (540) 504–1613.

SUPPLEMENTARY INFORMATION: Under the Debt Collection Act as amended (31 U.S.C. 3701, et seq.), the Federal Claims Collection Standards (31 CFR parts 900–904), and the Department of Homeland Security (DHS) regulations (6 CFR Part 11); the Administrator of the Federal Emergency Management Agency (FEMA) is: (1) Required to attempt collection of all debts owed to the United States arising out of activities of the FEMA; and (2) for debts not exceeding $100,000, authorized to compromise such debts or terminate collection action completely where it appears that no person is liable for such debt or has the present or prospective financial ability to pay a significant sum or that the cost of collecting such debt is likely to exceed the amount of the recovery (31 U.S.C. 3711(a)(2)).

This proposed information collection previously published in the **Federal Register** on July 19, 2019 at 84 FR 34918 with a 60-day public comment period. No comments were received. This information collection expired on June 30, 2019. FEMA is requesting a reinstatement, without change, of a previously approved information collection for which approval has expired. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Debt Collection Financial Statement.

Type of information collection: Reinstatement, without change, of a previously approved information collection for which approval has expired.

OMB Number: 1660–0011.

Form Titles and Numbers: Debt Collection Financial Statement, FEMA form 127–0–1.

Abstract: FEMA Form 127–0–1 is used to collect information provided voluntarily by the debtor to evaluate the debtor's financial abilities to determine if they qualify for a payment plan and set repayment terms or determine a compromise to write-off a debt in part or in full. Financial information obtained is essential to evaluate the debtor's ability for the payment of the debt in part or in full. Debt may be a recoupment of an ineligible disaster assistance payment or improper payment to an employee.

Affected Public: Individuals or households.

Estimated Number of Respondents: 300.

Estimated Number of Responses: 300.

Estimated Total Annual Burden Hours: 225.

Estimated Total Annual Respondent Cost: $8,206.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $41,661.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Maile Arthur,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2020–04128 Filed 2–27–20; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6201–N–01]

Administrative Guidelines: Subsidy Layering Review for Project-Based Vouchers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice provides updated Administrative Guidelines (Guidelines) and requirements for Project-Based Voucher (PBV) Subsidy Layering Reviews (SLRs), to include new PBV Housing Assistance Payments (HAP) contract terms provisions, as amended by the Housing Opportunity Through Modernization Act of 2016 (HOTMA),

and SLR requirements for Mixed-Finance projects that may or may not include PBV assistance. This notice also provides transparency on HUD's expectations regarding cash flow, debt coverage ratios, net operating income, and operating expense trending requirements.

FOR FURTHER INFORMATION CONTACT: Miguel A. Fontanez Sanchez, Director, Housing Voucher Financial Management Division, telephone number 202–402–4212 or Belinda Bly, Supervisor, Urban Revitalization Division, telephone number 202–402–4104 (neither are toll-free numbers). Addresses for both: c/o Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410. Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

In support of HUD's mission to create quality affordable housing, HUD provides funding assistance to incentivize affordable housing development. Subsidy layering reviews (SLRs) are undertaken to ensure the amount of assistance provided by HUD is not more than necessary to make the PBV project feasible in consideration of all other governmental assistance. SLRs prevent excessive public assistance that could result when a development proposes combining (layering) the HAP subsidy from the PBV program with other public assistance from Federal, State, or local agencies, including assistance through tax concessions or credits.

SLRs for PBV assistance are required pursuant to Section 8(o)(13) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(13)); section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA); and section 102 of the Department of Housing and Urban Development Reform Act of 1989. SLRs are only for proposed PBV new construction and rehabilitation projects prior to the execution of an Agreement to Enter into Housing Assistance Payments Contract (AHAP).

SLR requirements are not applicable to existing housing.[1] Specifically, an SLR is not required for a project already subject to a PBV HAP contract, even if that project is recapitalized with outside sources of funding (*i.e.,* a PBV HAP-assisted project under contract for 10 years which then receives a tax credit award to address rehabilitation needs). PBV regulations define existing housing as units that already exist on the proposal selection date that substantially comply with Housing Quality Standards (HQS) on that date. (The units must fully comply with the HQS before execution of the HAP contract.) In addition, no SLR is required when PBV is the only governmental assistance provided to a project.

Pursuant to 24 CFR 983.55, public housing agencies (PHAs) must submit a request for an SLR for a proposed PBV project when the project includes other governmental assistance. HUD can perform the SLRs in all cases; however, HUD has also delegated authority to participating Housing Credit Agencies (HCAs) as defined herein when the other governmental assistance includes Low-Income Housing Tax Credits (LIHTC).[2]

II. Subsidy Layering Review

A. Definitions

Housing Credit Agency: For purposes of this notice, an HCA is a state housing finance agency or other state agency defined by section 42 of the Internal Revenue Code of 1986. HCAs are sometimes referred to by other names, such as State Housing Finance Agencies or State Housing Corporation. A participating jurisdiction under HUD's HOME Investment Partnerships program (see 24 CFR part 92) may also serve as an HCA.

Mixed-finance development: Development or modernization of public housing pursuant to 24 CFR 905 Subpart F, where public housing units are owned by an entity other than a PHA.

Other government assistance: Any loan, grant, guarantee, insurance, payment, rebate, subsidy, tax credit, tax benefit, or any other form of direct or indirect assistance from the federal government, a state, or a unit of general local government, or any agency or instrumentality thereof.

B. Requesting a SLR for a PBV Award

When a PHA selects a project that is either new construction or rehabilitation, as defined in 24 CFR 983.3, for a PBV award, and the project will include forms of governmental assistance other than PBVs, the PHA must request an SLR. PHAs request an SLR through their local HUD Field Office or, if eligible, through a participating HCA. A list of participating HCAs is posted and updated periodically on the Housing Voucher Financial Management Division (FMD) website, found at: *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/fmd.* The participating HCA may charge a fee to perform the SLR, which the PHA may pay using Administrative Fees or Administrative Fee reserves.

The PHA is responsible for collecting all required documentation for the SLR from the project owner. A list of all the required documentation is included in Appendix A. If after the initial submission new information becomes available, the PHA is responsible for submitting updated information to HUD or the HCA. The PHA maintains a project file with a complete set of the required documents. As part of the project selection process and application for PBVs, the project owner must disclose all HUD and/or other Federal, State, or local governmental assistance committed to the project, as well as other governmental assistance, using Form HUD 2880 (even if no other governmental assistance is received or is anticipated). If PBV is the only governmental assistance, an SLR is not required. Whether the PHA or HCA performs the SLR, the PHA must confirm that no form of disclosed assistance renders the project ineligible for PBV assistance and does not violate 24 CFR 983.54.

The PHA must inform the owner if any information changes during the application process, either by the addition or deletion of other governmental assistance, the project owner must provide revised information to correct the earlier submissions to reflect the new information. If at any time (either during the application process, after AHAP execution, or after HAP execution) the owner receives supplemental HUD or new governmental assistance for the project that results in an increase in project financing in an amount equal to or greater than 10 percent of the approved SLR development budget, the owner must submit such changes to the PHA and the PHA must notify HUD or the HCA.[3] The AHAP requires that the owner disclose to the PHA information regarding any related assistance from the Federal government, a State, or a unit of general local government, or any

[1] Section 2835(a)(1)(F) of Housing and Economic Recovery Act of 2008 (Pub. L. 110–289), enacted July 30, 2008, does not require subsidy layering review for existing housing.

[2] Pursuant to the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), as amended by the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233, approved April 4, 1994) added a ''Subsidy Layering Review'' provision at 42 U.S.C. 3545.

[3] 24 CFR 4.11.

agency or instrumentality thereof, that is made available or expected to be made available with respect to the contract units.

Completion of an environmental review and environmental approval is required before an AHAP can be executed, pursuant to 24 CFR 983.153. At the time of initial submission of the SLR request, the PHA submits evidence that a request for a 24 CFR part 58 review is submitted to the responsible entity or a 24 CFR part 50 review is submitted to the Field Office.

C. Analysis and Safe Harbor Standards

When undertaking an SLR, HUD reviews both the development and operating costs of a project to determine whether costs are within a reasonable range, taking into consideration the project's size, characteristics, location, costs, financing and risk factors. Costs that fall within acceptable safe harbor standards, as identified below, may move forward without further justification. If costs exceed safe harbor standards, then additional justification and documentation are required to justify the costs based on risk factors, and HUD approval is required.

If the review is by an HCA, project costs exceeding the safe harbor standards must be consistent with the HCA's published qualified allocation plan.

(A) *Development Standards:*

i. *General Contractor Fees:* The safe harbor standard is based on hard construction costs. The maximum allowable combined contractor fee is fourteen percent (14%) of the total for hard construction costs. For example, if construction costs are $100,000, the safe harbor amount is $14,000:

- *General Conditions:* 6% of construction contract amount
- *Overhead:* 2% of construction contract amount
- *Builder's Profit:* 6% of construction contract amount

ii. *Developer Fee:* The safe harbor standard is a maximum of 15%. For projects combining public housing units and PBV units in a Mixed-Finance project, safe harbors are 9%, requiring no justification, above 9% and up to 12%, may be approved with justification. Fees over 12% may be approved if the PHA receives the amount over 12% and it is restricted for project costs or future phases as described in the ''Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development,'' dated April 9, 2003 or any successor document. See Section 7 on Mixed Finance Projects below.

(B) *Operating Standards:*

The maximum initial term for a PBV HAP contract is 20 years pursuant to section 8(o)(13)(F) of the 1937 Housing Act as recently amended by HOTMA, although the initial terms for other funding sources may be less. SLR requests must include an operating pro forma that reflects each year of the HAP contract initial term. All assumptions for income, expenses and debt must be clearly identified. Both the Debt Coverage Ratio (DCR) and cash flow are analyzed on a year-by-year basis. If a project has no debt, the SLR review is processed based only on cash-flow requirements, as described below in 6(C)(ii).

i. *Debt Coverage Ratio:* HUD and HCAs analyze the PBV development's projected DCR both on a yearly basis and trended over the term of the proposed subsidy period as an indicator of overall project health. As a HUD metric for PBV purposes, the minimum DCR is 1.10 and the maximum is 1.45. The DCR for each year is determined by dividing the net operating income for that year by the amount of the debt service for that year. Factors such as operating cost increases, rent increases, project size, unit and income mix, and vacancy rates affect net operating income. Therefore, a trending analysis is also used to evaluate the DCR over time and to determine whether the amount of assistance is excessive. HUD recognizes that some projects may have higher upfront DCRs since owners may frontload debt service to free up cash flow later in the project period for higher anticipated operating expenses, or that some projects may have higher DCRs in later years due to planned changes in financing costs, interest rates, or partnership transfers. If a project has an overall trending DCR outside the 1.10 to 1.45 range, the project may have too much governmental assistance. If a project DCR trends outside the range for an individual year, but has an overall trending DCR within the range, HUD will require justifications from the Owner or PHA to understand the project assumptions and yearly deviations.

- Net operating income is defined as total operating income minus total operating expenses. The net operating income for a project must cover all repayable debt over the life of the HAP contract.
- Operating expenses should be trended at a consistent fixed rate between 1% and 3% per year for the first 5 years and 3% thereafter. Justification for increases above 3% must be provided.
- Rent increases should be trended yearly at a consistent fixed rate between 2% and 3% per year. Justification is required for increases outside this range.
- Vacancy rates must not exceed 7%.
- Debt service is defined as the funds required to make payments on all non-forgivable loans, including any existing debt on the property. Debt service does not include forgivable/soft loans, non-repayable grants, non-repayable federal, state or local assistance, deferred developer fees, financing fees, partnership fees, management fees, capital contributions, tax concessions, or tax credits.

If the projected DCR remains between 1.10 and 1.45 during the initial term of the HAP contract, then it is assumed the project has enough cash-flow to pay operating expenses and amortized debt, and that the amount of government assistance is not excessive. HUD will require adjustments if the projected DCR in any one year falls below 1.10 and it continues to remain below 1.10 for a series of subsequent years as cash flow would not be enough to ensure stable operations. Likewise, HUD will require adjustments to PBV assistance, if the projected DCR exceeds the maximum of 1.45 in any one year and continues to remain above 1.45 for a series of subsequent years.

ii. *Cash-Flow:* For any given year of the project's operating pro forma, cash flow may not exceed 10% of total operating expenses. Cash-flow is defined as net operating income minus all required debt service.

- If all or a portion of the developer fee has been deferred and is owed, the face value amount of the deferred developer fee (*i.e.,* no interest earned) may be deducted from cash flow.
- Operational and replacement reserves may be deducted from cash flow when reserves are adjusted by a consistent amount each year.
- No further adjustments to cash-flow are permitted beyond deferred developer fees, operational reserve contributions and replacement reserve contributions.

If in any given year the annual cash-flow is greater than 10% of total operating expenses and it remains above 10%, it is assumed the cash generated from the government assistance is greater than is necessary to make the project feasible. Therefore, adjustments must be made by the project owner to reduce cash flow to 10% or less of operating expenses. If the owner declines, HUD will reduce PBV rents or the number of PBVs, so the project complies with the 10% requirement.

D. Requesting a SLR for a Mixed-Finance Project

For Mixed-Finance projects that also include PBVs, the SLR is handled as part of the Mixed-Finance project review process without a separate PBV SLR review. SLRs for Mixed-Finance projects are only done by HUD and may not be done by an HCA. Mixed-Finance reviews are done by HUD's Office of Public Housing Investments (OPHI) at HUD Headquarters. This provision also applies to Mixed-Finance projects with PBVs that are undertaken as part of the Choice Neighborhoods Grant Program, as well as Choice Neighborhoods projects that have PBVs, but no public housing. This includes MTW local nontraditional development (LNTD) proposals. OPHI prepares the SLR as part of the project review process without a separate PBV SLR review.

As it relates to the PBVs, Mixed-Finance projects must comply with the SLR standards identified above in the Notice. In addition to this review, the project will also be reviewed to assure compliance with the provisions of 24 CFR 905 Subpart F, and other applicable guidance, including the following:

- The ''Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development,'' dated April 9, 2003 or any successor document.
- Total Development Cost (TDC) and Housing Construction Cost (HCC) limits imposed on the project, pursuant to HUD Notice PIH–2011–38 or successor notice.
- The HUD Pro Rata Test, which assures that the proportion of HUD public housing funds committed to development of the project does not exceed the proportion of public housing units in the project. For example, if there are 120 units in the project and 50 are public housing, 42% of the units are public housing. Therefore, the amount of public housing funds contributed to the development of the project may not exceed 42% of the development budget, including hard and soft costs.
- HUD will review the amount of LIHTC equity to be invested in the project to ensure that the sale of LIHTCs results in an amount of net tax credit equity that is consistent with amounts generally contributed by investors to similar projects under similar market conditions, and that the amount is not less than 51 cents for each dollar of tax credit allocation awarded to a project. If the project receives 51 cents or less of LIHTC equity or does not receive a market rate of equity, it is subject to additional review to reassess the project's fees and costs.

E. Outcome

(A) *HUD:*

If HUD completes the SLR and determines the PBV assistance complies with the standards set in this Notice, where the PBV assistance will not result in excessive government subsidy, HUD will certify compliance pursuant to 24 CFR 4.13 and the local HUD Field Office will notify the PHA in writing.

If HUD completes the SLR and determines that the amount of government subsidy, including the PBV assistance, is excessive, HUD notifies the PHA. The notification includes a recommendation to reduce the amount of PBV assistance or a determination that PBV assistance cannot be provided. Once the PHA receives HUD's decision, the PHA must notify the owner in writing of the outcome and work with the owner to restructure, as needed. Revised materials must then be resubmitted to the HUD Field Office for review.

(B) *HCA:*

If an HCA completes the SLR and determines that PBV assistance complies with the above standards of this notice and does not result in excessive government subsidy, the HCA must notify the PHA and submit a certification to HUD at *PIH.Financial.Management.Division@hud.gov* with a copy to the Director of the local HUD Office of Public Housing (*https://www.hud.gov/program_offices/public_indian_housing/about/field_office*) stating that the PBV assistance to be provided is in accordance with HUD SLR guidelines in this Notice and that a determination has been made that it does not result in excessive government subsidy. The AHAP/HAP contract may then be executed if the environmental approval is received. If the SLR is performed by an HCA, subsequent approval of the SLR by HUD is not required. The HCA certification must include the documents outlined in Section 10. See Appendix C for a sample HCA certification letter and Appendix A for required information.

If the HCA SLR determines the public assistance amount is excessive, the HCA must notify HUD, in writing, with a copy to the PHA. The notification will include either a recommendation to reduce the amount of PBV assistance or the amount of LIHTC allocation or a determination that PBV assistance cannot be provided. HUD will consult with the HCA and the PHA prior to issuing a final determination to adopt the HCA's recommendation or to revise it. The PHA must notify the owner in writing of the outcome and work with the owner to restructure, as needed. Revised materials must then be resubmitted to the HCA and the HUD Field Office for review.

When a proposal for PBV assistance is contemporaneous with the application for or award of LIHTCs, the required SLR may be fulfilled by the HCA in accordance with IRC section 42(m)(2) review if such review substantially complies with the HUD SLR requirements and guidelines.

(C) *Mixed-Finance Projects:* If HUD completes the SLR and determines the PBV assistance and other public housing assistance complies with the above standards of this Notice for Mixed-Finance projects and thus does not result in excessive government subsidy, HUD will certify compliance pursuant to 24 CFR 4.13 and notify the PHA.

For projects that fail to comply, HUD will notify the PHA, which must (i) work with the owner to restructure the project so it complies with the above standards for Mixed-Finance projects and resubmit the revised documentation to HUD for approval, or (ii) provide sufficient justification to HUD to allow HUD to approve a variation(s) from the above standards.

F. Timing

In accordance with program regulations at 24 CFR 983.55, a PHA may not execute an AHAP contract until after the SLR is completed and approved by HUD or the HCA. The AHAP also may not be executed until there is a completed environmental review (ER) and written approval by the responsible entity or HUD, pursuant to 24 CFR part 50 or Part 58 and PIH Notice 2016–22. The local HUD Field Office must receive the completed SLR and either approve the Request for Release of Funds or complete a Part 50 environmental review prior to notifying the PHA that it may execute the AHAP. The PHA may request an SLR and environmental review simultaneously. The Field Office confirms to the FMD and/or the HCA that the ER process is complete.

If the owner reports to the PHA the addition of any governmental assistance before or during the AHAP contract when no SLR was initially required because the project had not received and did not anticipate receiving governmental assistance, then an SLR is required to be requested by the PHA at the time of the owner's report.

III. Housing Credit Agency Participation and Certification

An HCA is ordinarily established for the purpose of allocating and administering the LIHTC program under

section 42 of the Internal Revenue Code (IRC). With HUD approval, HCAs may perform SLRs for proposed PBV projects that include LIHTCs as part of the proposed financial assistance. If there are no LIHTCs, HCAs cannot conduct the SLR. SLRs without LIHTCs will only be conducted by HUD. Currently 29 states have a HUD-approved HCA; the remaining 21 states may seek HUD approval to conduct SLRs for PBV projects, by submitting a letter to HUD notifying HUD of their intent to participate. Appendix B is sample letter.

Pursuant to the requirements outlined herein, as well as the Memorandum Of Understanding (MOU) between participating HCAs and HUD, HCAs are required to provide notification to the FMD through the FMD mailbox of any SLRs approved on HUD's behalf by no later than 30 days from the date of authorization. Notifications of approval must contain the following documentation:

- Copy of the Signed HCA Certification as shown in Appendix C
- The HCA's Internal Recommendation and Sign-off
- The Developer's Disclosure of Sources and Uses of Funds
- The Developer's Operating Pro Forma Considered
- Copy of the PBV Commitment/Award Letter
- HUD Form 2880, and
- Rent Information and Project Summary
  - a. Project Name and Address
  - b. PHA name and code
  - c. Field Office name and code
  - d. HCA Name
  - e. PBV Type: Rental Assistance Demonstration (RAD), Veterans Assistance and Supportive Housing (VASH), and/or Regular
  - f. Elderly, Disabled, Homeless, Non-Elderly Disabled, Low-Income, and/or Veteran.
  - g. Is the Project New Construction or Rehabilitation?
  - h. Amount Per Dollar of Syndication Proceed
  - i. Number of PBV Units Approved by Bedroom Size
  - j. Debt Coverage Ratio: _____
  - k. Project meets Cash Flow Criteria (Y/N)

IV. Overview Chart

The following chart summarizes the types of projects that require an SLR, the entity authorized to perform the SLR and the required certification. 102 (d) Certification is the owner's certification of no additional government funding using form HUD 2880.

Type of project and scenarios	SLR reviewer	102 (d) certification required?
PBV subsidy without LIHTC. However, project is new construction or rehabilitation, as defined in 24 CFR § 983.3, with 2 or more forms of government assistance.	HUD	Yes.
PBV existing housing, as defined in 24 CFR 983.3	No SLR required	No.
PBV new construction or rehabilitated housing, but PBV is the only form of government assistance.	No SLR required	No.
PBV subsidy with LIHTC, new construction or rehabilitated project	HCA or HUD	If by HCA, certification not required. Otherwise, HUD certifies.
Mixed-finance projects, with or without LIHTC, with or without PBV, with or with other forms of government assistance.	HUD	Yes.

V. Monitoring

HUD performs quality control reviews of SLRs performed by participating HCAs by examining the following:

- If all required document and materials are available to the reviewer
- If values are correctly determined within the approvable range
- If values are above safe harbor standards
- If documentation was provided to justify higher costs
- If the subsidy was reduced correctly (if applicable)

If any required documentation is not provided, or any portion of the review is performed incorrectly, HUD requires appropriate corrective action. When an SLR is performed by an HCA, subsequent approval of the SLR by HUD is not required.

VI. Paperwork Reduction Act

The information collection requirements contained in this notice are currently approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid control number.

Dated: February 21, 2020.

R. Hunter Kurtz,

Assistant Secretary for Public and Indian Housing.

Appendix A: PHA Submissions

PHAs are responsible for collecting information from project owners and assembling it in an SLR request submitted to the local HUD Public Housing Field Office or HCA. SLR requests must contain the following information. Assembly using a binder is recommended. Incomplete submissions will be returned.

Required elements of an SLR application & checklist	Check
1. *Subsidy Layering Review request memorandum:* Clearly identify the PHA, the PHA number, the Field Office number, the project's name, the project's total number of units, and the number of PBV units requested. For a sample memorandum see Attachment 1 of PIH Notice 2013–11 or newer version superseding it.	
2. *Project Description:* Short narrative identifying ownership, type of activity (rehabilitation or new construction), location (including county), total units, requested PBV units, PBV type (RAD, VASH, regular), utility allowances, bedroom distributions, supportive services (if applicable) and residential population (homeless, veteran, elderly, low-income families) The narrative should also identify any exceptions applicable to the project (*e.g.,* number of PBV exceeding the Project Cap).	

Required elements of an SLR application & checklist	Check
3. *Accounting Statement of Sources and Uses of Funds:* Identifying each source and indicate type (loan, grant, syndication proceeds, contributed equity). Sources generally include only permanent financing and grants. If interim financing or a construction loan is proposed, provide details in project description. Separately identify detailed uses, avoiding broad categories such as ''soft costs.'' Under acquisition costs, identify purchase price separately from related costs such as appraisal, survey, title, recording and legal fees. Include separate line items representing construction contract amount, builder's profit, builder's overhead and total project costs. [Complete HUD Form 50156]	
4. *Description of funding sources:* Loans including principal, interest rate, amortization, term, and any accrual, deferral, balloon or forgiveness provisions. Describe any lender, grantor, or syndicator requirements for reserves or escrows requirements. Describe if a lender receives a portion of the net cash-flow, either as additional debt service or in addition to debt service. Identify the amount of LIHTC and include IRS form 8609.	
5. *Commitment Letters:* Lenders and other funding sources evidence their commitment to provide funding and disclose significant terms. Signed loan agreements and grant agreements meet this requirement. However, proposal letters and letters of intent do not meet this requirement.	
6. *Developer's Commitment Letter:* Delineating any arrangements, contributions, donations, significant terms or transfer of funds from the developer and/or participating partners such as deferred developer's fees, cash contributions, and equity investments.	
7. *HOME Commitment Letter:* (When applicable) Signed document clearly identifying requirements of the HOME designated units and intended rents.	
8. *Supportive Service Commitment:* (When applicable) A signed Memorandum of Understanding that describes the type of services to be provided, frequency, terms of service and resident eligibility.	
9. *Appraisal Report:* Based on the ''as is'' value of the property, before construction or rehabilitation, and without consideration of any financial implications of tax credits or project-based voucher assistance. An appraisal establishing value after the property is built or rehabilitated is not acceptable unless it also includes an ''as is'' valuation. The date of the appraisal to be within six months of date of submission.	
10. *Stabilized Operating Pro Forma:* Including projected rental, commercial, and miscellaneous gross income, vacancy loss, operating expenses, debt service, reserve contributions, with cash-flow projections, and debt service ratios; income and expenses trended at a consistent percent. [Complete HUD Form 50156]	
11. *Low-Income Housing Tax Credit Allocation Letter:* Issued by the authorized tax credit allocation agency, identifying the amount of LIHTCs reserved for the project.	
12. *Historic Tax Credit Letter:* Issued by an authorized historic credit agency, disclosing the estimated historic tax credit amount awarded to a project located in a designated historical area.	
13. *Equity Contribution Schedule:* If equity contributed to the project is paid in installments over time, provide a schedule showing the amount and timing of planned contributions.	
14. *Bridge Loans:* Providing details if the financing plan includes a bridge loan where equity contributions proceeds planned over an extended time can be paid upfront.	
15. Disclosure, perjury and identity of interest statement (Form HUD–2880) completed by the owner.	
16. *PBV award letter:* Identifying the housing authority's approval of project-based voucher assistance for the project by number of units and bedroom distribution.	
17. *PHA rent certification letter:* Documenting proposed contract rents, utility allowances, and gross rental amounts for assisted units. Include rent reasonableness documentation or comparability analysis as evidence of rent determination and certification.	
18. *Environmental Clearance:* Completion of the environmental review and environmental approval is required before AHAP approval can be granted. At the time of initial submission of the SLR request, submit evidence that a request for a part 58 review is submitted to the responsible entity or a part 50 review is submitted to the Field Office.	

Appendix B: HCA Notice of Intent To Participate

U.S. Department of Housing and Urban Development
PIH Financial Management Division, Room 4232
451 Seventh Street SW
Washington, DC 20410

By: Email:
pih.financial.management.division@hud.gov

Re: Intent to Participate on Subsidy Layering Reviews

To Whom It May Concern:

The undersigned is a qualified Housing Credit Agency (HCA) as defined under Section 42 of the Internal Revenue Code of 1986 and hereby notifies the United States Department of Housing and Urban Development (HUD) of our intention to conduct subsidy layering reviews (SLRs) pursuant to HUD's requirements for the purpose of ensuring the combination of assistance under the Section 8 Project-Based Voucher (PBV) Program with other federal, state, or local assistance does not result in excessive compensation. By signifying this notice, the undersigned hereby certifies that:

Required personnel reviewed the statutes identified in **Federal Register** Notice (Insert new reference) Contracts and Mixed-Finance Development, and 24 CFR 983.55.

The undersigned understands its HCA responsibilities and certifies it will perform SLRs in accordance with all present and future statutory, regulatory and HUD requirements. The undersign acknowledges participation continues unless and until HUD revokes this notice or the undersigned informs HUD, in writing with a 30-day-notice, of its decision to withdraw. Upon HUD approval, the undersigned shall immediately assume the responsibility of performing SLRs.

Name of agency and address:
Name, title and address if authorized official
Phone, FAX, and email:
Date of execution:

Transmit signed and dated notice of Intent to Participate as a PDF attachment to Miguel Fontanez at *pih.financial.management .division@hud.gov* with subject line identified ''Submission of Notice of Intent to Participate.'' For questions concerning the submission and receipt of the email, call the Financial Management Division at (202) 402–4212.

Appendix C: HCA Certification

U.S. Department of Housing and Urban Development
PIH Financial Management Division, Room 4232
451 Seventh Street SW
Washington, DC 20410

By: Email:
pih.financial.management.division@hud.gov

Re: Certification of Subsidy Layering Review

To Whom It May Concern:

For purposes of providing of Section 8 Project-Based Voucher (PBV) Assistance authorized pursuant to 42 U.S.C. 8(o)(13), section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA), section 102 of the Department of Housing and Urban Development Reform Act of 1989, and in accordance with HUD requirements, all of which address the prevention of excess governmental subsidy, I hereby certify that

the PBV assistance is not more than is necessary to provide affordable housing after taking into account other government assistance for the following project:

Name, address of project:
Name, address of PHA:
Phone, FAX, and email:
Name, address of HCA:
Date of HUD's approval of HCA's intent to participate:
Name of Authorized HCA Certifying Official:
Signature of Authorized HCA Certifying Official:
Date:

Transmit signed and dated SLR certification as PDF attachments to Miguel A. Fontanez at *pih.financial.management.division@hud.gov,* with a copy to the Director of the local HUD Office of Public Housing: *https://www.hud.gov/program_offices/public_indian_housing/about/field_office,* with subject line identified ''SLR Certification—Project Name, City, State'' For questions concerning the submission and receipt of the email, call the Financial Management Division at (202) 402–4212.

[FR Doc. 2020–04147 Filed 2–27–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R3–ES–2020–0005; FXES11140300000–201–FF03E00000]

Draft Environmental Assessment and Draft Habitat Conservation Plan; Receipt of an Application for an Incidental Take Permit, Timber Road II, III, and IV Wind Farms, Paulding County, Ohio

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Paulding Wind Farm II, LLC; Paulding Wind Farm III, LLC; and Paulding Wind Farm IV (collectively, the applicant), for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended, for the Timber Road II, III, and IV Wind Farms project. If approved, the ITP would authorize the incidental take of the Indiana bat and the northern long-eared bat for a 30-year term. The applicant has prepared a draft habitat conservation plan, which is available for public review. We also announce the availability of a draft environmental assessment, which has been prepared in accordance with the requirements of the National Environmental Policy Act. We request public comment on the application and associated documents.

DATES: We will accept comments received or postmarked on or before March 30, 2020.

ADDRESSES: *Obtaining documents:* Electronic copies of the documents this notice announces will be available online in Docket No. FWS–R3–ES–2020–0005 at *http://www.regulations.gov*. Public comments will also be available online at *http://www.regulations.gov*.

Paper copies of the documents this notice announces will be available at the following libraries: Brumback Library, 215 W Main St., Van Wert, OH 45891; and Paulding County Carnegie Library, 205 S Main St., Paulding, OH 45879.

Submitting comments: Please specify whether your comment addresses the draft habitat conservation plan, draft environmental assessment, any combination of the aforementioned documents, or other supporting documents. Please submit written comments by one of the following methods:

- *Online: http://www.regulations.gov*. Search for and submit comments on Docket No. FWS–R3–ES–2020–0005.
- *By hard copy:* Submit comments by U.S. mail or hand delivery to Public Comments Processing, Attn: Docket No. FWS–R3–ES–2020–0005; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: JAO/lN; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Keith Lott, Wildlife Biologist, or Patrice Ashfield, Project Leader, via phone at 614–416–8993, via the Federal Relay Service at 800–877–8339, or via U.S. mail at the U.S. Fish and Wildlife Service, Ohio Ecological Services Office, 4625 Morse Road, Suite 104, Columbus, OH 43230.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Paulding Wind Farm II, LLC; Paulding Wind Farm III, LLC; and Paulding Wind Farm IV (collectively, the applicant), for an incidental take permit (ITP) under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). If approved, the ITP would be for a 30-year period and would authorize incidental take of the endangered Indiana bat (*Myotis sodalis*) and the threatened northern long-eared bat (*Myotis septentrionalis*).

The applicant has prepared a draft habitat conservation plan (HCP), which covers the operation of the Timber Road II, III, and IV Wind Farms (project). The project consists of a wind-powered electric generation facility located in an approximately 65,017-acre area in Paulding County, Ohio. The draft HCP describes the following:

1. Permit duration;
2. Covered lands;
3. Covered species;
4. Project description and covered activities;
5. Environmental baseline and affected species;
6. Impact assessment and take authorization request for Indiana bats and northern long-eared bats;
7. Conservation plan, which includes the Biological Goals and Objectives, and measures to avoid, minimize, and mitigate the impact of the taking;
8. Monitoring and adaptive management;
9. Funding assurances;
10. Alternatives to the taking; and
11. Changed and unforeseen circumstances.

Under the National Environmental Policy Act (NEPA; 43 U.S.C. 4321 *et seq.*) and the ESA, the Service announces that we have gathered the information necessary to:

1. Determine the impacts and formulate alternatives for an EA related to:

a. Issuance of an ITP to the applicant for the take of the Indiana bat and the northern long-eared bat, and

b. Implementation of the associated HCP; and

2. Evaluate the application for ITP issuance, including the HCP, which provides measures to minimize and mitigate the effects of the proposed incidental take of the Indiana bat and the northern long-eared bat.

Background

The project includes 134 wind turbines, with a total energy-generating capacity of 325.8 megawatts (MW). The project was constructed in several phases, during the period 2012–2020. Timber Road II is an operational facility and consists of 55 turbines with a generating capacity of 99 MW. Timber Road III is also an operational facility and consists of 48 turbines with a generating capacity of 100.8 MW. Timber Road IV is anticipated to be operational in 2020; consisting of 31 turbines, it has a generating capacity of 126 MW. The need for the proposed action (*i.e.,* issuance of an ITP) is based on the potential that operation of the project could result in take of Indiana bats and northern long-eared bats.

The HCP provides a detailed conservation plan to ensure that the incidental take caused by the operation of the project will not appreciably reduce the likelihood of the survival and recovery of the Indiana bat and northern long-eared bat, and includes

mitigation to fully offset the impact of the taking. Further, the HCP provides a long-term monitoring and adaptive management strategy to ensure that the ITP terms are satisfied, and to account for changed and unforeseen circumstances.

Purpose and Need for Action

In accordance with NEPA, the Service has prepared a DEA to analyze the impacts to the human environment that would occur if the requested ITP is issued and the associated HCP is implemented.

Proposed Action

Section 9 of the ESA prohibits the ''taking'' of threatened and endangered species. However, provided certain criteria are met, the Service is authorized to issue permits under section 10(a)(1)(B) of the ESA for take of federally listed species when, among other things, such a taking is incidental to, and not the purpose of, otherwise lawful activities. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered and threatened species, or to attempt to engage in any such conduct. Our implementing regulations in title 50 of the Code of Federal Regulations (CFR) define ''harm'' as an act which actually kills or injures wildlife, and such act may include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

The HCP analyzes, and the ITP would authorize, take from killing of bats due to the operation of the project. If issued, the ITP would authorize incidental take consistent with the applicant's HCP and the ITP. To issue the ITP, the Service must find that the application, including the associated HCP, satisfies the criteria of section 10(a)(1)(B) of the ESA and the Service's implementing regulations at 50 CFR part 13 and § 17.22. If the ITP is issued, the applicant would receive assurances under the Service's No Surprises policy, codified at 50 CFR 17.22(b)(5).

The applicant proposes to operate a maximum of 134 wind turbines and associated facilities for a period of 30 years in Paulding County, Ohio. The project consists of wind turbines, associated gravel pads and access roads, underground and above-ground electrical collection circuits, three substations, four permanent un-guyed meteorological towers, and an operations and maintenance facility.

The draft HCP describes the impacts of take associated with the operation of the project and includes measures to avoid, minimize, mitigate, and monitor the impacts of incidental take on the Indiana bat and the northern long-eared bat. The applicant will mitigate for take and associated impacts through one or more methods, including restoration, if necessary, and permanent protection of documented maternity colony habitat and/or swarming habitat, and/or gating of a hibernaculum. Habitat mitigation, including any restored habitat, will occur on private land and be permanently protected by a conservation easement, fee simple acquisition with deed restrictions, or another site protection instrument that provides an equivalent level of protection, and will be approved by the Service. Chapter 5 of the HCP describes the avoidance, minimization measures, and compensatory mitigation that will limit and mitigate for the take of Indiana bats and northern long-eared bats. This chapter also includes the monitoring and adaptive management plans to ensure that the level of take stays within permitted levels and mitigation sites are maintained as suitable habitat for the Indiana bat and northern long-eared bat.

The Service is soliciting information regarding the adequacy of the HCP to avoid, minimize, mitigate, and monitor the proposed incidental take of the covered species and to provide for adaptive management. In compliance with section 10(c) of the ESA (16 U.S.C. 1539(c)), the Service is making the ITP application materials available for public review and comment as described above.

We invite comments and suggestions from all interested parties on the draft documents associated with the ITP application (HCP and HCP appendices), and request that comments be as specific as possible. In particular, we request information and comments on the following topics:

1. Whether adaptive management, mitigation, and monitoring provisions in the proposed action alternative are sufficient;

2. Any threats to the Indiana bat and the northern long-eared bat that may influence their populations over the life of the ITP that are not addressed in the draft HCP or DEA;

3. Any new information on white-nose syndrome effects on the Indiana bat and the northern long-eared bat; and

4. Any other information pertinent to evaluating the effects of the proposed action on the Indiana bat and the northern long-eared bat.

Alternatives in the Draft Environmental Assessment

The DEA contains an analysis of four alternatives:

1. No Action alternative, in which the Service would not issue a permit to the applicant, and the project turbines would be feathered until wind speeds reach 6.9 m/s from a half-hour before sunset to a half-hour after sunrise during the entirety of the fall migration season (August 1 through October 31) and spring migration season (March 15 through May 15), under which conditions take of listed species is unlikely to occur;

2. The applicant's Proposed Alternative, in which the Service would issue an ITP to authorize incidental take of covered species associated with the project's operations as described in the applicant's HCP. In this alternative, the project turbines would be feathered until wind speeds reach 3.5 m/s during the spring migration (April 1 through May 15) from a half-hour before sunset to a half-hour after sunrise, and during the fall migration season (August 1 through October 15), project turbines would be feathered until wind speeds reach 5.0 m/s from a half-hour before sunset to a half-hour after sunrise. While take is not anticipated during the summer (May 16–July 31), turbines will be feathered until wind speeds reach 3.0 m/s from a half-hour before sunset to a half-hour after sunrise. Minimization measures would be applicable until the temperature was greater than 10 degrees Celsius (°C). In this alternative, the applicant estimated take of Indiana and northern long-eared bats using an approach that addresses inherent uncertainty in take estimates by incorporating a 50 percent confidence bound around the mean estimate, and a 50 percent reduction in take from application of the proposed cut-in speed regime.

The various phases of this project began and will end in different years; thus, different numbers of turbines will be operational during the three different phases, which will change the amount of take during each of the phases. Thus, the estimated fatality rates under this alternative are:

- 10.8 Indiana bats and 2.5 northern long-eared bats per year for years 1–22;
- 6.3 Indiana bats and 1.5 northern long-eared bats per year for years 23–27; and
- 2.5 Indiana bats and 0.6 northern long-eared bats per year for years 28–30.

This results in a total of 276 Indiana bats and 64 northern long-eared bats over the 30-year permit term.

3. The Less Restrictive Operations alternative, in which the Service would

issue an ITP for the HCP, but turbine operations would be different than under the applicant's proposed project. All turbines would be feathered when the ambient temperature is above 10 °C, based on a 5-minute rolling average from one half-hour before sunset to one half-hour after sunrise during the spring migration season (April 1 through May 15) up to 3.5 m/s, during the summer season (May 16 through July 31) up to 3.0 m/s, and during the fall migration season (August 1 through October 15) up to 4.0 m/s. The estimated fatality rates for this alternative are:

- 13.46 Indiana bats and 3.1 northern long-eared bats per year for years 1–22;
- 7.94 Indiana bats and 1.84 northern long-eared bats per year for years 23–27; and
- 3.11 Indiana bats and 0.72 northern long-eared bats per year for years 28–30.

This results in a total of 345 Indiana bats and 79 northern long-eared bats over the 30-year permit term;

4. More Restrictive Operations alternative, in which the Service would issue an ITP for the HCP, but turbine operations would be different than under the applicant's proposed project. All turbines would be feathered when the ambient temperature is above 10 °C based on a 5-minute rolling average from one half-hour before sunset to one half-hour after sunrise during the spring migration season (April 1 through May 15) up to 3.5 m/s, summer (May 16 through July 31) up to 3.0 m/s, and during the fall migration season (August 1 through October 15) up to 6.5 m/s. The estimated fatality rates for this alternative are:

- 9.47 Indiana bats and 2.18 northern long-eared bats per year for years 1–22;
- 5.59 Indiana bats and 1.28 northern long-eared bats per year for years 23–27; and
- 2.19 Indiana bats and 0.51 northern long-eared bats per year for years 28–30.

This results in a total of 277 Indiana bats and 65 northern long-eared bats over the 30-year permit term. The quantity of mitigation needed to offset the impact of the taking and the level of effort of monitoring varies between the alternatives, although mitigation, monitoring, adaptive management, and funding assurances are components of all three action alternatives.

The DEA considers the direct, indirect, and cumulative effects of the alternatives, including any measures intended to minimize and mitigate such impacts. The DEA also identifies additional alternatives that were considered but were eliminated from analysis as detailed in section 2.4 of the DEA.

The Service invites comments and suggestions from all interested parties on the content of the DEA. In particular, information and comments regarding the following topics are requested:

1. The direct, indirect, or cumulative effects that implementation of any alternative could have on the human environment;
2. Whether or not the significance of the impact on various aspects of the human environment has been adequately analyzed; and
3. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

Public Comments

You may submit your comments and materials related to the draft HCP, DEA, or other supporting documents by one of the methods listed in **ADDRESSES**. We request you send comments using only one of the methods described in **ADDRESSES**.

Comments and materials we receive, as well as documents associated with the notice, will be available for public inspection by appointment, during normal business hours, at the Ohio Ecological Services Field Office in Columbus, Ohio (see **FOR FURTHER INFORMATION CONTACT**). 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

We provide this notice under section 10(c) of the ESA (16 U.S.C.1539(c)) and its implementing regulations (50 CFR 17.22) and the NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Lori Nordstrom,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2020–04046 Filed 2–27–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

[Docket No. DOI–2020–0001; 201D0102DM, DS6CS00000, DLSN00000.000000, DX6CS25]

Implementation of Executive Order 13891: Guidance Documents

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Department of the Interior (DOI), announce the availability of a single, searchable, indexed website that contains all of DOI's guidance documents. This action is required by the Executive Order (E.O.) titled, ''Promoting the Rule of Law Through Improved Agency Guidance Documents'' in order to make guidance documents readily available to the public. This website is found at the Electronic Library of the Interior's Policies (ELIPS) at *www.doi.gov/elips/browse.*

DATES: This website is available on February 28, 2020.

ADDRESSES: The notice is available for public inspection at *http://www.regulations.gov* in Docket No. DOI–2020–0001.

FOR FURTHER INFORMATION CONTACT: Bivan Patnaik, Deputy Director of Regulatory Affairs, Office of the Executive Secretariat and Regulatory Affairs, by phone at 202–208–3181 or via the Federal Relay Service at 800–877–8339, or via email at: *guidance_document@ios.doi.gov*].

SUPPLEMENTARY INFORMATION:

Background Information

A central principle of E.O. 13891 is that guidance should only clarify existing obligations and should not implement new, binding requirements on the public. Guidance is defined in the E.O. as ''an agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on statutory, regulatory, or technical issue, or an interpretation of a statute or regulation.'' Therefore, DOI is establishing on its website a single, searchable, indexed database that links to all guidance documents in effect from each bureau and office within the Department.

The purpose of this notice is to announce that DOI's website for agency guidance documents subject to posting on the website under the E.O. will be the Electronic Library of the Interior Policies (ELIPS), *https://www.doi.gov/elips/browse.* When the public enters this website, click the Departmental Guidance Documents and Portals folder, which will expand to provide a ''drop-down'' list of the bureaus and offices within DOI that have issued guidance documents for use by the public. From this list, the public will be able to click on the specific bureau or office, and will further be able to search for a specific document by using such search parameters as title, subject, region, etc.

The website will contain instructions for searching for guidance documents.

The website will contain all Departmental, bureau, service, or office guidance documents. Each guidance document that DOI publishes on its guidance website will include the following information:

A concise name for the guidance document.

The date on which the guidance document was issued.

The date on which the guidance document was posted to the website.

An agency unique identifier.

A hyperlink to the guidance document.

The general topic addressed by the guidance document.

One or two sentences summarizing the guidance document's content.

In addition to the information associated with each guidance document, the website will include a clearly visible note stating that: (1) Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract; and (2) the DOI and its component bureaus and offices may not cite, use, or rely on any guidance that is not posted on the website existing under the E.O., except to establish historical facts.

Next Steps

E.O. 13891 also requires agencies to finalize new or amend existing regulations that set forth a process for issuing guidance documents, which DOI is currently preparing.

Authority

DOI publishes this notice in accordance with E.O. 13891 and the Administrative Procedure Act, codified in sections of chapters 5 and 7 of title 5, United States Code, that govern procedures for agency rulemaking and adjudication and provides for judicial review of final agency actions.

Richard T. Cardinale,

Director, Office of the Executive Secretariat and Regulatory Affairs, U.S. Department of the Interior.

[FR Doc. 2020–04097 Filed 2–27–20; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

[201D0102DM, DS6CS00000, DLSN00000.000000, DX6CS25]; OMB Control No. 1090–NEW]

Agency Information Collection Activities; Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: Department of the Interior.

ACTION: Notice; request for comment.

SUMMARY: The Department of the Interior (DOI), as part of its continuing effort to reduce paperwork and respondent burden, is announcing an opportunity for public comment on a new proposed collection of information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a new collection proposed by the Agency.

DATES: *Submit comments on or before:* April 28, 2020.

ADDRESSES: Submit comments identified by Information Collection 1090–XXXX, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), by any of the following methods:

- *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.
- *Mail:* Jeffrey Parrillo, Departmental Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240; or by email to *Jeffrey_Parrillo@ios.doi.gov.* Please reference OMB Control Number 1090–NEW A–11 Section 280 Improving Customer Experience in the subject line of your comments.

Instructions: Please submit comments only and cite Information Collection 1090–XXXX, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), in all correspondence related to this collection. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Amira Boland, Office of Government-wide Policy, 1800 F St. NW, Washington, DC 20405; or via email to *amira.boland@gsa.gov;* or by telephone at 202–395–5222.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the PRA, (44 U.S.C. 3501–3520) Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, GSA is publishing notice of the proposed collection of information set forth in this document.

Whether seeking a loan, Social Security benefits, veterans benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: Conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. The Department of the Interior will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide government-wide data on customer experience that can be displayed on *performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

Method of Collection

DOI will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. The Department of the Interior may also utilize observational techniques to collect this information.

Data

Form Number(s): None.
Type of Review: New.

B. Annual Reporting Burden

Affected Public: Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and Universities.

Estimated Number of Respondents: 146,118.

Estimated Time per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 2 hours to participate in an interview.

Estimated Total Annual Burden Hours: 69,365.

Estimated Total Annual Cost to Public: $0.

C. Public Comments

DOI invites 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–04040 Filed 2–27–20; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14875–A, F–14875–A2; 20X.LLAK944000.L14100000.HY0000.P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface estate in certain lands to Kugkaktlik Limited, for the Native village of Kipnuk, pursuant to the Alaska Native Claims Settlement Act of 1971, as amended (ANCSA). The lands approved for conveyance lie partially within the former Clarence Rhode National Wildlife Range, now known as the Yukon Delta National Wildlife Refuge. The subsurface estate in the lands lying outside the former Clarence Rhode National Wildlife Range will be conveyed to Calista Corporation when the surface estate is conveyed to Kugkaktlik Limited.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: Judy A. Kelley, BLM Alaska State Office, 907–271–3786, or *j1kelley@blm.gov.* The BLM Alaska State Office may also be contacted via Telecommunications Device for the Deaf (TDD) through the Federal Relay Service at 1–800–877–8339. The relay service is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Kugkaktlik Limited for the Native village of Kipnuk. The decision approves conveyance of the surface estate in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*). The lands approved for conveyance lie partially within the former Clarence Rhode National Wildlife Range, established December 8, 1960, now known as the Yukon Delta National Wildlife Refuge. As provided by ANCSA, the subsurface estate in lands lying within a national wildlife refuge in existence on December 18, 1971, is not available for conveyance to the regional corporation, Calista Corporation, and will be reserved to the United States in the conveyance document transferring the surface estate. The subsurface estate in the lands lying *outside* the former Clarence Rhode National Wildlife Range will be conveyed to Calista Corporation when the surface estate is conveyed to Kugkaktlik Limited. The lands are located in the vicinity of Kipnuk, and are described as:

Lands Within the Former Clarence Rhode National Wildlife Range (Public Land Order No. 2213), Now Known as the Yukon Delta National Wildlife Refuge

Surface estate to be conveyed to Kugkaktlik Limited; Subsurface estate to be reserved to the United States.

Seward Meridian, Alaska

T. 1 S., R. 85 W.,
Secs. 31, 32, and 33.
Containing 690 acres.

T. 2 S., R. 85 W.,
Sec. 6.

Containing 191 acres.
Aggregating 881 acres.

Lands Outside the Former Clarence Rhode National Wildlife Range (Public Land Order No. 2213), Now Known as the Yukon Delta National Wildlife Refuge

Surface estate to be conveyed to Kugkaktlik Limited; Subsurface estate to be conveyed to Calista Corporation.

Seward Meridian, Alaska

T. 1 S., R. 84 W.,
Sec. 22.

Containing 0.94 acres.
T. 1 S., R. 85 W.,
Secs. 31, 32, and 33.

Containing 1,083 acres.
T. 2 S., R. 85 W.,
Secs. 5 and 6.

Containing 916 acres.
Aggregating 2,000 acres.
Aggregating a total of 2,881 acres.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to Sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands described above.

The BLM will publish notice of the decision once a week for four consecutive weeks in *The Delta Discovery* newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until March 30, 2020 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Judy A. Kelley,

Land Law Examiner, Adjudication Section.

[FR Doc. 2020–04132 Filed 2–27–20; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Bureau of Land Management

[LLNMF01000.L13100000.PP0000; AANNN04650.A0R9044040.999900. 201A21000DD]

Notice of Availability of the Farmington Mancos-Gallup Resource Plan Amendment and Draft Environmental Impact Statement, New Mexico

AGENCY: Bureau of Land Management, Interior; and Bureau of Indian Affairs, Interior.

ACTION: Notice of Availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Farmington Field Office, Farmington, New Mexico, and Bureau of Indian Affairs (BIA) Navajo Regional Office, Gallup, New Mexico, have prepared a Draft Resource Management Plan Amendment (RMPA) and associated Environmental Impact Statement (EIS). This notice announces a 90-day public review period of the Draft RMPA/EIS, and that the BLM and BIA will hold public meetings to solicit comments.

DATES: To ensure that comments will be considered, the BLM and BIA must receive written comments on the Draft RMPA/EIS within May 28, 2020 that the Environmental Protection Agency publishes its Notice of Availability for the Draft RMPA/EIS in the **Federal Register**. All information on the public comment period, including how to submit comments and when they are due, will be included on the project website as information is made available. The BLM and BIA will announce future public meetings, hearings, or other public participation activities at least 15 days in advance through public notices, media releases, and/or direct mailings.

ADDRESSES: You may submit comments related to the Draft RMPA/EIS through the following methods:

Project website: https://go.usa.gov/xdrjD;

Email: blm_nm_ffo_rmp@blm.gov;

Fax: 505–564–7608, Attn.: Jillian Aragon, Project Manager; or

Mail: Bureau of Land Management, Farmington Field Office, Attn.: Project Manager, 6251 College Blvd., Suite A, Farmington, New Mexico 87402; or BIA Navajo Regional Office, Attn.: Robert Begay, P.O. Box 1060, Gallup, New Mexico 87301.

Copies of the Draft RMPA/EIS are available from the BLM and the BIA at the following addresses: BLM Farmington Field Office, 6251 College Blvd., Suite A, Farmington, New Mexico 87402; BIA Navajo Regional Office, 301 West Hill, Gallup, New Mexico 87301; BIA Eastern Agency Office, 222 Chaco Blvd., Crownpoint, NM 87313; Pueblo Pintado Chapter House, Navajo Route 9 HCR 79, Cuba, NM 87013; Ojo Encino Chapter House, HCR 79, Ojo Encino, NM 87013; Counselor Chapter House 6828 Highway 44, Counselor, NM 87018; Nageezi Chapter House, 1153 US–550, Nageezi, NM 87037; Lake Valley Chapter House, 7750 NM 371, Crownpoint, NM 87313; 536 County Road 7150, Bloomfield, NM 87413; Upper Fruitland Chapter House, Fruitland, NM; San Juan Chapter House, Lower Waterflow, NM; Hogback Chapter House, Shiprock, NM; Burnham Chapter House, Newcomb, NM; White Rock Chapter House, Crownpoint, NM; Becenti Chapter House, Crownpoint, NM; Whitehorse Lake Chapter House, Cuba, NM; Torreon Chapter House, Cuba, NM; Navajo Nation Library, Hwy. 264 Loop Road, Window Rock, AZ 86515; Farmington Public Library, 2101 Farmington Ave, Farmington, NM 87401; and BLM New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico 87508.

FOR FURTHER INFORMATION CONTACT: Jillian Aragon, BLM Project Manager; telephone: 505–564–7722; address: 6251 College Blvd., Suite A, Farmington, New Mexico 87402; or contact Robert Begay, BIA Project Manager; telephone 505–863–8515; address P.O. Box 1060; Gallup, New Mexico 87301; or email both at: *blm_nm_ffo_rmp@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document evaluates alternatives for updating management of BLM-managed lands and minerals in the Farmington Field Office, considering new technologies for oil and gas extraction. It also evaluates alternatives and issues related to the BIA's authority over mineral leasing and associated activity decisions on Navajo Tribal Trust lands and Navajo Indian allotments (hereafter referred to as Navajo Trust and Navajo Indian allotments, respectively). The Draft RMPA/EIS has been developed in

order to analyze the impacts of additional development in what was previously considered a fully developed oil and gas play in the San Juan Basin in northwestern New Mexico. The Mancos Shale/Gallup Formation was analyzed in the 2002 Reasonably Foreseeable Development (RFD) Scenario and current Farmington Field Office 2003 RMP/EIS. Subsequent improvements and innovations in horizontal drilling technology and multi-stage hydraulic fracturing have enhanced the economics of developing this stratigraphic horizon. With favorable oil prices, the oil play in the southern part of the Farmington Field Office boundary has drawn considerable interest. As full-field development occurs, especially in the shale oil play, additional impacts may occur. This would require an EIS-level plan amendment and revision of the RFD regarding the Mancos Shale/Gallup Formation. Because the BLM is preparing an RMP amendment and not a revision, not all decisions from the 2003 RMP will be revisited. On February 25, 2014, the BLM released an initial Notice of Intent to prepare the RMPA/EIS. In 2016, the BIA became a co-lead agency. This was because of the two agencies' shared concerns and management responsibilities related to oil and gas development on Navajo Tribal trust and Navajo Indian allotments in the area of the RMPA/EIS.

The BIA has the responsibility to manage fluid and solid mineral leasing for Indian mineral owners. The Indian mineral owners include the Navajo Nation on Navajo Tribal trust lands and individual Navajo allottees on Navajo individual Indian allotments. The Notice of Intent announcing that the BIA had joined the project was published in the **Federal Register** on October 21, 2016 (81 FR 72819).

The planning area spans portions of San Juan, Rio Arriba, McKinley, and Sandoval counties in New Mexico. It encompasses approximately 4,189,500 acres of land, including approximately 675,400 acres of Navajo Trust surface, 1,316,200 acres of BLM-managed land, and 210,100 acres of Navajo Indian allotments, across 17 Navajo Nation chapters.

The purpose of the public comment process is to receive public input on the Draft RMPA/EIS. The BLM's preliminary planning criteria identified in the February 25, 2014, **Federal Register** (79 FR 10548) notice and the BIA's preliminary planning criteria identified in the October 21, 2016, **Federal Register** (81 FR 72819) notice are hereby incorporated by reference.

The BLM and BIA planning teams developed four preliminary planning issues to be addressed in the RMPA, including oil and gas development; lands and realty; BLM-managed lands with wilderness characteristics; and vegetation. The agencies selected these issues based on broad concerns or controversies related to conditions, trends, needs, and existing and potential uses of planning area lands. The agencies also identified issues during a review of current land management documents, including the 2003 Farmington RMP, and associated plan amendments and applicable Navajo Nation chapter house land use plans. These planning issues address each agency's purpose of and need for the RMPA/EIS and reflect the range of decisions to be analyzed in the RMPA/EIS. Land use planning and NEPA regulations require the BLM and BIA to formulate a reasonable range of alternatives to consider different management scenarios and different means of resolving resource or resource use conflicts. Established planning criteria, as outline in 43 CFR part 1610, guide the alternatives development process. This pursuit provides the BLM, BIA, and the public with an understanding of the various ways in which challenges surrounding resources and resource uses might be resolved. This Draft RMPA/EIS offers the BLM State Director and the BIA Navajo Regional Director a reasonable range of alternatives from which to make informed decisions. Both agencies developed one no action alternative and four action alternatives. The action alternatives for each agency were designed to accomplish the following:

- Address the four planning issues;
- Fulfill the purpose of and need for the RMPA/EIS;
- Meet the BLM's multiple use mandates of FLPMA (43 U.S.C., Section 1716);
- Achieve the BIA's mission to enhance quality of life, promote economic opportunity, and protect and improve trust assets.

The range of alternatives for each agency is as follows:

BLM

(1) BLM No Action Alternative—Continue 2003 RMP management direction;

(2) BLM Alternative A—Focus on managing and enhancing habitats in the BLM decision area;

(3) BLM Alternative B—Emphasize the preservation and protection of the Chacoan and cultural landscapes unique to northern New Mexico;

(4) BLM Alternative C—Focus on a strategy that balances community needs and development, while enhancing land health; and

(5) BLM Alternative D—Focus on maximizing resources that target economic outcomes, while sustaining land health.

BIA

(1) BIA No Action Alternative—Continue current management of leasing practices;

(2) BIA Alternative A—Focus on protecting and enhancing natural environments, while emphasizing the protection of sensitive wildlife areas and ecological resources;

(3) BIA Alternative B—Emphasize the preservation and protection of the cultural and natural landscapes unique to northern New Mexico;

(4) BIA Alternative C—Focus on allowing development to occur in harmony with the traditional, historical, socioeconomic, and cultural lifeways of the planning area; and

(5) BIA Alternative D—Focus on making the most of resources that target economic outcomes, while protecting land health.

The BLM and BIA have provided extensive opportunities for meaningful and substantive input and comments when preparing this Draft RMPA/EIS. Those invited to participate in the process include the public, non-governmental organizations, other Federal agencies, Tribal members, and state, local, and Tribal governments.

Public involvement for this Draft RMPA/EIS has consisted of the following:

- An initial BLM public scoping comment period from February 25 to May 28, 2014;
- A second public scoping period focused on BIA issues from October 21, 2016, to February 26, 2017;
- Public outreach via bulletins, newspaper announcements, public meetings, and the project website;
- Collaboration with Federal, state, local, and Tribal governments and cooperating agencies; and
- Public review of and comment on the Draft RMPA/EIS.

The BLM and BIA are required to consult Indian Tribes, as applicable, on a government-to-government basis, in accordance with Executive Order 13175 and other policies. Tribal and individual Indian allottee concerns, including impacts on Indian trust assets and potential impacts on cultural resources in the planning area, will continue to be given due consideration.

Federal, state, and local agencies and individual Indian allottees, Tribes, and

other stakeholders that may be interested in or affected by the proposed action being evaluated are invited to participate in the public comment process. These entities may request, or be requested by the BIA and BLM, to participate in the development of the environmental analysis as cooperating agencies, if eligible. Additionally, the BLM and BIA will continue to consult with the cooperating agencies, as appropriate.

You may submit comments on the Draft RMPA/EIS in writing at any public comment meeting, or by using one of the methods listed in the **ADDRESSES** section above. To be included in the analysis, all comments must be received by the date set forth in the **DATES** section above and must be submitted using one of the methods listed in the **ADDRESSES** section above. Please include your name, return address, and the caption ''Draft EIS Comments, Farmington Mancos-Gallup RMPA/EIS'' on the first page of your written comments.

Written comments, including names and addresses of respondents, will be available for public review at one of the addresses listed in the **ADDRESSES** section above, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. You can ask us in your comment to withhold your personal identifying information from public review, but we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2

Timothy R. Spisak,

BLM New Mexico State Director.

Bartholomew Stevens,

BIA Navajo Regional Director.

[FR Doc. 2020–04111 Filed 2–27–20; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19XL.LLIDI00000.L71220000.EO0000. LVTFD1900100.241A.4500134029]

Notice of Availability of the Final Environmental Impact Statement for the Proposed East Smoky Panel Mine Project at Smoky Canyon Mine, Caribou County, ID

AGENCY: Bureau of Land Management, Interior; Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, the Bureau of Land Management (BLM) and the U.S. Department of Agriculture, Forest Service (USFS) Caribou-Targhee National Forest (CTNF), have prepared a Final Environmental Impact Statement (Final EIS) for the proposed East Smoky Panel Mine Project (Project) and by this notice are announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days after the date the Environmental Protection Agency publishes its notice of availability in the **Federal Register**. The Final EIS and the Draft USFS Record of Decision (ROD) are now available for public review. A 60-day objection period for the Draft USFS ROD will start when the USFS publishes a legal notice in the newspaper of record.

ADDRESSES: Copies of the East Smoky Panel Mine Project Final EIS are available for public inspection at the BLM Pocatello Field Office at 4350 Cliffs Drive, Pocatello, ID 83204. Interested persons may also review the Final EIS on the internet at the following locations:

- *BLM Land Use Planning and NEPA Register: https://go.usa.gov/xnYTG*
- Caribou-Targhee National Forest Current and Recent Projects: *http://www.fs.usda.gov/projects/ctnf/landmanagement/projects*

FOR FURTHER INFORMATION CONTACT: Kyle Free, BLM Pocatello Field Office, 4350 Cliffs Drive, Pocatello, ID 83204; phone 208–478–6352; email: *kfree@blm.gov*; fax 208–478–6376. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Free. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for Mr. Free. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The J.R. Simplot Company (Simplot) submitted a proposed lease modification (enlargement) and Mine and Reclamation Plan (M&RP) for the East Smoky Panel leases (IDI–015259, IDI–26843, and IDI–012890), with the intent of expanding the current Smoky Canyon Phosphate Mine in Caribou County, Idaho.

The BLM, as the Federal lease administrator, is the lead agency, and the USFS is the co-lead agency. The Idaho Department of Environmental Quality, Idaho Department of Lands, and Idaho Governor's Office of Energy and Mineral Resources are cooperating agencies.

The NOA for the Draft EIS published on September 28, 2018, initiating a 90-day public comment period. Agencies, organizations, and interested parties provided comments on the Draft EIS via mail, email, and public meetings.

The Final EIS fully addresses issues identified during scoping and during public review of the Draft EIS by analyzing impacts to water resources, air quality, human health and safety, socioeconomics, and wildlife. It also addresses reclamation, financial assurance, mitigation and monitoring. The Final EIS evaluates three alternatives: The Proposed Action, the Preferred Alternative, and a No Action Alternative. The agencies identified Alternative 1 as the Preferred Alternative because it reduces impacts to groundwater and other resources. Under the Preferred Alternative, overall mining operations, mining sequences, and other associated ancillary operations remain the same as described for the Proposed Action. Use of a steeper pit wall would reduce the ultimate pit footprint by approximately 78 acres. This eliminates the need to mine the highly seleniferous cherty shale overburden. The reduction of seleniferous overburden material eliminates the need for the Proposed Action's geologic store-and-release cover and substitutes a less expensive and less complex, soil-only cover.

The BLM and USFS will make separate but coordinated decisions related to the proposed Project. The BLM will either approve, approve with modifications, or deny the M&RP; recommend whether or not to modify lease IDI–015259; and decide whether to grant a modification to the previously approved B-Panel Mine Plan of the Smoky Canyon Mine. The BLM will base its decisions on the Final EIS, public and agency input, and any

recommendations the USFS may have regarding surface management of leased National Forest System lands. The USFS will make recommendations to the BLM concerning surface management and best management practices on leased lands within the CTNF and will issue decisions on special use authorizations (SUAs) for off-lease mining support activities. The USFS SUAs are necessary for any off-lease disturbances/structures associated with the Project located within the CTNF. The Preferred Alternative requires an amendment to the forest plan as outlined in the Final EIS.

The portion of the Project related to USFS SUAs for off-lease activities is subject to the objection process pursuant to 36 CFR parts 218 and 219. The USFS will provide instructions for filing objections in the legal notice published in the newspaper of record for the Draft USFS ROD. The USFS will only accept objections from those who have previously submitted specific written comments regarding the proposed project during scoping or other designated opportunities for public comment in accordance with 36 CFR 218.5(a) and 219.53(a). Objection issues must be based on previously submitted, timely, and specific written comments regarding the proposed project unless they are based on new information arising after designated opportunities. The BLM will release a ROD concurrent with release of the Final USFS ROD.

(Authority: 36 CFR parts 218 and 219; 42 U.S.C. 4321 *et seq.*; 40 CFR parts 1500–1508; 43 CFR part 46; 43 U.S.C. 1701; and 43 CFR part 3590)

John F. Ruhs,

State Director, Bureau of Land Management, Idaho.

Mel Bolling,

Forest Supervisor, Caribou-Targhee National Forest.

[FR Doc. 2020–03970 Filed 2–27–20; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6657–A; AA–6657–C; AA–6657–F; AA–6657–I; AA–6657–A2; 20X.LLAK.944000.L14100000.HY0000.P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface estate in certain lands to Saguyak Incorporated, for the Native village of Clarks Point, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA), as amended. As provided by ANCSA, the BLM will convey the subsurface estate in the same lands to Bristol Bay Native Corporation when the BLM conveys the surface estate to Saguyak Incorporated.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the BLM, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: Bettie J. Shelby, BLM Alaska State Office, 907–271–5596 or *bshelby@blm.gov.* The BLM Alaska State Office may also be contacted via a Telecommunications Device for the Deaf (TDD) through the Federal Relay Service at 1–800–877–8339. The relay service is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Saguyak Incorporated. The decision approves conveyance of the surface estate in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*). As provided by ANCSA, the subsurface estate in the same lands will be conveyed to Bristol Bay Native Corporation when the surface estate is conveyed to Saguyak Incorporated. The lands are located in the vicinity of Clarks Point, Alaska, and are described as:

Block 3, Tract B, U.S. Survey No. 4992, Alaska. Containing 0.36 acres.

Seward Meridian, Alaska

T. 14 S., R. 55 W.,
Sec. 8.
Containing 46.62 acres.
T. 14 S., R. 57 W.,
Sec. 25.
Containing 638.74 acres.
T. 15 S., R. 57 W.,
Secs. 2, 3, and 4;
Secs. 9, 10, 11 and 16;
Sec. 31.
Containing 3,399.16 acres.
Aggregating 4,084.88 acres.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to Sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands described above. The BLM will also publish notice of the decision once a week for four consecutive weeks in the ''The Bristol Bay Times & The Dutch Harbor Fisherman'' newspaper. Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until March 30, 2020 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Bettie J. Shelby,

Land Law Examiner, Adjudication Section.

[FR Doc. 2020–04131 Filed 2–27–20; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1174]

Certain Toner Cartridges, Components Thereof, and Systems Containing Same Commission Determination Not To Review an Initial Determination Amending the Complaint and Notice of Investigation, and Terminating the Investigation With Respect to Two Respondents Based on a Partial Withdrawal of the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 32) issued by the presiding administrative law judge (''ALJ'') amending the complaint and notice of investigation, and terminating the investigation with respect to EPrinter Solution LLC of Pomona, California (''EPrinter'') and IFree E-Commerce Co.

of Kowloon, Hong Kong (''IFree'') based on a partial withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 23, 2019, based on a complaint filed by Brother Industries, Ltd., of Nagoya, Japan; Brother International Corporation (U.S.A.) of Bridgewater, New Jersey; and Brother Industries (U.S.A.), Inc., of Bartlett, Tennessee (together, ''Brother''). 84 FR 49762–63. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain toner cartridges, components thereof, and systems containing same by reason of infringement of certain claims of U.S. Patent Nos. 9,568,856; 9,575,460; 9,632,456; 9,785,093; and 9,846,387. *Id.* The Commission's notice of investigation named 32 respondents, including EPrinter and IFree. *Id.* at 49763. The Office of Unfair Import Investigations (''OUII'') is participating in this investigation. *Id.*

On January 10, 2020, Brother filed a motion seeking leave to amend the complaint and notice of investigation to correct the name for one respondent and to correct the address for seven respondents. Brother also sought to terminate the investigation with respect to EPrinter and IFree based on a partial withdrawal of the complaint due to the inability to serve those parties with the complaint and notice of investigation. On January 22, 2020, OUII filed a response in support of the motion.

On January 28, 2020, the ALJ issued the subject ID, and ordered that the complaint and notice of investigation be amended as requested. The subject ID additionally terminated the investigation with respect to EPrinter and IFree based on the withdrawal of the complaint with respect to those entities. No petitions for review of the ID were received.

The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 25, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–04108 Filed 2–27–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1182]

Certain Argon Plasma Coagulation System Probes, Their Components, and Other Argon Plasma Coagulation System Components for Use Therewith Commission Determination Not To Review an Initial Determination Terminating the Investigation as to Certain Respondents and Granting Leave To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') terminating this investigation as to certain respondents and granting leave to amend the complaint and notice of investigation to add a respondent.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–3427. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (''EDIS'') at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: On November 8, 2019, the Commission instituted this investigation based on a complaint filed by Erbe Elektromedizin GmbH of the Republic of Germany and Erbe USA, Inc. of Marietta, Georgia. 84 FR 60451. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 based upon the importation into the United States, the sale for importation, or the sale within the United States after importation of certain argon plasma coagulation system probes, their components, and other argon plasma coagulation system components for use therewith by reason of infringement of certain claims of U.S. Patent Nos. D577,671; 7,311,707; 7,717,911; 9,510,889; and 9,603,653. *Id.* The Commission's notice of investigation named the following as respondents: (1) Olympus Corporation of Tokyo, Japan; (2) Olympus Corporation of the Americas of Center Valley, Pennsylvania; (3) Olympus America of Center Valley, Pennsylvania; (4) Olympus Surgical Technologies Europe of Hamburg, Republic of Germany; (5) Olympus Winter & lbe GmbH of Hamburg, Republic of Germany; (6) Olympus KeyMed Group Limited of Essex, United Kingdom; (7) KeyMed (Medical & Industrial Equipment) Ltd. of Essex, United Kingdom; (8) Olympus Bolton of Bolton, United Kingdom; (9) Olympus Surgical Technologies Europe | Cardiff of Cardiff, United Kingdom. *Id.* at 60451–52. The Office of Unfair Import Investigations was also named as a party to this investigation. *Id.* at 60452.

On January 27, 2020, the private parties filed a joint, unopposed motion seeking to terminate this investigation in part based on withdrawal of the complaint as to named respondents Olympus KeyMed Group Limited, KeyMed (Medical & Industrial Equipment) Ltd., Olympus Bolton, and Olympus Surgical Technologies Europe | Cardiff. The motion also sought to amend the complaint and notice of investigation to add Gyrus Medical Ltd. as a named respondent.

On January 29, 2020, the ALJ issued Order No. 10, the subject ID, granting the motion. The ID finds that the motion complies with the Commission's Rules and that no extraordinary circumstances warrant denying the motion. No petitions for review of the subject ID were filed.

The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 25, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–04109 Filed 2–27–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Olympus Growth Fund VI, L.P., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Olympus Growth Fund VI, L.P., et al.,* Civil Action No. 1:20–cv–00464. On February 19, 2020, the United States filed a Complaint alleging that the proposed acquisition of the Plastics Division of DS Smith plc by Olympus Growth Fund VI, L.P., through its portfolio company Liqui-Box, Inc., would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Defendants to divest all of DS Smith's Bag-in-Box (BiB) product lines that overlap with BiB product lines offered by Liqui-Box in the United States, including those for dairy, post-mix, smoothie, and wine.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register** Comments should be directed to Katrina Rouse, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 (telephone: 202–598–2459).

Amy Fitzpatrick,

Counsel to the Senior Director of Investigations and Litigation.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, U.S. Department of Justice, Antitrust Division, 450 5th Street NW, Suite 8700, Washington, DC 20530, Plaintiff, v. *OLYMPUS GROWTH FUND VI, L.P., One Station Place, Stamford, CT 06902, LIQUI-BOX, INC., 901 E. Byrd Street, Richmond, VA 23219, and DS SMITH PLC, 350 Euston Road, London, NW1 3AX,* Defendants.

Civil Action No.: 1:20–cv–00464
Judge: Hon. Christopher Cooper

Complaint

The United States of America (''United States''), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants Olympus Growth Fund VI, L.P. (''Olympus''), Liqui-Box, Inc. (''Liqui-Box''), and DS Smith plc (''DS Smith'') to enjoin Olympus's proposed acquisition of DS Smith's Plastics Division (''DS Smith Plastics''), through Liqui-Box, a portfolio company of Olympus. The United States complains and alleges as follows:

I. Nature of the Action

1. Pursuant to a Stock Purchase Agreement dated March 5, 2019, Liqui-Box proposes to acquire DS Smith Plastics for approximately $500 million, making the combined company one of the largest bag-in-box (''BiB'') suppliers in the United States.

2. BiBs are engineered plastic bags used to store and dispense liquids such as milk, post-mix (*e.g.,* soda syrups and other beverage concentrates), smoothies, and wine. BiBs are made up of a single or multi-layer plastic film bag and an attached fitment, which is a plastic component used to facilitate the transfer of the liquids into and out of the bags. After a BiB is manufactured, it is shipped empty to the customer, who fills the BiB with liquid and then sells the filled BiB. Customers, such as dairies, soft-drink manufacturers, and other food producers, rely on BiBs to preserve and safely transport their liquids to restaurants, convenience stores, other food service operators, and retail outlets.

3. In the United States, Liqui-Box and DS Smith are two of only three significant suppliers of BiBs for nearly all end uses, including dairy, post-mix, and smoothies. Liqui-Box and DS Smith also are two of only four significant suppliers of BiBs for wine in the United States. The proposed acquisition will eliminate competition between Liqui-Box and DS Smith to supply these BiBs to customers and is likely to lead to increased prices, lower quality and service, and less innovation.

4. As a result, the proposed acquisition likely would substantially lessen competition for the development, manufacture, and sale of dairy, post-mix, smoothie, and wine BiBs in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and should be enjoined.

II. The Parties and the Transaction

5. Olympus, a fund managed by private equity firm Olympus Partners, is a Delaware limited partnership with headquarters in Stamford, Connecticut. In 2018, Olympus Partners had approximately $8.5 billion total capital under management between its different funds, with Olympus comprising approximately $2.3 billion of that total.

6. Liqui-Box, a company owned by Olympus, is a Delaware corporation with headquarters in Richmond, Virginia. Liqui-Box is a global manufacturer of packaging and packaging equipment, including BiBs, with four U.S. manufacturing facilities, as well as additional facilities across the world. In 2018, Liqui-Box had total sales of $177 million, including approximately $123 million in the United States.

7. DS Smith is a United Kingdom public limited company with headquarters in London, England. DS Smith is a global manufacturer of packaging, packaging equipment, and recycled paper. DS Smith operates DS Smith Plastics, a division that manufactures flexible packaging and dispensing solutions, rigid packaging, injection-molded products, and foam products. Among DS Smith Plastics' flexible packaging products are BiBs, which are primarily sold under the Rapak brand name in the United States. DS Smith Plastics has its U.S. headquarters in Romeoville, Illinois,

and operates five plants in the United States, as well as additional plants across the world. In 2018, DS Smith Plastics had total sales of $479 million, including approximately $137 million in sales of BiBs and other goods in the United States.

8. Pursuant to a Stock Purchase Agreement dated March 5, 2019, Liqui-Box agreed to acquire DS Smith Plastics for approximately $500 million.

III. Jurisdiction and Venue

9. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

10. Defendants develop, manufacture, and sell BiBs throughout the United States in the flow of interstate commerce. Defendants' activities in the development, manufacture, and sale of BiBs substantially affect interstate commerce. This Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

11. Defendants have consented to venue and personal jurisdiction in this District. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c).

IV. Industry Background

12. BiBs are used to store and dispense liquids such as milk, post-mix, smoothies, and wine. The components of a BiB include a flexible plastic bag and an attached fitment. BiBs typically hold between one and six gallons of liquid, but they also come in smaller and larger sizes. The attached fitment facilitates the transfer of liquids into and out of the bag.

13. The flexible plastic bag component of a BiB is typically made up of one to five layers of film. The films are most often made of polyethylene (''PE''), but also can be made with ethylene vinyl alcohol (''EVOH'') or other materials, and are bound together using heat sealing. Customers require different numbers and types of layers to meet individual product demands. For example, the most basic bags consist of a single layer of PE that secures the liquid during transport. More sophisticated bags have additional layers of engineered film that add durability, metallization, and oxygen, moisture, or temperature resistance.

14. The fitment component of a BiB typically is made from resin using injection molding and attached to the flexible plastic bag component via heat sealing. The design of the fitment is determined by the liquid that will go into the bag and the method that will be used to dispense the liquid out of the bag. For example, if the BiB is used to dispense post-mix into a soda dispenser, the fitment will be designed to attach to a soda dispenser. The simplest fitment is a basic cap, which can be flipped off or unscrewed to pour out the liquid. Highly engineered fitments can have specialized elements such as a built-in push-tap feature or an oxygen barrier to provide resistance to the elements. Fitments are often protected by patents due to the specialized nature and high degree of engineering that can be required in fitment manufacturing.

15. BiBs are shipped to the customer who fills the BiB with liquid using a filler machine that the customer typically purchases or leases from the BiB supplier. The customer then ships the filled BiB to a store, restaurant, or other food processor. For example, a post-mix manufacturer seeking to distribute its post-mix to a convenience store would purchase BiBs and a filler machine from a BiB supplier, fill the BiBs with the post-mix at its own facility, and then ship the filled BiBs to the convenience store for use in the convenience store's dispensing machine.

16. BiBs are distinct from and have numerous advantages over other forms of packaging. For example, compared to rigid containers (*e.g.,* jugs and bottles) and cartons, which are the other primary forms of packaging used for storing and transporting liquids, BiBs are smaller and thus reduce storage space and shelf space, both when empty and filled. In addition, BiBs can be a more hygienic form of dispensing liquids because they can reduce user contact and thus contamination. Further, BiBs can keep their contents fresher for longer than other types of packaging by allowing for minimal contact with air. Finally, BiBs can be more economical because they have features that allow the user to get all the liquid out of the bag and result in less packaging waste when they are empty and disposed of.

V. Relevant Markets

A. Product Markets

1. Dairy BiBs

17. BiBs for dairy products hold liquids such as ice cream mix, yogurt, milk, and cream. Dairy BiBs are typically durable bags made from PE and often have a flip-cap or screw-off cap fitment. Dairy BiBs are designed to reduce the risk of contamination and extend shelf life.

18. There are no substitutes for dairy BiBs. Dairy BiBs provide dairy liquids to customers in an easy to use, inexpensive format that other packaging does not offer. For example, rigid containers require more storage space, may not keep the dairy liquid as fresh, and may have a higher risk of contamination. BiBs for other end uses cannot be substituted for dairy BiBs due to the unique specifications for dairy BiBs.

19. In the event of a small but significant non-transitory price increase for dairy BiBs, customers would not substitute away from dairy BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the development, manufacture, and sale of dairy BiBs is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Post-Mix BiBs

20. Post-mix BiBs hold concentrated drink mixes such as soda syrup and juice concentrates. These concentrates are often mixed with carbonated or non-carbonated water before being served. Post-mix BiBs are typically made with layers of PE or EVOH and a fitment that attaches to a drink dispensing machine. Bags used for post-mix must be very strong to accommodate high filling flow rates required by post-mix manufacturers. Post-mix BiBs are designed to maintain freshness and ensure all liquid is dispensed from the bag while minimizing leaks and spills and accurately dispensing the product.

21. There are no substitutes for post-mix BiBs. Post-mix BiBs must attach to a dispensing machine, which a rigid container cannot do. Moreover, BiBs for other end uses cannot be substituted for post-mix BiBs due to the unique fitments and bag design required for post-mix BiBs.

22. In the event of a small but significant non-transitory price increase for post-mix BiBs, customers would not substitute away from post-mix BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the development, manufacture, and sale of post-mix BiBs is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

3. Smoothie BiBs

23. Smoothie BiBs hold mixes and other ingredients for smoothies and other drinks. Smoothie BiBs are typically made with layers of PE that offer low oxygen permeability. Like post-mix BiBs, most fitments on smoothie BiBs are designed to be

attached to dispensing machines and are highly specialized for the particular types of machines they attach to. A smoothie BiB typically has a special cap into which a probe is inserted in order to dispense the liquid. Smoothie BiBs are designed to maintain the safety and freshness of the liquid, protect the taste and quality of these flavor-sensitive liquids, and reduce the risk of contamination.

24. There are no substitutes for smoothie BiBs. Rigid containers cannot be attached to the dispensing machines smoothie BiBs are used in. Further, rigid containers are more expensive and bulkier to transport, may not keep the liquid as fresh, and may have a higher risk of contamination. Moreover, BiBs for other end uses cannot be substituted for smoothie BiBs due to the unique specifications required for smoothie BiBs. Fitments for smoothie BiBs, for example, often are designed to specifically interact with the dispensing machines.

25. In the event of a small but significant non-transitory price increase for smoothie BiBs, customers would not substitute away from smoothie BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the development, manufacture, and sale of smoothie BiBs is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

4. Wine BiBs

26. Wine BiBs hold the wine inside of boxed wines, which are often sold in retail outlets. The bag component of wine BiBs is typically made from PE and EVOH and is designed to protect against oxidation and UV light. The fitment for wine BiBs is typically a push, pull, or twist tap that is specifically designed to avoid allowing oxygen into the bag when the wine is dispensed. This provides a longer shelf life for wine once opened as compared to traditional bottles. Because the fitments for wine BiBs are operated directly by individuals, they must be simple to operate and user friendly.

27. There are no substitutes for wine BiBs. BiBs for other end uses cannot be substituted for wine BiBs due to the unique specifications for wine BiBs. Both the bag and fitment are specially engineered to provide an oxygen barrier for the product that other BiBs typically do not provide. Bags and fitments that lack this specialized oxygen barrier would allow oxygen to seep in and degrade the wine, making it unsuitable for consumption after only a short time. Wine bottles are not adequate substitutes for wine BiBs. A wine BiB can keep wine fresh for up to four weeks after it is opened, significantly longer than a wine bottle can. Also, wine BiBs provide faster and more sanitary pouring for food service operators than bottles do, with no risk of broken glass.

28. In the event of a small but significant non-transitory price increase for wine BiBs, customers would not substitute away from wine BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the development, manufacture, and sale of wine BiBs is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

B. Geographic Market

29. Customers in the United States do not purchase dairy, post-mix, smoothie, and wine BiBs (collectively, the ''Relevant BiB Products'') from suppliers located outside the United States. Shipping these products from outside the United States generally would not be economical because the shipping costs are too large relative to the cost of the BiB itself. In addition, BiBs manufactured and sold outside the United States often have different specifications than those manufactured and sold in the United States due to, for example, differences in the liquids stored in the BiBs or differences in dispensing machines. Further, it is important for a supplier of BiBs in the United States to be able to timely provide service to its customers who have issues with the BiBs, such as leakage or breakage of the bags or problems with the attachment of the BiBs to the filler machines. Suppliers located outside the United States do not have employees located in the United States to timely service BiB customers in the United States.

30. In the event of a small but significant non-transitory increase in the price of the Relevant BiB Products, customers in the United States would not procure these products from suppliers located outside the United States in a sufficient volume to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

VI. Anticompetitive Effects

31. Liqui-Box, DS Smith, and one other company are the only significant suppliers of dairy, post-mix, and smoothie BiBs to customers located in the United States. Liqui-Box and DS Smith are two of only four suppliers of wine BiBs to customers located in the United States.

32. Liqui-Box and DS Smith compete vigorously with one another on the basis of price, quality, and service in the markets for the Relevant BiB Products in the United States. Competition between Liqui-Box and DS Smith has fostered innovation and led to the development of new types of BiBs and product features. The proposed acquisition would eliminate the substantial head-to-head competition between Liqui-Box and DS Smith and the benefits that customers have realized from that competition in the form of lower prices, better quality and service, and innovation. By eliminating DS Smith as a competitor in the development, manufacture, and sale of the Relevant BiB Products in the United States, the proposed acquisition of DS Smith Plastics would substantially increase the likelihood that Liqui-Box would increase prices, reduce quality and service, and diminish investment in research and development below what it would have been absent the acquisition.

33. The proposed acquisition, therefore, would likely substantially lessen competition in the development, manufacture, and sale of the Relevant BiB Products in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

VII. Entry

34. Entry into the development, manufacture, and sale of the Relevant BiB Products would not be timely, likely, or sufficient to prevent the harm to competition caused by Liqui-Box's proposed acquisition of DS Smith Plastics.

35. Entry into the markets for the Relevant BiB Products is costly and time consuming. Significant upfront capital expenditures are required to enter. The machinery to manufacture BiBs, including injection molding machines for the fitments and production lines that seal the bags and attach the fitments, is expensive and highly engineered. Manufacturing BiBs in accordance with customer requirements requires skilled employees and industry know-how that can take years to establish. Further, customers demand that suppliers have a proven ability to supply BiBs with the required specifications so that their BiBs do not leak or break and are able to store the liquids for the required amount of time without spoiling. This reputation for having a quality product takes significant time to build. Finally, a new entrant would need to hire trained technicians capable of providing timely service to customers when BiBs leak, break, or encounter other product quality issues.

VIII. Violations Alleged

36. The acquisition of DS Smith Plastics by Liqui-Box is likely to substantially lessen competition in each of the relevant markets set forth above in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

37. The transaction will likely have the following anticompetitive effects, among others, in the relevant markets:

a. Competition between Liqui-Box and DS Smith will be eliminated;

b. competition generally will be substantially lessened; and

c. prices will likely increase, quality and the level of service will likely decrease, and innovation will likely decline.

IX. Request for Relief

38. The United States requests that this Court:

a. Adjudge and decree Liqui-Box's acquisition of DS Smith Plastics to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. enjoin Defendants and all persons acting on their behalf from consummating the proposed acquisition of DS Smith Plastics by Liqui-Box or from entering into or carrying out any other agreement, plan, or understanding the effect of which would be to combine Liqui-Box with DS Smith Plastics;

c. award the United States its costs of this action; and

d. grant the United States such other relief as the Court deems just and proper.

Dated: February 19, 2020.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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** Lead Attorney To Be Noticed.*

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Liqui-Box, Inc., Olympus Growth Fund VI, L.P.,* and *DS Smith PLC,* Defendants.

Civil Action No.: 1:20–cv–00464

Judge: Hon. Christopher Cooper

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on February 19, 2020, the United States and Defendants, Liqui-Box, Inc., Olympus Growth Fund VI, L.P., and DS Smith plc, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

And whereas, Defendants agree to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestiture required below can and will be made and that Defendants will not later raise any claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means TriMas or another entity to whom Defendants divest the Divestiture Assets.

B. ''Liqui-Box'' means Defendant Liqui-Box, Inc., a Delaware corporation with its headquarters in Richmond, Virginia; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Olympus Growth'' means Defendant Olympus Growth Fund VI, L.P., a Delaware limited partnership with its headquarters in Stamford, Connecticut; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''DS Smith'' means Defendant DS Smith plc, a United Kingdom corporation with the U.S. headquarters of its Plastics Division in Romeoville, Illinois; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''TriMas'' means TriMas Corporation, a Delaware corporation with its headquarters in Bloomfield Hills, Michigan; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. ''BiB Products'' means all components of Bag-in-Box (''BiB'') packaging and solutions, including, but not limited to, bags and fitments, whether the bags or fitments are sold as part of a complete BiB solution or individually. The term ''BiB Products'' does not include components used solely for tea or coffee.

G. ''Rapak Business'' means the development, manufacture, and sale of BiB Products and filler machines for BiB Products by the Plastics Division of DS Smith in the United States.

H. ''Divestiture Assets'' means the Rapak Business, including:

1. All of Defendants' rights, title, and interests in the facilities located at the following addresses (the ''Divestiture Facilities''):

a. 7430 New Augusta Road, Indianapolis, Indiana 46268 (''Indianapolis Plant'');

b. 6907 Coffman Road, Indianapolis, Indiana 46268 (''Indianapolis Warehouse'');

c. 29959 Ahern Avenue, Union City, California 94587 (''Union City Plant''); and

d. 1020 Davey Road, Woodbridge, Illinois 60517;

2. The DS Smith production lines listed in Appendix A (the ''Divested Lines'');

3. The DS Smith injection molding machines listed in Appendix B and all molds and dies, fitment assembly machines, and machinery used to manufacture fitments for the Rapak Business (the ''Divested Fitment Equipment'');

4. At the option of Acquirer, all other tangible assets related to or used in connection with the Rapak Business, including but not limited to: All manufacturing equipment, quality assurance equipment, research and development equipment, machine assembly equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records;

5. All intangible assets related to or used in connection with the Rapak Business, including but not limited to: All patents; licenses and sublicenses; intellectual property; copyrights; trademarks, trade names, service marks, and service names (including the Rapak name and all trademarks, service marks, and service names associated with the Rapak brand); technical information; computer software and related documentation; customer relationships, agreements, and contracts; know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information DS Smith provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts, including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments; and

6. At the option of Acquirer, inventory of BiB Products up to the amount sold by the Rapak Business in any two (2) months in 2019, with the specific months to be determined by Acquirer.

I. ''Relevant Employees'' means all employees engaged in the Rapak Business.

III. Applicability

A. This Final Judgment applies to Liqui-Box, Olympus Growth, and DS Smith, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, Defendants must require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within forty-five (45) calendar days after the Court's entry of the Asset Preservation Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to TriMas or an alternative Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total and will notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. Prior to the divestiture of the Divestiture Assets pursuant to Paragraph IV(A), Defendants must relocate any Divested Lines located at DS Smith's facility located at 1201 Windham Parkway, Romeoville, Illinois 60446 (''Romeoville Plant'') to one or more of the Divestiture Facilities, as determined by Acquirer, and must ensure that all Divested Lines are fully operational at the time of the divestiture.

C. In the event Defendants are attempting to divest the Divestiture Assets to an Acquirer other than TriMas, Defendants promptly must make known, by usual and customary means, the availability of the Divestiture Assets. Defendants must inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process, except information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants must provide Acquirer and the United States with reasonable access to Relevant Employees and with organization charts and all information relating to Relevant Employees, including name, job title, past experience relating to the Divestiture Assets, responsibilities, training and educational history, relevant certifications, and to the extent permissible by law, job performance evaluations, and current salary and benefits information, to enable Acquirer to make offers of employment. Upon request, Defendants must promptly make Relevant Employees available for interviews with Acquirer during normal business hours at a mutually agreeable location and will not interfere with efforts by Acquirer to employ Relevant Employees, such as by offering to increase the salary or benefits of Relevant Employees other than as part of a company-wide increase in salary or benefits granted in the ordinary course of business. Defendants' obligations under this paragraph will expire ninety (90) calendar days after the divestiture of the Divestiture Assets under Paragraph IV(A).

E. For any Relevant Employees who elect employment with Acquirer in the period provided for by Paragraph IV(D), Defendants must waive all noncompete and nondisclosure agreements, vest all unvested pension and other equity rights, and provide all other benefits that the Relevant Employees would generally be provided if transferred to a buyer of an ongoing business. For a period of twelve (12) months from the filing of the Complaint in this matter, Defendants may not solicit to hire, or hire, any Relevant Employee who was hired by Acquirer, unless: (1) The individual is terminated or laid off by Acquirer; or (2) Acquirer agrees in writing that Defendants may solicit or hire that individual. Nothing in Paragraphs IV(D) and (E) prohibits Defendants from maintaining any reasonable restrictions on the disclosure by any Relevant Employee who accepts an offer of employment with Acquirer of the Defendant's proprietary non-public

information that is: (1) Not otherwise required to be disclosed by this Final Judgment; (2) related solely to Defendants' businesses and clients; and (3) unrelated to the Divestiture Assets.

F. Defendants must permit prospective Acquirers of the Divestiture Assets to have reasonable access to make inspections of the physical facilities of the Divestiture Assets, the Divested Lines, and the Divested Fitment Equipment, wherever located; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. Defendants must warrant to Acquirer that each asset will be fully operational on the date of sale.

H. Defendants will not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

I. Defendants must make best efforts to assign, subcontract, or otherwise transfer all contracts related to the Divestiture Assets, including all supply and sales contracts, to Acquirer. Defendants must not interfere with any negotiations between Acquirer and a contracting party.

J. Within one-hundred and eighty (180) calendar days after the Court's entry of the Asset Preservation Stipulation and Order in this matter, Defendants must ensure that the Divested Fitment Equipment is relocated to, and fully operational at, one or more locations as specified by Acquirer.

K. At the option of Acquirer, Defendants must enter into a supply agreement for the manufacture of fitments for the Rapak Business sufficient to meet Acquirer's needs, as determined by Acquirer, for a period of up to six (6) months. Upon Acquirer's request, the United States, in its sole discretion, may approve one or more extensions of this supply agreement, for a total of up to an additional six (6) months. If Acquirer seeks an extension of the term of this supply agreement, Defendants must notify the United States in writing at least one (1) month prior to the date the supply agreement expires. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions for the Rapak Business.

L. At the option of Acquirer, Defendants must enter into a transition services agreement for service and support relating to the Rapak Business for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this transition services agreement, for a total of up to an additional six (6) months. If Acquirer seeks an extension of the term of this transition services agreement, Defendants must notify the United States in writing at least one (1) month prior to the date the agreement expires. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions for the services provided. The employee(s) of Defendants tasked with providing these transition services must not share any competitively sensitive information of Acquirer with any other employee of Defendants.

M. Defendants must warrant to Acquirer: (1) That there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets; and (2) that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

N. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV or by a Divestiture Trustee appointed pursuant to Section V of this Final Judgment must include the entire Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by Acquirer as part of a viable, ongoing business in the development, manufacture, and sale of BiB Products for dairy, post-mix, smoothie, and wine. It must be demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and that the divestiture of such assets will remedy the competitive harm alleged in the Complaint. If any of the terms of an agreement between Defendants and Acquirer to effectuate the divestitures required by the Final Judgment varies from the terms of this Final Judgment then, to the extent that Defendants cannot fully comply with both terms, this Final Judgment will determine Defendants' obligations. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(1) Must be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business in the development, manufacture, and sale of BiB Products for dairy, post-mix, smoothie, and wine; and

(2) must be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise Acquirer's costs, to lower Acquirer's efficiency, or otherwise to interfere in the ability of Acquirer to compete effectively.

V. Appointment of Divestiture Trustee

A. If Defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), Defendants must notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee will have the right to sell the Divestiture Assets. The Divestiture Trustee will have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and will have such other powers as the Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any agents or consultants, including, but not limited to, investment bankers, attorneys, and accountants, who will be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such agents or consultants will serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants will not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee will serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee will account for all

monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for any of its services yet unpaid and those of agents and consultants retained by the Divestiture Trustee, all remaining money will be paid to Defendants and the trust will then be terminated. The compensation of the Divestiture Trustee and agents and consultants retained by the Divestiture Trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the Divestiture Trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished, but the timeliness of the divestiture is paramount. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of the appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee will, within three (3) business days of hiring any other agents or consultants, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants must use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee must have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants must provide or develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets; other confidential research, development, or commercial information; or any applicable privileges. Defendants will take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee will file monthly reports with the United States setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. Such reports will include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets and will describe in detail each contact with any such person. The Divestiture Trustee will maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee will promptly file with the Court a report setting forth: (1) The Divestiture Trustee's efforts to accomplish the required divestiture; (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished; and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports will not be filed in the public docket of the Court. The Divestiture Trustee will at the same time furnish such report to the United States, which will have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it deems appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, the United States may recommend the Court appoint a substitute Divestiture Trustee.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, must notify the United States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it will similarly notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee must furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States will provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not, in its sole discretion, it objects to Acquirer or any other aspect of the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V must not be consummated. Upon objection by Defendants under Paragraph V(C), a divestiture proposed under Section V must not be consummated unless approved by the Court.

VII. Financing

Defendants must not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

VIII. Asset Preservation

Until the divestiture required by this Final Judgment has been accomplished, Defendants must take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by the Court. Defendants will take no action that would jeopardize the divestiture ordered by the Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or Section V, Defendants must deliver to the United States an affidavit, signed by each Defendant's Chief Financial Officer and highest-ranking officer or partner, which must describe the fact and manner of Defendants' compliance with Section IV or Section V of this Final Judgment. Each such affidavit must

include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and must describe in detail each contact with any such person during that period. Each such affidavit must also include a description of the efforts Defendants have taken to complete the sale of or solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, must be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants must deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants must deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendants must keep all records of all efforts made to preserve and divest the Divestiture Assets until one (1) year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Asset Preservation Stipulation and Order or of determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States, including agents retained by the United States, must, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy or, at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants must submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in Section X will be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time that Defendants furnish information or documents to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States will give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs, including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four (4) years following the expiration of the Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action under this Section; (2) any appropriate contempt remedies; (3) any additional relief needed to ensure Defendant complies with the terms of the Final Judgment; and (4) fees or expenses as called for in Paragraph XIII(C).

XIV. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment will expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

_____

United States District Judge

Appendix A

1. Production Line R01 (located at the Romeoville Plant);
2. Production Line R02 (located at the Romeoville Plant);
3. Production Line R12 (located at the Romeoville Plant);
4. Production Line UC01 (located at the Union City Plant);
5. Production Line UC03 (located at the Union City Plant);
6. Production Line N03 (located at the Indianapolis Plant); and
7. Production Line N04 (located at the Indianapolis Plant).

Appendix B

1. Injection Molding Machine (''IM'') 96 (located at the Worldwide Dispensers location at 78 2nd Avenue S, Lester Prairie, Minnesota 55354 (''Lester Prairie Plant''));
2. IM 542 (located at the Lester Prairie Plant);
3. IM 747 (located at the Lester Prairie Plant);
4. IM 599 (located at the Lester Prairie Plant);
5. IM 345 (located at the Lester Prairie Plant);
6. IM 515 (located at the Lester Prairie Plant);
7. IM 583 (located at the Worldwide Dispensers location at 595 Territorial Drive, Bolingbrook, Illinois 60440 (''Bolingbrook Plant'');
8. IM 373 (located at the Bolingbrook Plant);
9. IM 294 (located at the Bolingbrook Plant); and
10. IM 80 (located at the Bolingbrook Plant).

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Liqui-Box, Inc., Olympus Growth Fund VI, L.P.,* and *DS Smith Plc,* Defendants.

Civil Action No.: 1:20–cv–00464
Judge: Hon. Christopher Cooper

Competitive Impact Statement

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA'' or ''Tunney Act''), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On March 5, 2019, Defendant Olympus Growth Fund VI, L.P. (''Olympus''), through its portfolio company Defendant Liqui-Box, Inc. (''Liqui-Box''), agreed to acquire Defendant DS Smith plc's (''DS Smith'') Plastics Division (''DS Smith Plastics'') for approximately $500 million, making the combined company one of the largest bag-in-box (''BiB'') suppliers in the United States. The United States filed a civil antitrust Complaint on February 19, 2020, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for the development, manufacture, and sale of dairy, post-mix, smoothie, and wine BiBs in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States filed an Asset Preservation Stipulation and Order (''APSO'') and proposed Final Judgment, which are designed to address the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, the Defendants are required to divest all of DS Smith's product lines that overlap with product lines offered by Liqui-Box in the United States, including its dairy, post-mix, smoothie, and wine BiB product lines. Under the terms of the APSO, the Defendants must take certain steps to ensure that the divested assets are preserved and operated in such a way as to ensure that the products and services produced by or sold under the divested assets continue to be ongoing, economically viable competitive product lines.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Olympus, a fund managed by private equity firm Olympus Partners, is a Delaware limited partnership with headquarters in Stamford, Connecticut. In 2018, Olympus Partners had approximately $8.5 billion total capital under management between its different funds, with Olympus comprising approximately $2.3 billion of that total. Liqui-Box, a company owned by Olympus, is a Delaware corporation with headquarters in Richmond, Virginia. Liqui-Box is a global manufacturer of packaging and packaging equipment, including BiBs, with four U.S. manufacturing facilities, as well as additional facilities across the world. In 2018, Liqui-Box had total sales of $177 million, including approximately $123 million in the United States.

DS Smith is a United Kingdom public limited company with headquarters in London, England. DS Smith is a global manufacturer of packaging, packaging equipment, and recycled paper. DS Smith Plastics manufactures flexible packaging and dispensing solutions, rigid packaging, injection-molded products, and foam products. Among DS Smith Plastics' flexible packaging products are BiBs, which are primarily sold under the Rapak brand name in the United States. DS Smith Plastics has its U.S. headquarters in Romeoville, Illinois, and operates five plants in the United States, as well as additional plants across the world. In 2018, DS Smith Plastics had total sales of $479 million, including approximately $137 million in sales of BiBs and other goods in the United States.

Pursuant to a Stock Purchase Agreement dated March 5, 2019, Liqui-Box agreed to acquire DS Smith Plastics for approximately $500 million.

B. Industry Background

BiBs are used to store and dispense liquids such as milk, post-mix,

smoothies, and wine. The components of a BiB include a flexible plastic bag and an attached fitment. BiBs typically hold between one and six gallons of liquid, but they also come in smaller and larger sizes. The attached fitment facilitates the transfer of liquids into and out of the bag.

The flexible plastic bag component of a BiB is typically made up of one to five layers of film. The films are most often made of polyethylene (''PE''), but also can be made with ethylene vinyl alcohol (''EVOH'') or other materials, and are bound together using heat sealing. Customers require different numbers and types of layers to meet individual product demands. For example, the most basic bags consist of a single layer of PE that secures the liquid during transport. More sophisticated bags have additional layers of engineered film that add durability, metallization, and oxygen, moisture, or temperature resistance.

The fitment component of a BiB typically is made from resin using injection molding and attached to the flexible plastic bag component via heat sealing. The design of the fitment is determined by the liquid that will go into the bag and the method that will be used to dispense the liquid out of the bag. For example, if the BiB is used to dispense post-mix into a soda dispenser, the fitment will be designed to attach to a soda dispenser. The simplest fitment is a basic cap, which can be flipped off or unscrewed to pour out the liquid. Highly engineered fitments can have specialized elements such as a built-in push-tap feature or an oxygen barrier to provide resistance to the elements. Fitments are often protected by patents due to the specialized nature and high degree of engineering that can be required in fitment manufacturing.

BiBs are shipped to the customer, who fills the BiB with liquid using a filler machine that the customer typically purchases or leases from the BiB supplier. The customer then ships the filled BiB to a store, restaurant, or other food processor. For example, a post-mix manufacturer seeking to distribute its post-mix to a convenience store would purchase BiBs and a filler machine from a BiB supplier, fill the BiBs with the post-mix at its own facility, and then ship the filled BiBs to the convenience store for use in the convenience store's dispensing machine.

BiBs are distinct from and have numerous advantages over other forms of packaging. For example, compared to rigid containers (*e.g.,* jugs and bottles) and cartons, which are the other primary forms of packaging used for storing and transporting liquids, BiBs are smaller and thus reduce storage space and shelf space, both when empty and filled. In addition, BiBs can be a more hygienic form of dispensing liquids because they can reduce user contact and thus contamination. Further, BiBs can keep their contents fresher for longer than other types of packaging by allowing for minimal contact with air. Finally, BiBs can be more economical because they have features that allow the user to get all the liquid out of bag and result in less packaging waste when they are empty and disposed of.

C. Relevant Markets

1. Product Markets

a. Dairy BiBs

BiBs for dairy products hold liquids such as ice cream mix, yogurt, milk, and cream. Dairy BiBs are typically durable bags made from PE and often have a flip-cap or screw-off cap fitment. Dairy BiBs are designed to reduce the risk of contamination and extend shelf life.

As alleged in the Complaint, there are no substitutes for dairy BiBs. Dairy BiBs provide dairy liquids to customers in an easy to use, inexpensive format that other packaging does not offer. For example, rigid containers require more storage space, may not keep the dairy liquid as fresh, and may have a higher risk of contamination. BiBs for other end uses cannot be substituted for dairy BiBs due to the unique specifications for dairy BiBs.

The Complaint alleges that in the event of a small but significant non-transitory price increase for dairy BiBs, customers would not substitute away from dairy BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the Complaint alleges that the development, manufacture, and sale of dairy BiBs is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

b. Post-Mix BiBs

Post-mix BiBs hold concentrated drink mixes such as soda syrup and juice concentrates. These concentrates are often mixed with carbonated or non-carbonated water before being served. Post-mix BiBs are typically made with layers of PE or EVOH and a fitment that attaches to a drink dispensing machine. Bags used for post-mix must be very strong to accommodate high filling flow rates required by post-mix manufacturers. Post-mix BiBs are designed to maintain freshness and ensure all liquid is dispensed from the bag while minimizing leaks and spills and accurately dispensing the product.

The Complaint alleges that there are no substitutes for post-mix BiBs. Post-mix BiBs must attach to a dispensing machine, which a rigid container cannot do. Moreover, BiBs for other end uses cannot be substituted for post-mix BiBs due to the unique fitments and bag design required for post-mix BiBs.

As further alleged in the Complaint, in the event of a small but significant non-transitory price increase for post-mix BiBs, customers would not substitute away from post-mix BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the Complaint alleges that the development, manufacture, and sale of post-mix BiBs is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

c. Smoothie BiBs

Smoothie BiBs hold mixes and other ingredients for smoothies and other drinks. Smoothie BiBs are typically made with layers of PE that offer low oxygen permeability. Like post-mix BiBs, most fitments on smoothie BiBs are designed to be attached to dispensing machines and are highly specialized for the particular types of machines they attach to. A smoothie BiB typically has a special cap into which a probe is inserted in order to dispense the liquid. Smoothie BiBs are designed to maintain the safety and freshness of the liquid, protect the taste and quality of these flavor-sensitive liquids, and reduce the risk of contamination.

According to the Complaint, there are no substitutes for smoothie BiBs. Rigid containers cannot be attached to the dispensing machines smoothie BiBs are used in. Further, rigid containers are more expensive and bulkier to transport, may not keep the liquid as fresh, and may have a higher risk of contamination. Moreover, BiBs for other end uses cannot be substituted for smoothie BiBs due to the unique specifications required for smoothie BiBs. Fitments for smoothie BiBs, for example, often are designed to specifically interact with the dispensing machines.

The Complaint alleges that in the event of a small but significant non-transitory price increase for smoothie BiBs, customers would not substitute away from smoothie BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the Complaint alleges that the development, manufacture, and sale of smoothie BiBs is a relevant product market and line of commerce within the meaning of

Section 7 of the Clayton Act, 15 U.S.C. 18.

d. Wine BiBs

Wine BiBs hold the wine inside of boxed wines, which are often sold in retail outlets. The bag component of wine BiBs is typically made from PE and EVOH and is designed to protect against oxidation and UV light. The fitment for wine BiBs is typically a push, pull, or twist tap that is specifically designed to avoid allowing oxygen into the bag when the wine is dispensed. This provides a longer shelf life for wine once opened as compared to traditional bottles. Because the fitments for wine BiBs are operated directly by individuals, they must be simple to operate and user friendly.

As alleged in the Complaint, there are no substitutes for wine BiBs. BiBs for other end uses cannot be substituted for wine BiBs due to the unique specifications for wine BiBs. Both the bag and fitment are specially engineered to provide an oxygen barrier for the product that other BiBs typically do not provide. Bags and fitments that lack this specialized oxygen barrier would allow oxygen to seep in and degrade the wine, making it unsuitable for consumption after only a short time. Wine bottles are not adequate substitutes for wine BiBs. A wine BiB can keep wine fresh for up to four weeks after it is opened, significantly longer than a wine bottle can. Also, wine BiBs provide faster and more sanitary pouring for food service operators than bottles do, with no risk of broken glass.

According to the Complaint, in the event of a small but significant non-transitory price increase for wine BiBs, customers would not substitute away from wine BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the Complaint alleges that the development manufacture, and sale of wine BiBs is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Geographic Market

The Complaint alleges that customers in the United States do not purchase dairy, post-mix, smoothie, and wine BiBs (collectively, the ''Relevant BiB Products'') from suppliers located outside the United States. Shipping these products from outside the United States generally would not be economical because the shipping costs are too large relative to the cost of the BiB itself. In addition, BiBs manufactured and sold outside the United States often have different specifications than those manufactured and sold in the United States due to, for example, differences in the liquids stored in the BiBs or differences in dispensing machines. Further, according to the Complaint, it is important for a supplier of BiBs in the United States to be able to timely provide service to its customers who have issues with the BiBs, such as leakage or breakage of the bags or problems with the attachment of the BiBs to the filler machines. Suppliers located outside the United States do not have employees located in the United States to timely service BiB customers in the United States.

The Complaint alleges that, in the event of a small but significant non-transitory increase in the price of the Relevant BiB Products, customers in the United States would not procure these products from suppliers located outside the United States in a sufficient volume to make such a price increase unprofitable. Accordingly, the Complaint alleges that the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

D. Anticompetitive Effects

The Complaint alleges that Liqui-Box, DS Smith, and one other company are the only significant suppliers of dairy, post-mix, and smoothie BiBs to customers located in the United States. It also alleges that Liqui-Box and DS Smith are two of only four suppliers of wine BiBs to customers located in the United States.

According to the Complaint, Liqui-Box and DS Smith compete vigorously with one another on the basis of price, quality, and service in the markets for the Relevant BiB Products in the United States. Competition between Liqui-Box and DS Smith has fostered innovation and led to the development of new types of BiBs and product features. The proposed acquisition would eliminate the substantial head-to-head competition between Liqui-Box and DS Smith and the benefits that customers have realized from that competition in the form of lower prices, better quality and service, and innovation. By eliminating DS Smith as a competitor in the development, manufacture, and sale of the Relevant BiB Products in the United States, the proposed acquisition of DS Smith Plastics would substantially increase the likelihood that Liqui-Box would increase prices, reduce quality and service, and diminish investment in research and development below what it would have been absent the acquisition.

According to the Complaint, the proposed acquisition, therefore, would likely substantially lessen competition in the development, manufacture, and sale of the Relevant BiB Products in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

E. Entry

The Complaint alleges that entry into the development, manufacture, and sale of the Relevant BiB Products would not be timely, likely, or sufficient to prevent the harm to competition caused by Liqui-Box's proposed acquisition of DS Smith Plastics.

According to the Complaint, entry into the markets for the Relevant BiB Products is costly and time consuming. Significant upfront capital expenditures are required to enter. The machinery to manufacture BiBs, including injection molding machines for the fitments and production lines that seal the bags and attach the fitments, is expensive and highly engineered. Manufacturing BiBs in accordance with customer requirements requires skilled employees and industry know-how that can take years to establish. Further, customers demand that suppliers have a proven ability to supply BiBs with the required specifications so that their BiBs do not leak or break and are able to store the liquids for the required amount of time without spoiling. This reputation for having a quality product takes significant time to build. Finally, a new entrant would need to hire trained technicians capable of providing timely service to customers when BiBs leak, break, or encounter other product quality issues.

III. Explanation of the Proposed Final Judgment

The divestiture required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing an independent and economically viable competitor with the scale and scope to compete effectively in the markets for the Relevant BiB Products in the United States. Paragraph IV(A) of the proposed Final Judgment requires the Defendants to divest DS Smith Plastics' Rapak Business within 45 calendar days of the Court's entry of the APSO to TriMas Corporation or another acquirer acceptable to the United States in its sole discretion.[1] The divestiture

[1] Paragraph II(G) of the proposed Final Judgment defines the ''Rapak Business'' as ''the development, manufacture, and sale of BiB Products and filler machines for BiB Products by the Plastics Division of DS Smith in the United States.'' Paragraph II(F) defines ''BiB Products'' as ''all components of Bag-in-Box (''BiB'') packaging and solutions, including, but not limited to, bags and fitments, whether the bags or fitments are sold as part of a complete BiB

Continued

includes four facilities (production facilities in Indianapolis, Indiana and Union City, California; an office and production facility in Woodbridge, Illinois; and a warehouse in Indianapolis, Indiana); seven production lines that are used to manufacture dairy, post-mix, smoothie, and wine BiBs as well as BiBs for other products; injection-molding and other equipment used to manufacture fitments; at the acquirer's option, all other tangible assets related to or used in connection with the Rapak Business; all intangible assets related to or used in connection with the Rapak Business (including the Rapak brand); and, at the acquirer's option, certain inventory. In order to enhance its viability, the divestiture includes not only DS Smith's dairy, post-mix, smoothie, and wine BiB product lines, but also all other DS Smith BiB product lines that overlap with product lines offered by Liqui-Box in the United States. This includes, for example, BiBs for edible oil, liquid egg, and tomato products. Paragraph IV(N) of the proposed Final Judgment requires that the divestiture assets must be divested in such a way as to satisfy the United States in its sole discretion that they can and will be operated by the purchaser as part of a viable, ongoing business that can compete effectively in the development, manufacture, and sale of dairy, post-mix, smoothie, and wine BiBs.

Paragraph IV(B) of the proposed Final Judgment requires that, prior to the divestiture, the Defendants must relocate any divested production lines that are currently located at DS Smith Plastics' Romeoville, Illinois production facility—a facility that is not being divested—to one or more of the production facilities included in the divestiture, with the specific facility to be determined by the acquirer. Defendants have both previously moved production lines for independent business reasons with little to no disruption in production or supply. The Defendants must also ensure that the divested production lines are fully operational in their new locations at the time of the closing of the divestiture. Three of the divested production lines are currently located at DS Smith Plastics' Romeoville facility. These production lines are to be moved to the divested production facilities and divested because they are used primarily for the manufacture of the Relevant BiB Products. In addition, Paragraph IV(J) requires that within 180 days after the Court's entry of the APSO, the Defendants must ensure that the fitment equipment to be divested is relocated to, and fully operational at, a facility or facilities specified by the acquirer.

The proposed Final Judgment contains several provisions to facilitate the immediate use of the divestiture assets by the acquirer. Paragraph IV(K) of the proposed Final Judgment requires the Defendants, at the acquirer's option, to enter into a supply contract for fitments sufficient to meet all or part of the acquirer's needs for a period of up to six months. Upon the acquirer's request, the United States, in its sole discretion, may approve one or more extensions of any such agreement for a total of up to an additional six (6) months. In addition, Paragraph IV(L) of the proposed Final Judgment requires the Defendants, at the acquirer's option, to enter into a transition services agreement for service and support relating to the Rapak Business for a period of up to twelve months. The paragraph further provides that the United States, in its sole discretion, may approve one or more extensions of this transition services agreement for a total of up to an additional six (6) months. Paragraph IV(L) also provides that employees of the Defendants tasked with providing any transition services must not share any competitively sensitive information of the acquirer with any other employee of the Defendants.

The proposed Final Judgment also contains provisions intended to facilitate the acquirer's efforts to hire employees engaged in the Rapak Business. Paragraph IV(D) of the proposed Final Judgment requires the Defendants to provide the acquirer with organization charts and information relating to these employees and to make them available for interviews, and it provides that the Defendants must not interfere with any negotiations by the acquirer to hire them. In addition, Paragraph IV(E) provides that, for employees who elect employment with the acquirer, the Defendants must waive all noncompete and nondisclosure agreements, vest all unvested pension and other equity rights, and provide all benefits that the employees would generally be provided if transferred to a buyer of an ongoing business. This paragraph further provides that, for a period of 12 months from the filing of the Complaint, the Defendants may not solicit to hire or hire any employee engaged in the Rapak Business who was hired by the acquirer, unless that individual is terminated or laid off by the acquirer or the acquirer agrees in writing that the Defendants may solicit or hire that individual.

If the Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that the Defendants will pay all costs and expenses of the trustee. The divestiture trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee will provide periodic reports to the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the divestiture trustee and the United States will make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the trust, including by extending the trust or the term of the divestiture trustee's appointment.

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. Paragraph XIII(A) provides that the United States retains and reserves all rights to enforce the provisions of the Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, the Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that the Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIII(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore competition the United States alleged would otherwise be harmed by the transaction. The Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this

solution or individually'' but ''does not include components used solely for tea or coffee.''

Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIII(C) of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that the Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XIII(C) provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that the Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Paragraph XIII(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XIV of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and the Defendants that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Katrina Rouse, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against the Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Liqui-Box's acquisition of DS Smith Plastics. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the development, manufacture, and sale of dairy, post-mix, smoothie, and wine BiBs in the United States. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the

''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Id.* at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: February 19, 2020.

Respectfully submitted,

For Plaintiff, United States of America

Christine A. Hill
(D.C. Bar #461048) *

Attorney, United States Department of Justice, Antitrust Division, Defense, Industrials, and Aerospace Section, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, (202) 305–2738, *christine.hill@usdoj.gov.*

* Attorney of Record.

[FR Doc. 2020–04119 Filed 2–27–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *George Gradel Co., Inc., et al.,* Civil Action No. 3:20–cv–00373, was lodged with the United States District Court for the Northern District of Ohio, Western Division, on February 19, 2020.

This proposed Consent Decree concerns a complaint filed by the United States against George Gradel Co., Inc., and First Energy Nuclear Operating Co., pursuant to Sections 301(a), 309(b), and 309(d) of the Clean Water Act, 33

U.S.C. 1311(a), 1319(b), and 1319(d), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to perform mitigation and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Phillip R. Dupré, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, Post Office Box 7611, Washington, DC 20044, and refer to *United States* v. *George Gradel Co., Inc., et al.,* DJ No. 90–5–1–1–20652.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Ohio, 1716 Spielbusch Avenue, Toledo, OH 43604. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/consent-decrees.*

Cherie Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2020–04079 Filed 2–27–20; 8:45 am]

BILLING CODE 4410–CW–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 20–CRB–0005–AU]

Notice of Intent To Audit

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges announce receipt of a notice from SoundExchange of SoundExchange's intent to audit the various services, including Commercial Webcaster services, Preexisting Subscription Service(s), New Subscription Service(s), and Business Establishment Service, of Mood Media Corporation and its affiliates for 2017, 2018, and 2019 pursuant to four statutory licenses.

ADDRESSES: Docket: For access to the docket to read background documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 20–CRB–0005–AU.

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

SUMMARY INFORMATION: The Copyright Act, title 17 of the United States Code, grants to sound recordings copyright owners the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to limitations. Specifically, the right is limited by the statutory license in section 114 which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, pre-existing subscription services, new subscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In addition, a statutory license in section 112 allows a service to make necessary ephemeral reproductions to facilitate the digital transmission of the sound recording, including for transmissions to business establishments. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges. The rates and terms for the section 112 and 114 licenses are set forth in 37 CFR parts 380 and 382–84.

As part of the terms set for these licenses, the Judges designated SoundExchange, Inc., as the Collective, *i.e.,* the organization charged with collecting the royalty payments and statements of account submitted by Commercial Webcasters, Preexisting Subscription Services, New Subscription Services, and Business Establishment Services, and with distributing the royalties to the copyright owners and performers entitled to receive them under the section 112 and 114 licenses. *See* 37 CFR 380.4, 382.5, 383.4, 384.4.

As the Collective, SoundExchange may, only once a year, conduct an audit of a licensee for any or all of the prior three calendar years in order to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. 37 CFR 380.6, 382.7, 383.4. 384.6.

On January 29, 2020, SoundExchange filed with the Judges a notice of intent to audit Mood Media Corporation and its affiliates (primarily Muzak LLC and DMX Music) for the years 2017, 2018, and 2019. The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the Collective's intent to conduct an audit. *Id.* Today's notice fulfills this requirement with respect to SoundExchange's January 29, 2020 notice of intent to audit.

Dated: February 24, 2020.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2020–04102 Filed 2–27–20; 8:45 am]

BILLING CODE 1410–72–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2020–022]

Agency Guidance; Portal

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of centralized agency guidance portal.

SUMMARY: We are announcing that we have established an online centralized portal that includes information about our guidance and a searchable, indexed listing of, and links to, our guidance documents. The portal, located on our website, does not displace other listings of or links to our guidance documents in topic-specific sections of our website.

DATES: The portal is online beginning February 28, 2020, although we will be refining it and adding existing guidance through the end of May 2020.

ADDRESSES: The portal's URL is *archives.gov/guidance.*

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by mail at National Archives and Records Administration, Suite 4100, 8601 Adelphi Road, College Park, MD 20740–6001, or by email at *regulation_comments@nara.gov.*

SUPPLEMENTARY INFORMATION: Executive Order 13891, and OMB implementing guidance memorandum M–20–02, require Federal agencies to establish an online, centralized, searchable database of their guidance documents, to include certain identifying information, and to provide information on how to comment on open guidance and how to request revisions to the agency's guidance. They also require agencies to publish notice in the **Federal Register** of the new guidance portal.

Although the E.O. and OMB memorandum primarily discuss guidance affecting the public, OMB has clarified that guidance affecting other agencies must also be included in the portal. Most of our guidance pertains to other Federal agencies, including records management guidance, controlled unclassified information

guidance, and classified information guidance, and does not directly affect the public. Agency and other users who already access our guidance through the content-specific sections of our website (such as the records management pages or the CUI pages) may continue to do so. The guidance portal does not replace the information on those pages; it simply pulls the guidance all together in an additional, centralized location.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2020–04157 Filed 2–27–20; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Geosciences (1755).

Date and Time: April 16, 2020; 8:30 a.m.–5:00 p.m. EDT, April 17, 2020; 8:30 a.m.–2:00 p.m. EDT.

Place: National Science Foundation, 2415 Eisenhower Avenue, Room 2030, Alexandria, Virginia 22314.

Type of Meeting: Open.

Contact Person: Melissa Lane, National Science Foundation, Room C 8000, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight on support for geoscience research and education including atmospheric, geo-space, earth, ocean and polar sciences.

Agenda:

April 16, 2020

- Directorate and NSF activities and plans
- Budget Updates
- U
- Summary of AC OPP Fall Meeting and Upcoming Spring Meeting
- Meeting with the NSF Chief Operating Officer

April 17, 2020

- Division Meetings
- Action Items/Planning for Fall 2020 Meeting

Dated: February 24, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–04047 Filed 2–27–20; 8:45 am]

BILLING CODE 7555–01–P

PENSION BENEFIT GUARANTY CORPORATION

New Guidance Document Database

AGENCY: Pension Benefit Guaranty Corporation (PBGC).

ACTION: Notice of availability.

SUMMARY: PBGC announces its new guidance document database. Guidance documents currently in effect are accessible through the database.

DATES: The database will be publicly available no later than February 28, 2020.

FOR FURTHER INFORMATION CONTACT: Hilary Duke (*duke.hilary@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, 202–229–3839. (TTY users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–229–3839.)

SUPPLEMENTARY INFORMATION: On October 9, 2019, the President issued Executive Order (E.O.) 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents.'' Central principles of E.O. 13891 are that the American public should only be subject to binding rules imposed through duly enacted statutes or through regulations that are lawfully promulgated, and that Americans should have fair notice of any such obligations. To ensure increasing transparency, section 3 of the E.O. requires each agency to establish on its website a single, searchable, indexed database that contains, or links to, all of the agency's ''guidance documents,'' as defined in the E.O., and provides certain information about them. Accordingly, PBGC has established the required guidance document database at *www.pbgc.gov/guidance.* The guidance document database contains links to PBGC ''guidance documents.''

Issued in Washington, DC, by

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88272; File No. SR-Phlx-2020–06]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend PSX Rule 3506 (Anti-Money Laundering Compliance Program) and Options 9, Section 21 (Anti-Money Laundering Compliance Program)

February 24, 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 February 18, 2020, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend PSX Rule 3506 and Options 9, Section 21, both titled ''Anti-Money Laundering Compliance Program.'' This rule change is intended to reflect the Financial Crimes Enforcement Network's (''FinCEN'') adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions (''CDD Rule''). Specifically, the proposed amendments would conform PSX Rule 3506 and Options 9, Section 21 to the CDD Rule's amendments to the minimum regulatory requirements for members' anti-money laundering (''AML'') compliance programs by requiring such programs to include risk-based procedures for conducting ongoing customer due diligence. This ongoing customer due diligence element for AML programs includes: (1) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

The Exchange has designated this proposal as ''non-controversial'' under

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

paragraph (f)(6) of Rule 19b–4 [3] under the Act.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

I. Background

The Bank Secrecy Act [4] (''BSA''), among other things, requires financial institutions,[5] including broker-dealers, to develop and implement AML programs that, at a minimum, meet the statutorily enumerated ''four pillars.'' [6] These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

- The establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;
- independent testing for compliance by broker-dealer personnel or a qualified outside party;
- designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and
- ongoing training for appropriate persons.[7]

In addition to meeting the BSA's requirement with respect to AML programs, Exchange members must also comply with PSX Rule 3506 and Options 9, Section 21, respectively, which incorporates the BSA's four pillars, as well as requires members' AML programs to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions.

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule [8] to clarify and strengthen customer due diligence for covered financial institutions, [9] including broker-dealers. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) Customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.[10] As the first component is already required to be part of a broker-dealers AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.[11] The CDD Rule also addresses the third and fourth components, which FinCEN states ''are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements,'' by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new ''fifth pillar.''

On November 21, 2017, FINRA published Regulatory Notice 17–40 to provide guidance to member firms regarding their obligations under FINRA Rule 3310 in light of the adoption of FinCEN's CDD Rule. In addition, the Notice summarized the CDD Rule's impact on member firms, including the addition of the new fifth pillar required for member firms' AML programs. FINRA also amended FINRA Rule 3310 to explicitly incorporate the fifth pillar.[12] This proposed rule change amends PSX Rule 3506 and Options 9, Section 21 to harmonize these rules with the FINRA rule and incorporate the fifth pillar.

II. PSX Rule 3506 and Options 9, Section 21 and Amendment to Minimum Requirements for Members' AML Programs

Section 352 of the USA PATRIOT Act of 2001 [13] amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, Options 9, Section 21 requires each member to develop and implement a written AML program reasonably designed to achieve and monitor the member's compliance with the BSA and implementing regulations. Among other requirements, PSX Rule 3506 and Options 9, Section 21 require that each member firm, at a minimum: (1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide independent testing for compliance to be conducted by member personnel or a qualified outside party; (4) designate and identify to the Exchange an individual or individuals (*i.e.,* AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML program and provide prompt notification to the Exchange of any changes to the designation; and (5)

[3] 17 CFR 240.19b–4(f)(6).

[4] 31 U.S.C. 5311, *et seq.*

[5] *See* U.S.C. 5312(a)(2) (defining ''financial institution'').

[6] 31 U.S.C. 5318(h)(1).

[7] 31 CFR 1023.210(b).

[8] FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. *See* 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking).

[9] *See* 31 CFR 1010.230(f) (defining ''covered financial institution'').

[10] *See* CDD Rule Release at 29398.

[11] *See* 31 CFR 1010.230(d) (defining ''beneficial owner'') and 31 CFR 1010.230(e) (defining ''legal entity customer'').

[12] *See* Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (File No. SR–FINRA–2018–016).

[13] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, 115 Stat. 272 (2001) (''PATRIOT Act'').

provide ongoing training for appropriate persons.

FinCEN's CDD Rule does not change the requirements of either PSX Rule 3506 or Options 9, Section 21, and members must continue to comply with its requirements.[14] However, FinCEN's CDD Rule amends the minimum regulatory requirements for broker-dealers' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.[15] Accordingly, the Exchange is proposing to amend PSX Rule 3506 and Options 9, Section 21 to incorporate this ongoing customer due diligence element, or ''fifth pillar'' required for AML programs. Thus, proposed PSX Rule 3506(a)(6) and Options 9, Section 21(a)(6) would provide that the AML programs required by this Rule shall, at a minimum include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (A) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (B) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for members to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their customers.[16] The proposed rule change simply incorporates into PSX Rule 3506 and Options 9, Section 21 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule to aid members in complying with the CDD Rule's requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in members' AML programs, the CDD Rule requires members to update their AML programs to explicitly incorporate them.

III. Summary of Fifth Pillar's Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.[17] To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.[18] Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer's income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer's history of activity.[19] The CDD Rule also does not prescribe a particular form of the customer risk profile.[20] Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.[21]

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).[22] Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.[23]

Conduct Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum standards of customer due diligence required for firms' AML programs.[24] If, in the course of its normal monitoring for suspicious activity, the member detects information that is relevant to assessing the customer's risk profile, the member must update the customer information, including the information regarding the beneficial owners of legal entity customers.[25] However, there is no expectation that the member update customer information, including beneficial ownership information, on an ongoing or continuous basis.[26]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Section 6(b)(5) of the Act,[28] in particular, in that it is designed 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. Specifically, the Exchange believes the proposed rule change will protect investors, because it will aid members in complying with the CDD Rule's requirement that members' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into PSX Rule 3506 and Options 9, Section 21.

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 proposed rule change simply

[14] FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and FINRA Rule 3310, which is substantially identical to PSX Rule 3506 and Options 9, Section 21. *See* CDD Rule Release 29421, n. 85.

[15] *See* CDD Rule Release at 29420; 31 CFR 1023.210.

[16] *Id.* at 29419.

[17] *Id.* at 29421.

[18] *Id.* at 29422.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.* at 29402.

[25] *Id.* at 29420–21. See also FINRA Regulatory Notice 17–40 (discussing identifying and verifying the identity of beneficial owners of legal entity customers).

[26] *Id.*

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

incorporates into PSX Rule 3506 and Options 9, Section 21 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule. Regardless of the proposed rule change, to the extent that the elements of the fifth pillar are not already included in members' AML programs, the CDD Rule requires members to update their AML programs to explicitly incorporate them. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Further, all Exchange members that have customers are required to be members of FINRA pursuant to Rule 15b9–1 under the Exchange Act,[29] and are therefore already subject to the requirements of FINRA Rule 3310. Additionally, the proposed rule change is virtually identical [30] to FINRA Rule 3310. The Exchange is not imposing any additional direct or indirect burdens on member firms or their customers through this proposal, and as such, the proposal imposes no new burdens on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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)(iii) of the Act [31] and subparagraph (f)(6) of Rule 19b–4 thereunder.[32]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2020–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2020–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2020–06 and should be submitted on or before March 20, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

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[29] 17 CFR 240.15b9–1.

[30] The Exchange notes that changes between the proposed Rule and FINRA Rule 3310 are non-substantive and relate to cross references.

[31] 15 U.S.C. 78s(b)(3)(A)(iii).

[32] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88269; File No. SR–NYSEAMER–2020–11]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change for Certain Conforming Changes to Rule 9217

February 24, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 11, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes certain conforming changes to Rule 9217 in order to more closely align the Exchange's rule with that of its affiliates. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes certain conforming changes to Rule 9217 in order to more closely align the Exchange's rule with that of its affiliates.

Rule 9217 sets forth the list of rules under which a member organization or covered person may be subject to a fine under a minor rule violation plan as described in proposed [sic] Rule 9216(b). The Exchange proposes the following amendments to Rule 9217.

First, the Exchange proposes to add the following paragraph to the introduction to Rule 9217:

> Nothing in this Rule shall require the Exchange to impose a fine for a violation of any rule under this Minor Rule Plan. If the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under the Rule 9000 Series rather than under this Rule.

The language is based on the rules of the Exchange's affiliates New York Stock Exchange LLC (''NYSE'') and NYSE Arca, Inc. (''NYSE Arca'').[4]

Second, the Exchange proposes to add subsections (a), (b)(1) and (b)(5) of Rule 3110—Equities to the list of rules in Rule 9217 eligible for disposition pursuant to a fine under Rule 9216(b).

Rule 3110—Equities is the Exchange's supervision rule for equities trading. Rule 3110(a)—Equities governs supervisory systems and requires member organizations to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.

Subsection (b)(1) governs written procedures and requires member organizations to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.

Subsection (b)(5) requires a member organization's supervisory procedures to include procedures to capture, acknowledge, and respond to all written (including electronic) customer complaints.

Rule 3110—Equities is substantially similar to NYSE Rule 3110. Subsections (a), (b)(1) and b(5) of NYSE Rule 3110 are each separately eligible for a minor rule fine under NYSE Rule 9217.[5]

Finally, the Exchange proposes to correct a typographical error in Rule 9217(ii)(7)(b), which refers to ensuring compliance with, among other things, NYSE Arca Rules. The correct reference should be to the NYSE American Rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules. The Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of its rules governing supervision requirements in situations where either a cautionary action letter or a more formal disciplinary action may not be warranted or appropriate.

In addition, the Exchange believes that adding rules based on the rules of its affiliate to the Exchange's minor rule plan would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. As noted above, Rule 3110—Equities is substantially similar to NYSE Rule 3110. Subsections (a), (b)(1) and b(5) of NYSE Rule 3110 are each separately eligible for a minor rule fine under NYSE Rule 9217.[8]

The Exchange further believes that the proposed amendments to Rule 9217 are consistent with Section 6(b)(6) of the Act,[9] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations pursuant to the Exchange's rules.

Finally, the Exchange also believes that correction of a typographical error would remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rulebook.

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 proposed change is not designed to address any competitive issue but rather to update the Exchange's rules to strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[4] *See* NYSE Rule 9217 & NYSE Arca Rule 10.9217.

[5] *See* NYSE Rules 3110 (Supervision) & 9217.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* NYSE Rules 3110 (Supervision) & 9217.

[9] 15 U.S.C. 78f(b)(6).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–11 and should be submitted on or before March 20, 2020.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to 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 also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act [12] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[13] which governs minor rule violation plans.

As stated above, the Exchange proposes to add to its list of equities rule violations rules that are identical to those of its affiliated exchange. The Commission believes that the proposed rule provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. However, the Commission expects, as suggested by the Exchange's proposed introduction to its Rule 9217, that the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the rule is appropriate, or whether a violation requires formal disciplinary action. The Commission further notes that, as before, the Exchange must give the Commission prompt notice of any violation with sanction over $2,500, in accordance with Securities Exchange Act Rule 19d–1(c).[14] Accordingly, the Commission believes the proposal raises no novel or significant issues.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[15] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal merely adds rules and language from affiliated exchanges. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [16] and Rule 19d–1(c)(2) thereunder,[17] that the proposed rule change (SR–NYSEAMER–2020–11) be, and hereby is, approved and declared effective on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04071 Filed 2–27–20; 8:45 am]

BILLING CODE 8011–01–P

[10] 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).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[13] 17 CFR 240.19d–1(c)(2).

[14] *See* 17 CFR 240.19d–1(c).

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 240.19d–1(c)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88273; File No. SR–GEMX–2020–06]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 9, Section 21 (Anti-Money Laundering Compliance Program)

February 24, 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 February 18, 2020, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Exchange files the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) [3] of the Act and Rule 19b–4(f)(6) [4] thereunder. The Commission is publishing this notice to

[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. The Exchange provided the Commission with 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 the proposed rule change as required by Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 9, Section 21, ''Anti-Money Laundering Compliance Program.'' This rule change is intended to reflect the Financial Crimes Enforcement Network's (''FinCEN'') adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions (''CDD Rule''). Specifically, the proposed amendments would conform Options 9, Section 21 to the CDD Rule's amendments to the minimum regulatory requirements for Members' anti-money laundering (''AML'') compliance programs by requiring such programs to include risk-based procedures for conducting ongoing customer due diligence. This ongoing customer due diligence element for AML programs includes: (1) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

I. Background

The Bank Secrecy Act [5] (''BSA''), among other things, requires financial institutions,[6] including broker-dealers, to develop and implement AML programs that, at a minimum, meet the statutorily enumerated ''four pillars.'' [7] These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

- The establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;
- independent testing for compliance by broker-dealer personnel or a qualified outside party;
- designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and
- ongoing training for appropriate persons.[8]

In addition to meeting the BSA's requirement with respect to AML programs, Exchange Members must also comply with Options 9, Section 21, which incorporates the BSA's four pillars, as well as requires Members' AML programs to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions.

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule [9] to clarify and strengthen customer due diligence for covered financial institutions,[10] including broker-dealers. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) Customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.[11] As the first component is already required to be part of a broker-dealers AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.[12] The CDD Rule also addresses the third and fourth components, which FinCEN states ''are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements,'' by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new ''fifth pillar.''

On November 21, 2017, FINRA published Regulatory Notice 17–40 to provide guidance to member firms regarding their obligations under FINRA Rule 3310 in light of the adoption of FinCEN's CDD Rule. In addition, the Notice summarized the CDD Rule's impact on member firms, including the addition of the new fifth pillar required for member firms' AML programs. FINRA also amended FINRA Rule 3310 to explicitly incorporate the fifth pillar.[13] This proposed rule change amends Options 9, Section 21 to harmonize it with the FINRA rule and incorporate the fifth pillar.

II. Options 9, Section 21 and Amendment to Minimum Requirements for Members' AML Programs

Section 352 of the USA PATRIOT Act of 2001 [14] amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, Options 9, Section 21 requires each Member to develop and implement a written AML program reasonably designed to achieve and monitor the Member's compliance with

[5] 31 U.S.C. 5311, *et seq.*

[6] *See* U.S.C. 5312(a)(2) (defining ''financial institution'').

[7] 31 U.S.C. 5318(h)(1).

[8] 31 CFR 1023.210(b).

[9] FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. *See* 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking).

[10] *See* 31 CFR 1010.230(f) (defining ''covered financial institution'').

[11] *See* CDD Rule Release at 29398.

[12] *See* 31 CFR 1010.230(d) (defining ''beneficial owner'') and 31 CFR 1010.230(e) (defining ''legal entity customer'').

[13] *See* Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (File No. SR–FINRA–2018–016).

[14] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, 115 Stat. 272 (2001) (''PATRIOT Act'').

the BSA and implementing regulations. Among other requirements, Options 9, Section 21 requires that each Member firm, at a minimum: (1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide independent testing for compliance to be conducted by Member personnel or a qualified outside party; (4) designate and identify to the Exchange an individual or individuals (*i.e.,* AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML program and provide prompt notification to the Exchange of any changes to the designation; and (5) provide ongoing training for appropriate persons.

FinCEN's CDD Rule does not change the requirements of Options 9, Section 21, and Members must continue to comply with its requirements.[15] However, FinCEN's CDD Rule amends the minimum regulatory requirements for broker-dealers' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.[16] Accordingly, the Exchange is proposing to amend Options 9, Section 21 to incorporate this ongoing customer due diligence element, or ''fifth pillar'' required for AML programs. Thus, proposed Options 9, Section 21(f) would provide that the AML programs required by this Rule shall, at a minimum include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (1) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for Members to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their customers.[17] The proposed rule change simply incorporates into Options 9, Section 21 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule to aid Members in complying with the CDD Rule's requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them.

III. Summary of Fifth Pillar's Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.[18] To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.[19] Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer's income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer's history of activity.[20] The CDD Rule also does not prescribe a particular form of the customer risk profile.[21] Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.[22]

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).[23] Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.[24]

Conduct Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum standards of customer due diligence required for firms' AML programs.[25] If, in the course of its normal monitoring for suspicious activity, the Member detects information that is relevant to assessing the customer's risk profile, the Member must update the customer information, including the information regarding the beneficial owners of legal entity customers.[26] However, there is no expectation that the Member update customer information, including beneficial ownership information, on an ongoing or continuous basis.[27]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[28] in general, and furthers the objectives of Section 6(b)(5) of the Act,[29] in particular, in that it is designed 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

[15] FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and FINRA Rule 3310, which is substantially identical to Options 9, Section 21. See CDD Rule Release 29421, n. 85.

[16] *See* CDD Rule Release at 29420; 31 CFR 1023.210.

[17] *Id.* at 29419.

[18] *Id.* at 29421.

[19] *Id.* at 29422.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.* at 29402.

[26] *Id.* at 29420–21. See also FINRA Regulatory Notice 17–40 (discussing identifying and verifying the identity of beneficial owners of legal entity customers).

[27] *Id.*

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

public interest. Specifically, the Exchange believes the proposed rule change will protect investors, because it will aid Members in complying with the CDD Rule's requirement that Members' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into Options 9, Section 21.

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 proposed rule change simply incorporates into Options 9, Section 21 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule. Regardless of the proposed rule change, to the extent that the elements of the fifth pillar are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Further, all Exchange Members that have customers are required to be members of FINRA pursuant to Rule 15b9–1 under the Exchange Act,[30] and are therefore already subject to the requirements of FINRA Rule 3310. Additionally, the proposed rule change is virtually identical [31] to FINRA Rule 3310. The Exchange is not imposing any additional direct or indirect burdens on member firms or their customers through this proposal, and as such, the proposal imposes no new burdens on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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)(iii) of the Act [32] and subparagraph (f)(6) of Rule 19b–4 thereunder.[33]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2020–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2020–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2020–06 and should be submitted on or before March 20, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04074 Filed 2–27–20; 8:45 am]

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[30] 17 CFR 240.15b9–1.

[31] The Exchange notes that changes between the proposed Rule and FINRA Rule 3310 are non-substantive and relate to cross references.

[32] 15 U.S.C. 78s(b)(3)(A)(iii).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88275; File No. SR–MRX–2020–05]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 9, Section 21 (Anti-Money Laundering Compliance Program)

February 24, 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 February 18, 2020, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 9, Section 21, ''Anti-Money Laundering Compliance Program.'' This rule change is intended to reflect the Financial Crimes Enforcement Network's (''FinCEN'') adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions (''CDD Rule''). Specifically, the proposed amendments would conform Options 9, Section 21 to the CDD Rule's amendments to the minimum regulatory requirements for Members' anti-money laundering (''AML'') compliance programs by requiring such programs to include risk-based procedures for conducting ongoing customer due diligence. This ongoing customer due diligence element for AML programs includes: (1) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

The Exchange has designated this proposal as ''non-controversial'' under paragraph (f)(6) of Rule 19b–4 [3] under the Act.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

I. Background

The Bank Secrecy Act [4] (''BSA''), among other things, requires financial institutions,[5] including broker-dealers, to develop and implement AML programs that, at a minimum, meet the statutorily enumerated ''four pillars.'' [6] These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

- The establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;
- independent testing for compliance by broker-dealer personnel or a qualified outside party;
- designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and
- ongoing training for appropriate persons.[7]

In addition to meeting the BSA's requirement with respect to AML programs, Exchange Members must also comply with Options 9, Section 21, which incorporates the BSA's four pillars, as well as requires Members' AML programs to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions.

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule [8] to clarify and strengthen customer due diligence for covered financial institutions,[9] including broker-dealers. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) Customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.[10] As the first component is already required to be part of a broker-dealers AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.[11] The CDD Rule also addresses the third and fourth components, which FinCEN states ''are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements,'' by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new ''fifth pillar.''

On November 21, 2017, FINRA published Regulatory Notice 17–40 to provide guidance to member firms regarding their obligations under FINRA Rule 3310 in light of the adoption of FinCEN's CDD Rule. In addition, the Notice summarized the CDD Rule's impact on member firms, including the addition of the new fifth pillar required for member firms' AML programs. FINRA also amended FINRA Rule 3310 to explicitly incorporate the fifth pillar.[12] This proposed rule change amends Options 9, Section 21 to harmonize it with the FINRA rule and incorporate the fifth pillar.

II. Options 9, Section 21 and Amendment to Minimum Requirements for Members' AML Programs

Section 352 of the USA PATRIOT Act of 2001 [13] amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above.

[4] 31 U.S.C. 5311, *et seq.*

[5] *See* U.S.C. 5312(a)(2) (defining ''financial institution'').

[6] 31 U.S.C. 5318(h)(1).

[7] 31 CFR 1023.210(b).

[8] FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. *See* 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking).

[9] *See* 31 CFR 1010.230(f) (defining ''covered financial institution'').

[10] *See* CDD Rule Release at 29398.

[11] *See* 31 CFR 1010.230(d) (defining ''beneficial owner'') and 31 CFR 1010.230(e) (defining ''legal entity customer'').

[12] *See* Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (File No. SR–FINRA–2018–016).

[13] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, 115 Stat. 272 (2001) (''PATRIOT Act'').

Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, Options 9, Section 21 requires each Member to develop and implement a written AML program reasonably designed to achieve and monitor the Member's compliance with the BSA and implementing regulations. Among other requirements, Options 9, Section 21 requires that each Member firm, at a minimum: (1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide independent testing for compliance to be conducted by Member personnel or a qualified outside party; (4) designate and identify to the Exchange an individual or individuals (*i.e.,* AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML program and provide prompt notification to the Exchange of any changes to the designation; and (5) provide ongoing training for appropriate persons.

FinCEN's CDD Rule does not change the requirements of Options 9, Section 21, and Members must continue to comply with its requirements.[14] However, FinCEN's CDD Rule amends the minimum regulatory requirements for broker-dealers' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.[15] Accordingly, the Exchange is proposing to amend Options 9, Section 21 to incorporate this ongoing customer due diligence element, or ''fifth pillar'' required for AML programs. Thus, proposed Options 9, Section 21(f) would provide that the AML programs required by this Rule shall, at a minimum include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (1) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for Members to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their customers.[16] The proposed rule change simply incorporates into Options 9, Section 21 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule to aid Members in complying with the CDD Rule's requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them.

III. Summary of Fifth Pillar's Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.[17] To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.[18] Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer's income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer's history of activity.[19] The CDD Rule also does not prescribe a particular form of the customer risk profile.[20] Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.[21]

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).[22] Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.[23]

Conduct Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum standards of customer due diligence required for firms' AML programs.[24] If, in the course of its normal monitoring for suspicious activity, the Member detects information that is relevant to assessing the customer's risk profile, the Member must update the customer information, including the information regarding the beneficial owners of legal entity customers.[25] However, there is no expectation that the Member update customer information, including beneficial ownership information, on an ongoing or continuous basis.[26]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Section 6(b)(5) of the Act,[28] in particular, in that it is

[14] FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and FINRA Rule 3310, which is substantially identical to Options 9, Section 21. See CDD Rule Release 29421, n. 85.

[15] *See* CDD Rule Release at 29420; 31 CFR 1023.210.

[16] *Id.* at 29419.

[17] *Id.* at 29421.

[18] *Id.* at 29422.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.* at 29402.

[25] *Id.* at 29420–21. See also FINRA Regulatory Notice 17–40 (discussing identifying and verifying the identity of beneficial owners of legal entity customers).

[26] *Id.*

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

designed 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. Specifically, the Exchange believes the proposed rule change will protect investors, because it will aid Members in complying with the CDD Rule's requirement that Members' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into Options 9, Section 21.

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 proposed rule change simply incorporates into Options 9, Section 21 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule. Regardless of the proposed rule change, to the extent that the elements of the fifth pillar are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Further, all Exchange Members that have customers are required to be members of FINRA pursuant to Rule 15b9–1 under the Exchange Act,[29] and are therefore already subject to the requirements of FINRA Rule 3310. Additionally, the proposed rule change is virtually identical [30] to FINRA Rule 3310. The Exchange is not imposing any additional direct or indirect burdens on member firms or their customers through this proposal, and as such, the proposal imposes no new burdens on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[29] 17 CFR 240.15b9–1.

[30] The Exchange notes that changes between the proposed Rule and FINRA Rule 3310 are non-substantive and relate to cross references.

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)(iii) of the Act [31] and subparagraph (f)(6) of Rule 19b–4 thereunder.[32]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MRX–2020–05 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–MRX–2020–05. 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–MRX–2020–05 and should be submitted on or before March 20, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04075 Filed 2–27–20; 8:45 am]

BILLING CODE 8011–01–P

[31] 15 U.S.C. 78s(b)(3)(A)(iii).

[32] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88271; File No. SR–ISE–2020–08]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 9, Section 21 (Anti-Money Laundering Compliance Program)

February 24, 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 February 18, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 9, Section 21, ''Anti-Money Laundering Compliance Program.'' This rule change is intended to reflect the Financial Crimes Enforcement Network's (''FinCEN'') adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions (''CDD Rule''). Specifically, the proposed amendments would conform Options 9, Section 21 to the CDD Rule's amendments to the minimum regulatory requirements for Members' anti-money laundering (''AML'') compliance programs by requiring such programs to include risk-based procedures for conducting ongoing customer due diligence. This ongoing customer due diligence element for AML programs includes: (1) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

The Exchange has designated this proposal as ''non-controversial'' under paragraph (f)(6) of Rule 19b–4 [3] under the Act.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

I. Background

The Bank Secrecy Act [4] (''BSA''), among other things, requires financial institutions,[5] including broker-dealers, to develop and implement AML programs that, at a minimum, meet the statutorily enumerated ''four pillars.'' [6] These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

- The establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;
- independent testing for compliance by broker-dealer personnel or a qualified outside party;
- designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and
- ongoing training for appropriate persons.[7]

In addition to meeting the BSA's requirement with respect to AML programs, Exchange Members must also comply with Options 9, Section 21, which incorporates the BSA's four pillars, as well as requires Members' AML programs to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions.

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule [8] to clarify and strengthen customer due diligence for covered financial institutions,[9] including broker-dealers. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) Customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.[10] As the first component is already required to be part of a broker-dealers AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.[11] The CDD Rule also addresses the third and fourth components, which FinCEN states ''are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements,'' by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new ''fifth pillar.''

On November 21, 2017, FINRA published Regulatory Notice 17–40 to provide guidance to member firms regarding their obligations under FINRA Rule 3310 in light of the adoption of FinCEN's CDD Rule. In addition, the Notice summarized the CDD Rule's impact on member firms, including the addition of the new fifth pillar required for member firms' AML programs. FINRA also amended FINRA Rule 3310 to explicitly incorporate the fifth pillar.[12] This proposed rule change amends Options 9, Section 21 to harmonize it with the FINRA rule and incorporate the fifth pillar.

II. Options 9, Section 21 and Amendment to Minimum Requirements for Members' AML Programs

Section 352 of the USA PATRIOT Act of 2001 [13] amended the BSA to require broker-dealers to develop and

[4] 31 U.S.C. 5311, *et seq.*

[5] *See* U.S.C. 5312(a)(2) (defining ''financial institution'').

[6] 31 U.S.C. 5318(h)(1).

[7] 31 CFR 1023.210(b).

[8] FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. *See* 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking).

[9] *See* 31 CFR 1010.230(f) (defining ''covered financial institution'').

[10] *See* CDD Rule Release at 29398.

[11] *See* 31 CFR 1010.230(d) (defining ''beneficial owner'') and 31 CFR 1010.230(e) (defining ''legal entity customer'').

[12] *See* Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (File No. SR–FINRA–2018–016).

[13] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, 115 Stat. 272 (2001) (''PATRIOT Act'').

implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, Options 9, Section 21 requires each Member to develop and implement a written AML program reasonably designed to achieve and monitor the Member's compliance with the BSA and implementing regulations. Among other requirements, Options 9, Section 21 requires that each Member firm, at a minimum: (1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide independent testing for compliance to be conducted by Member personnel or a qualified outside party; (4) designate and identify to the Exchange an individual or individuals (*i.e.,* AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML program and provide prompt notification to the Exchange of any changes to the designation; and (5) provide ongoing training for appropriate persons.

FinCEN's CDD Rule does not change the requirements of Options 9, Section 21, and Members must continue to comply with its requirements.[14] However, FinCEN's CDD Rule amends the minimum regulatory requirements for broker-dealers' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.[15] Accordingly, the Exchange is proposing to amend Options 9, Section 21 to incorporate this ongoing customer due diligence element, or ''fifth pillar'' required for AML programs. Thus, proposed Options 9, Section 21(f) would provide that the AML programs required by this Rule shall, at a minimum include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (1) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for Members to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their customers.[16] The proposed rule change simply incorporates into Options 9, Section 21 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule to aid Members in complying with the CDD Rule's requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them.

III. Summary of Fifth Pillar's Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.[17] To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.[18] Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer's income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer's history of activity.[19] The CDD Rule also does not prescribe a particular form of the customer risk profile.[20] Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.[21]

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).[22] Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.[23]

Conduct Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum standards of customer due diligence required for firms' AML programs.[24] If, in the course of its normal monitoring for suspicious activity, the Member detects information that is relevant to assessing the customer's risk profile, the Member must update the customer information, including the information regarding the beneficial owners of legal entity customers.[25] However, there is no expectation that the Member update customer information, including beneficial ownership information, on an ongoing or continuous basis.[26]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[27] in general, and

[14] FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and FINRA Rule 3310, which is substantially' identical to Options 9, Section 21. See CDD Rule Release 29421, n. 85.

[15] *See* CDD Rule Release at 29420; 31 CFR 1023.210.

[16] *Id.* at 29419.

[17] *Id.* at 29421.

[18] *Id.* at 29422.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.* at 29402.

[25] *Id.* at 29420–21. See also FINRA Regulatory Notice 17–40 (discussing identifying and verifying the identity of beneficial owners of legal entity customers).

[26] *Id.*

[27] 15 U.S.C. 78f(b).

furthers the objectives of Section 6(b)(5) of the Act,[28] in particular, in that it is designed 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. Specifically, the Exchange believes the proposed rule change will protect investors, because it will aid Members in complying with the CDD Rule's requirement that Members' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into Options 9, Section 21.

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 proposed rule change simply incorporates into Options 9, Section 21 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule. Regardless of the proposed rule change, to the extent that the elements of the fifth pillar are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Further, all Exchange Members that have customers are required to be members of FINRA pursuant to Rule 15b9–1 under the Exchange Act,[29] and are therefore already subject to the requirements of FINRA Rule 3310. Additionally, the proposed rule change is virtually identical [30] to FINRA Rule 3310. The Exchange is not imposing any additional direct or indirect burdens on member firms or their customers through this proposal, and as such, the proposal imposes no new burdens on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[28] 15 U.S.C. 78f(b)(5).

[29] 17 CFR 240.15b9–1.

[30] The Exchange notes that changes between the proposed Rule and FINRA Rule 3310 are non-substantive and relate to cross references.

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)(iii) of the Act [31] and subparagraph (f)(6) of Rule 19b–4 thereunder.[32]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–ISE–2020–08 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–ISE–2020–08.* 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–ISE–2020–08* and should be submitted on or before March 20, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04072 Filed 2–27–20; 8:45 am]

BILLING CODE 8011–01–P

[31] 15 U.S.C. 78s(b)(3)(A)(iii).

[32] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[33] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11055]

Notice of Determinations; Culturally Significant Objects Re-Imported for Exhibition—Determinations: ''Caravans of Gold, Fragments in Time: Art, Culture, and Exchange Across Medieval Saharan Africa'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects included in the exhibition ''Caravans of Gold, Fragments in Time: Art, Culture, and Exchange across Medieval Saharan Africa,'' being re-imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are re-imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Museum of African Art, Smithsonian Institution, Washington, District of

Columbia, from on or about April 8, 2020, until on or about November 29, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–04093 Filed 2–27–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 11052]

Department of State Guidance Portal (Executive Order 13891)

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State (the Department) is publishing this notice pursuant to Executive Order 13891 to announce and describe the public-facing portal that will contain the Department's Guidance Documents, as described under the Executive Order.

DATES: The Guidance Portal is available as of February 28, 2020.

ADDRESSES: If a member of the public wishes to provide a comment on any Guidance Document included on the portal, or suggestions for operation of the site, he or she can submit the comment to *guidance@state.gov.*

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney-Adviser, Office of the Legal Adviser, 202–647–2318, *kottmyeram@state.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 3 of Executive Order 13891, *Promoting the Rule of Law Through Improved Agency Guidance Documents,* dated October 9, 2019 (the Executive Order), the Department of State has established a portal that contains or links to all Department documents that qualify as ''Guidance Documents'' under the Executive Order. The URL for this searchable Guidance Portal is *https://state.gov/guidance.*

Pursuant to Sections 2 and 7 of the Executive Order, certain documents are not linked to or included on the Department's Guidance Portal. Such documents include, but are not limited to, those that pertain to ''foreign or military affairs, or to a national security or homeland security function of the United States (other than guidance documents involving procurement or the import or export of non-defense articles and services)''; including but not limited to documents related to the implementation of the Arms Export Control Act, 22 U.S.C. 2751 *et seq;* educational and cultural exchange, *e.g.,* via implementation of the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1431, *et seq.*), and the Mutual Educational and Cultural Exchange Act of 1961, as amended, (22 U.S.C. 2451 *et seq.*), and related or similar legislation; administration and enforcement of immigration laws relating to visas in 8 U.S.C. 1101 *et seq.* and other immigration laws; and documents included exclusively on a U.S. Embassy website.

If those documents are included on other Department websites, exclusion from the Guidance Portal will not affect the availability of those documents on such websites. For clarity and convenience, the Department may include on the Guidance Portal documents that fall outside the scope of the Executive Order, including documents that are not ''Guidance Documents'' and documents that are otherwise exempted under the Executive Order. The Department may remove any or all such documents from the Guidance Portal at any time.

John C. Sullivan,

Deputy Assistant Secretary for Global Information Services, Bureau of Administration, U.S. Department of State.

[FR Doc. 2020–04101 Filed 2–27–20; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 11054]

Notice of Determinations; Additional Culturally Significant Objects Imported for Exhibition—Determinations: ''Malangatana: Mozambique Modern'' Exhibition

SUMMARY: On November 15, 2019, notice was published on page 62561 of the **Federal Register** (volume 84, number 221) of determinations pertaining to certain objects to be included in an exhibition entitled ''Malangatana: Mozambique Modern.'' Notice is hereby given of the following determinations: I hereby determine that certain additional objects to be included in the exhibition ''Malangatana: Mozambique Modern,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The additional objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the additional exhibit objects at the Art Institute of Chicago, Chicago, Illinois, from on or about March 22, 2020, until on or about July 5, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–04096 Filed 2–27–20; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1297X]

Indiana & Ohio Railway Company—Discontinuance of Service Exemption—in Warren County, Ohio

Indiana & Ohio Railway Company (IORY) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over a 5.6-mile rail line extending between milepost 1.10 near Lebanon and milepost 6.70 at Hageman Junction near Mason in Warren County, Ohio (the Line).[1] The Line traverses U.S. Postal Service Zip Codes 45036 and 45040.

IORY has certified that: (1) No local traffic has moved over the Line for at least two years; (2) because the Line is stub-ended, it has not handled any overhead traffic in at least two years, and there is no potential overhead traffic that would need to be rerouted; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is pending either with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA)[2] to subsidize continued rail service has been received, this exemption will be effective on March 29, 2020, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2)[3] must be filed by March 9, 2020.[4] Petitions for reconsideration must be filed by March 19, 2020, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with Board should be sent to IORY's representative, Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. NW, Suite 1300 South, Washington, DC 20004.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available at *www.stb.gov.*

Decided: February 25, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2020–04104 Filed 2–27–20; 8:45 am]

BILLING CODE 4915–01–P

[1] While the verified notice states that the Line is owned by the City of Lebanon, agency precedent (which is cited by IORY) indicates that IORY itself acquired the Line in 1987, and no other authority is provided to suggest that the Line has since been transferred. (Verified Notice 2 n.1.) *Ind. & Ohio Ry.—Acquis. & Operation Exemption—Ind. & Ohio R.R.,* FD 30906 (ICC served Feb. 6, 1987); *see also Ind. & Ohio Rail Passenger Corp.—Trackage Rights Exemption—Cincinnati Term. Ry., et al.,* FD 32894 (STB served Apr. 30, 1996) (notice of exemption for, among other things, IORY to grant trackage rights to the Indiana & Ohio Rail Passenger Corporation between Lebanon and Hageman).

[2] Persons interested in submitting an OFA to subsidize continued rail service must first file a formal expression of intent to file an offer, indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[3] The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

[4] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require environmental review.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0137]

Airport Improvement Program (AIP) Grant Assurances

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of modification of Airport Improvement Program grant assurances; opportunity to comment.

SUMMARY: The FAA has updated the AIP grant assurances to reflect recent legislative provisions in the FAA Reauthorization Act of 2018 as well as recently issued executive orders.

DATES: The FAA is implementing these modified grant assurances upon publication of this notice to expedite processing Fiscal Year 2020 grants under the AIP. The FAA will accept public comments concerning these modified grant assurances for 30 days. Comments must be submitted on or before March 30, 2020. If necessary, in response to comments received, the FAA will consider appropriate revisions to these grant assurance modifications through publication of a subsequent notice in the **Federal Register**.

ADDRESSES: You may send comments [identified by Docket Number FAA–2020–0137] using any of the following methods:

- *Government-wide Rulemaking Website:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dave Cushing, Manager, Airports Financial Assistance Division, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–8827; fax: (202) 267–5302.

Authority for Grant Assurance Modifications

This notice is published under the authority described in Subtitle VII, Part B, Chapter 471, Sections 47107 and 47122 of Title 49 United States Code (U.S.C.). In addition, the statutory authorities delegated to the Federal Aviation Administration are enumerated in Title 49 Code of Federal Regulations (CFR) § 1.83 (''Delegations to the Federal Aviation Administration'').

SUPPLEMENTARY INFORMATION: A sponsor (applicant) seeking financial assistance in the form of an AIP grant for airport planning, airport development, noise compatibility planning, or noise mitigation under 49 U.S.C., as amended, must agree to comply with certain assurances. These grant assurances are incorporated in, and become part of a sponsor's grant agreement for Federal assistance. As need dictates, the FAA modifies these assurances to reflect new Federal requirements. Notice of such modifications is published in the

Federal Register, and an opportunity for public comment is provided. The assurances that apply to a sponsor depend on the type of sponsor.

There are three types of AIP grant assurances:

- Airport Sponsor (applicable for airport development);
- Non-Airport Sponsors Undertaking Noise Compatibility Program Projects; and
- Planning Agency Sponsors.

Prior to the FAA Reauthorization Act of 2018 (Pub. L. 115–254), the assurances were published on:

- February 3, 1988, at 53 FR 3104 and amended on September 6, 1988, at 53 FR 34361;
- August 29, 1989, at 54 FR 35748;
- June 10, 1994, at 59 FR 30076;
- January 4, 1995, at 60 FR 521;
- June 2, 1997, at 62 FR 29761;
- August 18, 1999, at 64 FR 45008;
- March 29, 2005, at 70 FR 15980;
- March 18, 2011, at 76 FR 15028;
- April 13, 2012, at 72 FR 22376; and
- April 3, 2014, at 79 FR 18755.

A complete list of the current grant assurances may be viewed at: *https://www.faa.gov/airports/aip/grant_assurances/.*

Discussion of AIP Grant Assurance Modifications

The FAA is making several changes to the AIP grant assurances. These changes will be in effect for grants issued on or after the date of publication of this notice. The changes to the AIP grant assurances are listed below. The grant assurance numbers referenced relate to the assurance (airport development grants):

Technical Non-Substantive Changes To Correct Minor Typographical Errors

Because these have no change on the substance of the assurances, these changes, including minor edits to Grant Assurance 37, have not been specifically called out.

Addition of Buy American and Hire American Executive Orders

The FAA has added Executive Order 13788 (''Buy American and Hire American'') and Executive Order 13858 (''Strengthening Buy-American Preferences for Infrastructure Projects'') to the list of executive orders applicable in Grant Assurance C.

Updates Pursuant to Section 131 of the Act

Section 131 of the Act requires the FAA to change Sponsor Assurance #32 (''Engineering and Design Services''). Sponsor Assurance #32 now applies to a sponsor if ''any phase of such project has received funds under this subchapter.''

Updates Pursuant to Section 135 of the Act

Section 135 of the Act expands the statutory grant assurance regarding veteran's preference to include veterans of ''Operation New Dawn, Operation Inherent Resolve, Operation Freedom's Sentinel, or any successor contingency operation to such operations;'' and small business concerns owned and controlled by disabled veterans. FAA has revised Sponsor Assurance #15, Veteran's Preference, to include these changes.

Updates Pursuant to Section 163 of the Act

Section 163 of the Act modified the FAA's authorities and responsibilities regarding changes in airport land use under certain circumstances. Sponsor Assurances #5(b) and #29 have been amended to reflect this provision.

In consideration of the above, the FAA makes the following changes to the existing published Airport Sponsor Assurances.

C. Sponsor Certification. The sponsor hereby assures and certifies that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following updated provisions.

Executive Orders

g. Executive Order 13788—Buy American and Hire American.

Executive Order 13858—Strengthening Buy-American Preferences for Infrastructure Projects

5. Preserving Rights and Powers.

b. Subject to the FAA Act of 2018, Public Law 115–254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

29. Airport Layout Plan.

a. Subject to the FAA Reauthorization Act of 2018, Public Law 115–254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:

(1) Boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;

(2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;

(3) the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and

(4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility, or efficiency of the airport.

b. Subject to the FAA Reauthorization Act of 2018, Public Law 115–254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the

Secretary's design standards beyond the control of the airport sponsor.

32. Engineering and Design Services. If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U.S.C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

As noted previously, all other grant assurances remain in full force and effect except as shown above.

Issued in Washington, DC on February 25, 2020.

Robert John Craven,

Director, Office of Airport Panning and Programming.

[FR Doc. 2020–04139 Filed 2–27–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0278]

Agency Information Collection Activities; Approval of a New Information Collection Request: Crime Prevention for Truckers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. This request, titled ''Crime Prevention for Truckers,'' will allow for a study to understand the prevalence, seriousness, and nature of the problem of harassment and assaults against minority and female truckers.

DATES: Please send your comments by March 30, 2020. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2018–0278. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Chris Flanigan, General Engineer, Technology Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Telephone: 202–385–2384; Email Address: *chris.flanigan@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Crime Prevention for Truckers.

OMB Control Number: 2126–00XX.

Type of Request: New information collection.

Respondents: Female and minority male commercial motor vehicle drivers.

Estimated Number of Respondents: Maximum of 880 truck drivers [80 respondents reporting no incidents of harassment or crime + 800 respondents reporting one or more incidents of harassment or crime].

Estimated Time per Response: Varies. [8 minutes for respondents not reporting incidents of harassment or crime; 20 minutes for respondents reporting an incident of harassment or crime].

Expiration Date: This is a new information collection.

Frequency of Response: Once.

Estimated Total Annual Burden: 277.3 hours [80 respondents reporting no incidents × (8 minutes ÷ 60 minutes per hour) + 800 respondents reporting one or more incidents × (20 minutes ÷ 60 minutes per hour)].

Background: FMCSA has accumulated evidence, both documentary and anecdotal, for a serious pattern of harassment- and assault-related crimes against female and minority male truckers. For example, Security Journal, in a 2006 article titled ''Workplace Violence against Female Long-haul Truckers,'' reported that 42 percent of female longhaul truckers reported experiencing one or more types of workplace violence. USA Today, in a 2017 article titled ''Rigged,'' gave accounts of repeated harassment of minority male truckers. Currently, FMCSA does not provide materials or training to truckers, including minority and female truckers, on how to protect themselves from being stalked, harassed, assaulted, or robbed. Before effective solutions for preventing or reducing these crimes against female and minority truckers can be developed and implemented, FMCSA must understand the prevalence, seriousness, and nature of the problem of harassment and assaults against truckers. Currently, there is insufficient data. The frequency and number of harassment- and assault-related crimes occurring, the portion that are unreported, and reasons for underreporting are unknown.

The purpose of this research study is to gather information to answer these questions, to understand how serious the problem is, and to report it to FMCSA so the Agency can decide on further options for evaluation and action. FMCSA needs to explore and validate the problem of harassment- and assault-related crimes, especially against female and minority male truckers for two reasons. First, there seems to be a perception among these subpopulations of truckers that they are more vulnerable than others. Second, there is a critical shortage of truckers, and helping these subpopulations of truckers protect themselves from crimes could draw more truckers from these subpopulations, while stemming turnover, to alleviate the shortage.

FMCSA has contracted with Battelle to create and execute a survey of truck drivers to gather this information. This exploratory survey will be limited in scale and scope. Quantitative and qualitative analysis of the data will help the Agency to understand the nature and extent of the problem and begin to formulate an approach to reducing it. The results will not be used for rulemaking.

The survey of professional truck drivers will be limited to female and minority male drivers. The survey will ask whether the drivers have experienced race- or gender-related harassment or crimes on the job. If the driver has had such an experience, the survey will ask follow-up questions on where and when the incidents occurred, any information the respondent knows about the perpetrator, and whether the respondent reported the incident. The survey will be anonymous. None of the questions ask for information that could personally identify the respondent or any perpetrators involved. Some respondents will take the survey online, and others will take it in the form of an in-person interview. Identical questions

will be asked of all drivers, but answers from males and females will be analyzed separately.

A maximum of 440 males and 440 females will be included in the information collection. The information will be collected through a combination of an online survey and in-person interviews. Approximately 160 in person interviews will be completed, 80 females and 80 minority males. The balance will take the survey electronically. Some individuals may be eligible to participate in the survey but will not have had any recent experience of harassment or assault. These individuals will be included in the final results for calculation of prevalence. The total number of respondents targeted for those who experienced some sort of harassment or assault will be 400 in each group. If 400 targeted individuals are reached before the overall cap of 440 respondents, data collection will be stopped for that group. Individuals who are screened but are not female or minority male, or with other criteria such as not being active drivers, will not be included in the interview counts, though a tabulation of the number of such contacts and reason for their disqualification will be reported to better understand resource needs and burden in future data collection efforts of this type. A $25 incentive will be given to eligible respondents to the in-person interview or the online survey. For respondents to be eligible and to receive the incentive, they must report that they are a female or a minority male who has driven a truck professionally in the past 2 years and complete the survey—at least through the initial questions of what events, if any, they have experienced.

Battelle statisticians experienced in surveys and in analyzing data for FMCSA will execute the data analysis plan. Findings will be presented in a report that will be made available on the Agency's website so that interested stakeholders and the general public will be aware of the findings. Battelle is required to deliver a public-use dataset at the conclusion of the project. By understanding the nature and prevalence of crimes against truckers, FMCSA will be able to formulate and promote programs to address the problem. The report may be useful to law enforcement personnel, motor carriers, truck drivers, operators of private truck stops, and others interested in addressing the situation.

If study findings indicate a significant problem that merits action, FMCSA may consider developing training or outreach materials to help truckers protect themselves from crime or harassment. Such training or outreach materials could help foster motor carriers' employee retention efforts and help make the truck driving profession more attractive to a greater range of people.

Public comments on this were requested in the **Federal Register** in a July 23, 2019 notice (Docket No. FMCSA–2018–0278). Three comments were received and are summarized below.

Ellen Voie, President, Women In Trucking (WIT) Association, appreciates the initiative to better understand the challenges female and minority drivers face. WIT conducted research on best practices in hiring and retaining female professional drivers. The respondents indicated their level of safety at 4.4 on a scale of one to ten. She states that this is unacceptable and that once the survey has been completed and we can better understand the extent of crimes against female (and minority) drivers, we can better address how to eliminate any harassment and assaults directed against them. Overall, this information will assist WIT in their efforts to attract and retain more women in trucking.

Desiree Wood, President, Real Women in Trucking, Inc. (RWIT), has been receiving distress calls related to sexual misconduct related to entry-level driver training fleets for over 10 years. RWIT is a truck driver organization formed by working female truck drivers, many of whom have had firsthand experience with sexual misconduct at a trucking company, including Ms. Wood. This led to her forming RWIT, which aims to assist women who have been raped, assaulted, harassed, and abandoned by their employing carrier by referring them to law firms and the EEOC. Ms. Wood recommends that FMCSA take immediate action to address these issues instead of conducting the survey.

Bunny Sterling, East Calais, Vermont, described several types of harassment against women working in the trucking industry, but did not claim specifically that they happened to her. They included lude comments and gestures, unwanted physical advances and phone calls, and threats of losing employment if retaliation occurred.

FMCSA appreciates the comments and support for examining this issue and plans to proceed with the data call to assess in more detail the extent of this problem. This could lead to the agency reaching out to driver training schools to encourage that they address these issues in their courses.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: February 19, 2020.

Kenneth Riddle,

Acting, Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2020–04100 Filed 2–27–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0018]

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 30, 2020, Nevada Northern Railway (NN) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 230, Steam Locomotive Inspection and Maintenance Standards. FRA assigned the petition Docket Number FRA–2020–0018.

Specifically, NN requests relief from 49 CFR 230.17, *One thousand four hundred seventy-two (1,472) service day inspection,* which requires that locomotives be inspected after 1,472 service days or 15 years, whichever occurs first. NN states that Locomotive 40 will be due for its 1,472 service day inspection (SDI) on May 20, 2020, although it has only accrued 795 service days since its last 1,472 SDI. The railroad would like to operate the locomotive through October 20, 2020, which would consist of less than 60 service days. During this period, NN states that it will perform all regularly required maintenance and inspection as otherwise required.

NN is a historical railroad that offers passenger train rides. It is supported by the Nevada Northern Railway Foundation. NN is concerned that if Locomotive 40 must be taken out of service, NN will be left with only one operating steam locomotive for its 2020 season. If that steam engine also cannot run, it will be impossible for NN to operate its schedule of steam-powered excursion trips, which would cause an excessive financial strain on the organization, as locomotive rides are

essential to revenue and ridership. Approval of this waiver request would allow NN to finish restoration of another steam locomotive that could take Locomotive 40's place in late 2020, when Locomotive 40 would receive its 1,472 SDI.

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 April 13, 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. 2020–04141 Filed 2–27–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0045]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel EPIPHANY (Sailing Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 30, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0045 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0045 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0045, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel EPIPHANY is:

—*INTENDED COMMERCIAL USE OF VESSEL:* ''Private Vessel Charters, Passengers Only, for day charters and overnight charters.''

—*GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS:* ''Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York (excluding New York Harbor), New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas'' (Base of Operations: St. Michaels, MD)

—*VESSEL LENGTH AND TYPE:* 43′ sailing catamaran

The complete application is available for review identified in the DOT docket as MARAD–2020–0045 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise

comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0045 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 24, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–04054 Filed 2–27–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0026]

Inventory of U.S.-Flag Launch Barges; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) is performing its annual update of registered U.S.-flag launch barges. Any additions or changes to the current *Register of U.S.-Flag Launch Barges* published below in the **SUPPLEMENTARY INFORMATION** section should be submitted as comments to MARAD. MARAD's Launch Barge Program information page is located at *https://www.maritime.dot.gov/ports/domestic-shipping/launch-barge-program.*

DATES: Submit comments on or before March 30, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0026 by any of the following methods:

- *Website/Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search ''MARAD–2020–00026'' and follow the instructions for submitting comments on the electronic docket site.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: All submissions must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov* and search using ''MARAD–2020–0026'' or go to Room W12–401 of the Department of Transportation, 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: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.Carr@dot.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 46 CFR part 389.3, in order to provide timely notification and to identify potential participants to each other so they may examine how they can best work together to maximize use of coastwise-qualified vessels, MARAD is required to publish a notice in the **Federal Register** annually requesting that owners or operators (or potential owners or operators) of coastwise qualified launch barges notify us of: (1) Their interest in participating in the transportation and, if needed, the launching or installation of offshore platform jackets; (2) the contact information for their company; and, (3) the specifications of any currently owned or operated coastwise qualified launch barges or plans to construct same. In addition, MARAD is also seeking the same information from owners or operators of non-coastwise qualified (U.S.-flag) launch barges. The following is MARAD's current register of U.S.-flag launch barges:

REGISTER OF U.S.-FLAG LAUNCH BARGES

Vessel name	Owner	Built	Length (ft.)	Beam (ft.)	DWT (L.T.)	Approx. launch capacity (L.T.)	Coastwise qualified
455 4	Crowley Marine Services	2009	400	105	19,226	18,766	X
455 5	Crowley Marine Services	2009	400	105	19,226	18,766	X
455 6	Crowley Marine Services	2009	400	105	19,226	18,766	X
455 7	Crowley Marine Services	2009	400	105	19,226	18,766	X
455 8	Crowley Marine Services	2010	400	105	19,226	18,766	X
455 9	Crowley Marine Services	2010	400	105	19,226	18,766	X

REGISTER OF U.S.-FLAG LAUNCH BARGES—Continued

Vessel name	Owner	Built	Length (ft.)	Beam (ft.)	DWT (L.T.)	Approx. launch capacity (L.T.)	Coastwise qualified
Barge 400L	Crowley Marine Services	1997	400	100	19,646	19,146	X
Barge 410	Crowley Marine Services	1974	400	99.5	12,035	11,535	X
Barge 455–3	Crowley Marine Services	2008	400	105	19,226	18,766	X
Barge 500–1	Crowley Marine Services	1982	400	105	16,397	15,897	X
Julie B	Crowley Marine Services	2008	400	130	23,600	23,100	X
Marty J	Crowley Marine Services	2008	400	105	19,226	18,766	X
MWB 403	HMC Leasing, Inc	1979	400	105	16,322	6,800	X
INTERMAC 600	J. Ray McDermott, Inc	1973	500	120	32,290	15,600	
McDermott Tidelands 020	J. Ray McDermott, Inc	1980	240	72	5,186	5,000	X
McDermott Tidelands 021	J. Ray McDermott, Inc	1980	240	72	4,700	2,200	X
McDermott Tidelands 021	J. Ray McDermott, Inc	1981	240	72	5,186	5,000	X
McDermott Tidelands No. 012	J. Ray McDermott, Inc	1973	240	72.2	4,217	4,000	X
McDermott Tidelands No. 014	J. Ray McDermott, Inc	1973	240	72.2	4,217	4,000	X
MARMAC 11	McDonough Marine Service	1994	250	72	4,743	4,200	X
MARMAC 12	McDonough Marine Service	1994	250	72	4,743	4,200	X
MARMAC 15	McDonough Marine Service	1995	250	72	4,743	4,200	X
MARMAC 16	McDonough Marine Service	1995	250	72	4,743	4,200	X
MARMAC 17	McDonough Marine Service	1997	250	72	4,743	4,200	X
MARMAC 18	McDonough Marine Service	1998	250	72	4,743	4,200	X
MARMAC 19	McDonough Marine Service	1999	250	72	4,743	4,200	X
MARMAC 20	McDonough Marine Service	1999	250	72	4,743	4,200	X
MARMAC 21	McDonough Marine Service	2002	260	72	5,163	4,500	X
MARMAC 22	McDonough Marine Service	2003	260	72	5,082	4,500	X
MARMAC 23	McDonough Marine Service	2009	260	72	5,082	4,500	X
MARMAC 24	McDonough Marine Service	2010	260	72	5,082	4,500	X
MARMAC 25	McDonough Marine Service	2010	260	72	5,082	4,500	X
MARMAC 300	McDonough Marine Service	1998	300	100	10,105	9,500	X
MARMAC 301	McDonough Marine Service	1996	300	100	9,553	9,000	X
MARMAC 3018	McDonough Marine Service	1996	318	95′ -9″	10,046	9,500	
MARMAC 400	McDonough Marine Service	2001	400	99′ -9″	11,272	10,500	X
MARMAC 9	McDonough Marine Service	1993	250	72	4,743	4,200	X
COLUMBIA NORFOLK	Moran Towing	1982	329′ 3½″	78	8,036	8,000	X
FAITHFUL SERVANT	Puglia Engineering, Inc	1979	492	131	23,174	23,000	
ATLANTA BRIDGE	Trailer Bridge, Inc	1998	402	100	6,017	6,017	X
BROOKLYN BRIDGE	Trailer Bridge, Inc	1998	402	100	6,017	6,017	X
CHARLOTTE BRIDGE	Trailer Bridge, Inc	1998	402	100	6,017	6,017	X
CHICAGO BRIDGE	Trailer Bridge, Inc	1998	402	100	6,017	6,017	X
MEMPHIS BRIDGE	Trailer Bridge, Inc	1998	402	100	6,017	6,017	X

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 24, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–04057 Filed 2–27–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0042]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel WATER LILY (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 30, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0042 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0042 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S.

Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0042, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WATER LILLY is:

—*INTENDED COMMERCIAL USE OF VESSEL:* ''This vessel will be used for private charters on inland waters. It will primarily be used on the Ohio River in the vicinity of Cincinnati, Ohio. There may be times when the vessel will be operated on other nearby inland waters for special events (*e.g.* Louisville, etc) should a customer request something of this nature. These will be sight seeing charters of 2 to 3 hours in duration.''

—*GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS:* ''Ohio, Kentucky, Indiana'' (Base of Operations: Four Seasons Marina, Cincinnati, OH)

—*VESSEL LENGTH AND TYPE:* 30′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0042 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0042 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 24, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–04053 Filed 2–27–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0044]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ALEMANDE (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 30, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0044 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0044 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0044, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington,

DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ALEMANDE is:

—*INTENDED COMMERCIAL USE OF VESSEL:* ALEMANDE, provides families with means of carrying/disbursing creamins three nautical (3) miles offshore per enviromental protection agency. depart dock; proceed to the three (3) nautical mile limit; conduct service and return to dock. approximately 3hr cruise. total time outside of line of demarkation is fifty (50) minutes

—*GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS:* ''Florida'' (Base of Operations: Ponce Inlet, FL)

—*VESSEL LENGTH AND TYPE:* 49′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0044 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0044 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

Dated: February 24, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–04049 Filed 2–27–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0041]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel KISKEEDEE (Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 30, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0041 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0041 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0041, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel KISKEEDEE is:

—*INTENDED COMMERCIAL USE OF VESSEL:* ''Sailing instruction and live aboard pleasure cruises for youth groups and families''

—*GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS:* ''Florida'' (Base of Operations: Miami, FL)

—*VESSEL LENGTH AND TYPE:* 51′ sailboat

The complete application is available for review identified in the DOT docket as MARAD–2020–0041 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0041 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 24, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–04052 Filed 2–27–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0043]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel JUNO (Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 30, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0043 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0043 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0043, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453,

Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel JUNO is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Captained charter sails on the San Francisco Bay for parties no more than 12.''

—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''California, Washington, Oregon'' (Base of Operations: Oakland, CA)

—VESSEL LENGTH AND TYPE: 36′ sailboat

The complete application is available for review identified in the DOT docket as MARAD–2020–0043 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0043 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 24, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–04051 Filed 2–27–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0040]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DOCKTALES (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 30, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0040 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0040 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0040, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DOCKTALES is:

—*INTENDED COMMERCIAL USE OF VESSEL:* ''Charter trips to Key West, the Florida Keys, St. Augustine and Jacksonville Florida.''

—*GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS:* ''Florida'' (Base of Operations: Tampa, FL)

—*VESSEL LENGTH AND TYPE:* 58′ motor vessel

The complete application is available for review identified in the DOT docket

as MARAD–2020–0040 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0040 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 24, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–04050 Filed 2–27–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0020; Notice 1]

FCA US, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: FCA US, LLC, (f/k/a Chrysler Group, LLC) ''FCA US,'' has determined that certain Mopar headlamp assemblies sold as aftermarket equipment and installed as original equipment in certain model year (MY) 2017–2018 Dodge Journey motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* FCA US filed a noncompliance report for the replacement equipment dated March 14, 2019, and later amended it on April 9, 2019. FCA US also filed a noncompliance report for the associated vehicles dated March 14, 2019, later amended it on April 9, 2019, and April 25, 2019. FCA US subsequently petitioned NHTSA on April 5, 2019, and filed a supplemental petition on May 14, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of FCA US's petition.

DATES: The closing date for comments on the petition is February 28, 2020.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register**

pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. *Overview:* FCA US has determined that certain MY 2017–2018 Dodge Journey motor vehicles and replacement Dodge Journey headlamp assemblies do not fully comply with paragraph S8.1.11 of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108). FCA US filed a noncompliance report for the replacement equipment dated March 14, 2019, and later amended it on April 9, 2019. FCA US also filed a noncompliance report for the associated vehicles dated March 14, 2019, later amended it on April 9, 2019, and April 25, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* FCA US subsequently petitioned NHTSA on April 5, 2019, and filed a supplemental petition on May 14, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt, of FCA US's petition, is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercises of judgment concerning the merits of the petition.

II. *Equipment and Vehicles Involved:* Approximately 16,604 Mopar headlamp assemblies sold as aftermarket equipment, manufactured between August 2, 2017, and July 6, 2018, are potentially involved. Approximately 84,908 MY 2017–2018 Dodge Journey motor vehicles, manufactured between August 2, 2017, and July 6, 2018, are potentially involved.

III. *Noncompliance:* FCA US explains that the noncompliance is that the subject headlamp assemblies, sold as aftermarket equipment and equipped in certain MY 2017–2018 Dodge Journey motor vehicles contain a front amber side reflex reflector that does not meet the photometric requirements specified in paragraph S8.1.11 of FMVSS No. 108. Specifically, the reflex reflector, in the subject headlamp assemblies, do not meet the minimum photometry requirements at the observation angle of 0.2 degrees.

IV. *Rule Requirements:* Paragraph S8.1.11 of FMVSS No. 108 includes the requirements relevant to this petition. Each reflex reflector must be designed to conform to the photometry requirements of Table XVI–a, when tested according to the procedure in paragraph S14.2.3 of FMVSS No. 108, for the reflex reflector color.

V. *Summary of FCA US's Petition:*

The following views and arguments presented in this section, V. Summary of FCA US's petition, are the views and arguments provided by FCA US. They have not been evaluated by the Agency and do not reflect the views of the Agency.

FCA US described the subject noncompliance and stated that the noncompliance is inconsequential as it relates to motor vehicle safety. FCA US submitted the following views and arguments in support of the petition:

A. For the purposes of FMVSS No. 108, the primary function of a reflex reflector is to prevent crashes by permitting early detection of an unlighted motor vehicle at an intersection or when parked on or by the side of the road. Because reflex reflectors are not independent light sources, their performance is wholly reliant upon the amount of illumination they receive from vehicle headlamps. Ideally, a reflex reflector would achieve its highest performance when the reflex reflector is mounted at the height of another vehicle's lower beam 'hot spot.' Due to the significant range of permissible mounting heights for headlamps (between 22 and 54 inches), achieving such ideal performance is impractical. FMVSS No. 108, which establishes minimum performance standards for reflex reflectors, specifies a range of acceptable reflector mounting heights (not less than 15 inches or more than 60 inches) to ensure that reflex reflectors are exposed to enough illumination to be effective. The standard also provides allowances in the fore and aft location of reflex reflectors (*e.g.,* as far to the front as practicable). This flexibility provides vehicle manufacturers with sufficient flexibility in mounting locations to ensure that the mounting height remains in the appropriate range to ensure adequate reflex reflector performance relative to headlamps that would illuminate them.'' Decision on Petition for Inconsequential Noncompliance, 82 FR 24204, May 25, 2017. (emphasis added by FCA US).

B. For reasons discussed below, and supported by a demonstration project conducted by FCA US, FCA US submits that the reflex reflectors on the subject vehicles perform adequately to meet the safety purpose of the standard because they permit the early detection of an unlighted motor vehicle at an intersection or when parked, notwithstanding their deviation from certain photometric requirements.

1. FCA US believes that the failure of these reflex reflectors to meet the photometric requirements does not reduce their effectiveness in providing the necessary visibility for oncoming vehicles and that the difference between the reflectivity provided by a compliant reflector is not distinguishable from the reflectivity provided by a noncompliant reflector. To demonstrate this point, FCA US conducted an informal evaluation comparing the performance of a Dodge Journey equipped with a known compliant reflex reflector with a Dodge Journey equipped with a known noncompliant reflex reflector. This evaluation was conducted with two Dodge Journey vehicles parked front end to front end across the road surface, 100 feet (30.5 meters) away from vehicles that used their headlamps as a source of illumination for observers to evaluate the luminous intensity of each front side reflex reflector. The 100 feet (30.5 meters) distance was chosen because that is the distance specified in FMVSS No. 108 and CMVSS No. 108 for testing reflex reflectors using a goniometer in a photometric laboratory.

2. A 2019 Jeep Cherokee with LED projector headlamps and a 2019 Ram 1500 Pickup Truck with LED reflector headlamps were used as sources of illumination. Sixteen volunteer evaluators (who were FCA US or FCA Canada, Inc., employees) stood immediately in front of, and at the centerline of, the vehicles whose headlamps were being used as the source of illumination. Evaluators were asked if they were able to distinguish a difference between the compliant and noncompliant reflex reflectors. None of the evaluators were able to distinguish any luminous intensity differences of the light being reflected in any of the scenarios.

3. The reflex reflectors in the subject vehicles were mounted 32.31 to 32.62 inches from the ground to the center of the devices. The headlamp mounting heights of the two vehicles used as sources of illumination in the

evaluation are 34.89 inches for the Jeep Cherokee and 39.59 inches for the Ram 1500. FCA US believes that these vehicles cover the range of typical headlamp mounting heights for vehicles on the road today. Nevertheless, FCA US is undertaking another round of evaluations using a vehicle with a lower headlamp mounting height as a source of illumination to try to demonstrate a ''worst-case'' scenario. FCA US expects to supplement this petition with the results of that further evaluation in the near future. (See Supplement to FCA US Petition, dated May 14, 2019.)

FCA's Evaluation: A subjective evaluation was conducted on a Dodge Journey with a headlamp assembly containing a front side reflex reflector known not to meet FMVSS No. 108/CMVSS No. 108 photometric requirements compared to a Dodge Journey with a headlamp assembly containing a front side reflex reflector known to meet FMVSS No. 108/CMVSS No. 108 photometric requirements. This evaluation was conducted at 6:30 a.m., Friday, March 22, 2019, in the Lighting Tunnel at the FCA Canada Automotive Research and Development Center in Windsor, Ontario, Canada. Sixteen FCA US employees, with various job responsibilities, participated in this subjective evaluation.

This evaluation was conducted with two Dodge Journey vehicles parked front end to front end across the road surface, 100 feet (30.5 meters) away from vehicles that used their headlamps as a source of illumination for observers to evaluate the luminous intensity of each front side reflex reflector. The 100 feet (30.5 meters) distance was chosen because that is the distance that is specified in FMVSS No. 108 and CMVSS No. 108 for testing reflex reflectors using a goniometer in a photometric laboratory.

A black Dodge Journey was parked across the left side of the pavement with a passenger-side headlamp containing a front side reflex reflector known to not meet FMVSS No. 108 and CMVSS No. 108 photometric requirements. A red Dodge Journey was parked across the right side of the pavement with a driver-side headlamp containing a front side reflex reflector known to meet FMVSS No. 108 and CMVSS No. 108 photometric requirements.

A 2019 Jeep Cherokee with LED projector headlamps and a 2019 Ram 1500 Pickup Truck with LED reflector headlamps were used as sources of illumination. Evaluators stood immediately in front of, and at the centerline of, the vehicles whose headlamps were being used as the source of illumination. Evaluators were asked if they were able to distinguish a difference between the reflex reflectors.

Five different scenarios were subjectively evaluated as described below:

Subjective Evaluation A: Jeep Cherokee Low beam Headlamps used as light source at center of the pavement shining towards the two Dodge Journey Vehicles.

Subjective Evaluation B: Jeep Cherokee High beam Headlamps used as light source at center of the pavement shining towards the two Dodge Journey Vehicles.

Subjective Evaluation C: Jeep Cherokee Low beam Headlamps used as light source at the left edge of pavement (146 inches to the left of the centerline of pavement) shining towards the two Dodge Journey vehicles.

Subjective Evaluation D: Jeep Cherokee Low beam Headlamps used as light source at the right edge of pavement (150 inches to the right of the centerline of pavement) shining towards the two Dodge Journey vehicles.

Subjective Evaluation E: Ram 1500 Pickup Truck Low beam Headlamps used as light source at the center of the pavement shining towards the two Dodge Journey vehicles.

Findings: None of the sixteen evaluators were able to distinguish any luminous intensity differences of the light being reflected to their eyes from the Dodge Journey front side reflex reflectors that were being illuminated by the headlamps of the source vehicles in the five subjective evaluations that were conducted.

FCA US submitted a supplemental petition dated May 14, 2019, and provided the following supplemental information:

Background: Reflex reflectors are devices used on vehicles to give an indication to approaching drivers using reflected light from the lamps of the approaching vehicle. A subjective evaluation of the ''on-vehicle'' reflective performance of Dodge Journey Front Side Reflex Reflectors was conducted to determine if human eyes are capable of distinguishing between reflex reflectors known to not meet, and known to meet, the photometric requirements of FMVSS 108 and CMVSS 108.

The original subjective evaluation was conducted on March 22, 2019, in the Lighting Tunnel at the FCA Canada Automotive Research and Development Center in Windsor, Ontario, Canada, with headlamps of two different vehicles used as sources of illumination. The first vehicle used as a source of illumination was a Jeep Cherokee that had a headlamp mounting height of 34.89 inches above ground (as measured to the center of the device). The second vehicle used as a source of illumination was a Ram 1500 Pickup Truck that had a headlamp mounting height of 39.59 inches above ground (as measured to the center of the device).

This follow-up evaluation was conducted using an Alfa Romeo Giulia that had a headlamp mounting height of 26.50 inches above ground (as measured to the center of the device). This vehicle was chosen to demonstrate a scenario of a vehicle with low headlamp mounting heights being used as the source of illumination. (Please note the lettering is sequential to those used in the previous March 22, 2019 report.)

FCA's Follow-up Evaluation: A subjective evaluation was conducted on a Dodge Journey with a headlamp assembly containing a front side reflex reflector known not to meet FMVSS No. 108/CMVSS No. 108 photometric requirements compared to a Dodge Journey with a headlamp assembly containing a front side reflex reflector known to meet FMVSS No. 108/CMVSS No. 108 photometric requirements. This evaluation was conducted at 9:00 a.m., Friday, April 26, 2019, in the Lighting Tunnel at the FCA Canada Automotive Research and Development Center in Windsor, Ontario, Canada. Eight FCA US employees, with various job responsibilities, participated in this subjective evaluation.

This evaluation was conducted with two Dodge Journey vehicles parked front end to front end across the road surface, 100 feet (30.5 meters) away from an Alfa Romeo Giulia vehicle that used its headlamps as a source of illumination for observers to evaluate the luminous intensity of each front side reflex reflector. The 100 feet (30.5 meters) distance was chosen because that is the distance that is specified in FMVSS No. 108 and CMVSS No. 108 for testing reflex reflectors using a goniometer in a photometric laboratory.

A red Dodge Journey was parked across the left side of the pavement with a passenger-side headlamp containing a front side reflex reflector known to not meet FMVSS No. 108 and CMVSS No. 108 photometric requirements. Another red Dodge Journey was parked across the right side of the pavement with a driver-side headlamp containing a front side reflex reflector known to meet FMVSS No. 108 and CMVSS No. 108 photometric requirements. These were the same headlamp assemblies and side reflex reflectors that were used for the previous subjective evaluation that occurred on March 22, 2019.

A 2019 Alfa Romeo Giulia with Bi-Xenon Projector Headlamps (25 watt D5S light sources) was used as the

source of illumination. Evaluators stood immediately in front of, and at the centerline of, the Alfa Romeo Giulia vehicle while its headlamps were being used as the source of illumination. Evaluators were asked if they were able to distinguish a difference between the reflex reflectors.

Four different scenarios were subjectively evaluated as described below:

Subjective Evaluation F: Alfa Romeo Giulia Low Beam Headlamps used as a light source at the center of the pavement shining towards the two Dodge Journey vehicles.

Subjective Evaluation G: Alfa Romeo Giulia High Beam Headlamps used as a light source at the center of the pavement shining towards the two Dodge Journey vehicles.

Subjective Evaluation H: Alfa Romeo Giulia Low Beam Headlamps used as a light source at the left edge of pavement (146 inches to the left of the centerline of pavement) shining towards the two Dodge Journey vehicles.

Subjective Evaluation J: Alfa Romeo Giulia Low Beam Headlamps used as a light source at the right edge of pavement (150 inches to the right of the centerline of pavement) shining towards the two Dodge Journey vehicles.

Findings: None of the eight evaluators were able to distinguish any luminous intensity differences of the light being reflected to their eyes from the Dodge Journey front side reflex reflectors that were being illuminated by the headlamps of the Alfa Romeo Giulia in the four subjective evaluations that were conducted.

FCA US concluded by expressing its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject equipment and vehicles that FCA US no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment and vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant equipment and vehicles under their control after FCA US notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020–04106 Filed 2–27–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2020–0023]

Regional Infrastructure Accelerator Program

AGENCY: Build America Bureau, U.S. Department of Transportation.

ACTION: Request for Information (RFI).

SUMMARY: The Fixing America's Surface Transportation Act (FAST),[1] enacted in December 2015, authorized the establishment of a Regional Infrastructure Accelerator Demonstration Program (the Program) to assist entities in developing improved infrastructure priorities and financing strategies for the accelerated development of a project that is eligible for funding under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program under Chapter 6 of Title 23, United States Code. The Further Consolidated Appropriations Act, 2020 enacted on December 20, 2019 appropriated $5 million for this Program.[2]

The Build America Bureau (the Bureau) of the U.S. Department of Transportation (Department or DOT) is seeking input from interested parties with the intent to gather as much information as possible before implementing the Program.

The Bureau is issuing this RFI on the most effective, transparent and expedient way to implement the Program. Information gleaned from this effort will help inform the development of the Program and approach to designating and funding Regional Infrastructure Accelerators that will: (1) Serve a defined geographic area; and (2) act as a resource to qualified entities in the geographic area in accordance with Section 1441 of the FAST Act.

[1] Public Law 114–94, 129 Stat. 1312, 1435.

[2] Public Law 116–94, div. H, tit. I, H.R. 1865 at 413 (as enrolled December 20, 2019).

DATES: Responses to this RFI are due no later than 11:59 p.m. 30 days after publication of this notice. The Bureau may hold an RFI information session(s) before the due date.

ADDRESSES: All responses MUST be submitted electronically via email to the Bureau at *ria@dot.gov.* Questions regarding the RFI may be submitted to the Bureau at *ria@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For further information regarding this RFI please contact Sam Beydoun via email at *sam.beydoun@dot.gov* or via telephone at 202–366–2300. A TDD is available at 202–366–3993.

Background

The Bureau is responsible for driving transportation infrastructure development projects in the United States through innovative financing programs. Its mission is to provide access to the Bureau's credit programs in a streamlined, expedient and transparent manner. In accomplishing its mission, the Bureau also provides technical assistance and encourages innovative best practices in project planning, financing, delivery, and monitoring. The Bureau draws upon the full resources of the Department of Transportation to best utilize the expertise of the Department's Operating Administrations while promoting a culture of innovation and customer service.

The Transportation Infrastructure Finance and Innovation Act of 1998[3] established a Federal credit program (TIFIA Program) for eligible transportation projects under which the Department may provide three forms of credit assistance—secured (direct) loans, loan guarantees, and standby lines of credit. The TIFIA Program's fundamental goal is to leverage federal funds by attracting substantial private and other non-Federal co-investment to support critical improvements to the Nation's surface transportation system. Eligible recipients of TIFIA credit assistance include State departments of transportation, transit operators, special authorities, local governments and private entities.

Demonstration Program

Section 1441 of the FAST Act (*https://www.transportation.gov/buildamerica/programs-and-services/regional-infrastructure-accelerators*) authorizes the Program to assist in developing improved infrastructure priorities and financing strategies for the accelerated development of eligible projects. It is envisioned that Regional Infrastructure

[3] Codified as 23 U.S.C. 601–609.

Accelerator(s) will act as a resource and help facilitate delivery of projects within a designated geographic region while promoting investment in covered infrastructure projects. The Further Consolidated Appropriations Act, 2020 appropriated $5 million to carry out the Program.

The goal of this RFI is to engage interested parties to obtain input into the most effective, transparent and expedient ways to structure and deliver the Program. Respondents to this RFI are encouraged to provide related information and answers to one or more of the following:

Structure

(1) What would be an effective form of the accelerator that could influence the development of infrastructure projects, and what type of structure and authority would be required for the establishment of a regional accelerator? Are there examples of such entities from around the country and abroad, or in other sectors that could be used as a model for the Program?

(2) What barriers such as regulatory, technical and institutional (public or private) would hinder implementation? What authority should the accelerator(s) have to effectively carry out its mission?

Geographic Diversity

(1) What is the most effective regional approach in achieving geographic diversity?

(2) What consideration should be given to urban versus rural areas, regional verses statewide or multi-State accelerators?

(3) Given the appropriated amount ($5 million), what would be the optimum range and most effective number of awards for regional accelerators? What would be an appropriate size program to consider in addressing the needs of priority infrastructure projects in rural areas?

Qualifications

(1) What resources, competencies and experience would be required from and within an accelerator? The approach should consider the resources required in accelerating the development of smaller rural projects and assisting inexperienced or under-resourced regions.

(2) If external resources and expertise would be contemplated, what would be the acquisition strategy while ensuring transparency and accountability?

(3) What is the best way to conduct an effective and transparent selection process? What evaluation criteria should the Bureau consider?

Approach

(1) What is the most effective approach to achieve the goals of the Program through an accelerator? In responding, please address considerations for the creation, selection and designation of regional accelerator(s).

(2) What actions are required to plan, implement and assess effectiveness of regional accelerators? If your response considers a phased approach, what would be the activities, resources and timelines for each phase? If new entities are considered, how much time would be needed to stand up a regional accelerator and what would be the major challenges?

(3) How could an accelerator leverage the Federal funding beyond the initial Federal support? If feasible, could a standalone, self-funded and sustainable model continue to deliver the intended benefits under the Program?

(4) Rural transportation infrastructure is of critical interest to the Department. How could Regional Infrastructure Accelerators assist in supporting priority programs in the region such as Rural Opportunities to Use Transportation for Economic Success (ROUTES) and the Bureau's Railroad Rehabilitation & Improvement Financing (RRIF) credit program that further accelerate projects?

Measures of Success

(1) How would Bureau assess and monitor the success of the program in accomplishing the goals and objectives?

(2) What would be appropriate key performance indicators that help measure the effectiveness of this demonstration program? Please consider the planned activities under the Program as indicated in Section 1441 of the FAST Act.

Other Considerations

(1) What else should the Bureau consider (in addition to the statutory criteria in Section 1441 of the FAST Act) and/or do to ensure an effective and successful regional accelerator program?

RFI Review

Individuals or entities wishing to respond to the RFI should state their role as well as knowledge and experience in developing or delivering such programs. The Bureau may request additional clarifying information from any or all respondents. Responses shall not exceed 10 pages and have no smaller than 12-point font with 1-inch margin all around. Any additional documents (*e.g.* white papers, brochure materials) would be considered. However, only the first 10 pages will be reviewed. The Bureau is not seeking and will not accept any unsolicited proposals through this RFI.

This RFI does NOT constitute a Request for Proposal and is not to be construed as a commitment, implied or otherwise, by the Bureau or the Department that a procurement action will be issued. Any response related to this RFI is not a request to be added to a bidders list or to receive a copy of a solicitation. There is no entitlement to payment for direct or indirect costs or charges arising as a result of any potential inquiries regarding this solicitation. The Bureau may not respond to any specific questions or comments submitted in response to this notice or information provided as a result of this notification. This RFI is solely for information and planning purposes and should not be construed as a commitment by Bureau or Department for any other purpose.

All interested parties are encouraged to respond fully to this RFI. The Bureau is in no way obligated by the information received and submission by respondents to the RFI is strictly voluntary. Not responding to the RFI does not preclude participation in any future procurement or grant program, if any is issued. However, the Bureau places tremendous value on information received and may utilize it to implement and finalize its Program development strategy.

ALL INFORMATION SUBMITTED SHALL BE *UNCLASSIFIED.* DO NOT SUBMIT ANY PROPRIATARY OR PRICING INFORMATION.

Issued in Washington, DC on February 24, 2020.

Morteza Farajian,

Executive Director.

[FR Doc. 2020–04099 Filed 2–27–20; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

United States Mint

Public Meeting; Notification of Citizens Coinage Advisory Committee

ACTION: Notification of Citizens Coinage Advisory Committee March 10–11, 2020, Public Meeting.

SUMMARY: The United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for March 10, 2020 and March 11, 2020.

Date: March 10, 2020 and March 11, 2020.

Time: 1:00 p.m. to 3:30 p.m. (March 10, 2020) and 9:00 a.m. to 12:30 p.m. (March 11, 2020).

Location: 2nd Floor Conference Room A&B, United States Mint, 801 9th Street NW, Washington, DC 20220.

Subject: Review and discussion of candidate designs for the George H.W. Bush Coin and Barbara Bush Gold Coin and Bronze Medal (March 10, 2020); and the 2021 American Innovation $1 Coin Program (March 11, 2020).

Interested members of the public may either attend the meeting in person or dial in to listen to the meeting at (866) 564–9287/Access Code: 62956028.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by email to *info@ccac.gov.*

The CCAC advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals; advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and makes recommendations with respect to the mintage level for any commemorative coin recommended.

Members of the public interested in attending the meeting in person will be admitted into the meeting room on a first-come, first-serve basis as space is limited. Conference Room A&B can accommodate up to 50 members of the public at any one time. In addition, all persons entering a United States Mint facility must adhere to building security protocol. This means they must consent to the search of their persons and objects in their possession while on government grounds and when they enter and leave the facility, and are prohibited from bringing into the facility weapons of any type, illegal drugs, drug paraphernalia, or contraband.

The United States Mint Police Officer conducting the screening will evaluate whether an item may enter into or exit from a facility based upon Federal law, Treasury policy, United States Mint policy, and local operating procedure; and all prohibited and unauthorized items will be subject to confiscation and disposal.

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, United States Mint Liaison to the CCAC; 801 9th Street NW; Washington, DC 20220; or call 202–354–7208.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: February 24, 2020.

Patrick Hernandez,

Acting Deputy Director, United States Mint.

[FR Doc. 2020–04116 Filed 2–27–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0571]

Agency Information Collection Activity: (Customer Satisfaction Surveys)

AGENCY: National Cemetery Administration (NCA), Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of perceptions of the quality of service afforded by the National Cemetery Administration as judged by next of kin of those interred, or funeral directors who facilitate these interments.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 28, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Mr. James Geleta, National Cemetery Administration (42A), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *James.Geleta@va.gov.* Please refer to ''OMB Control No. 2900–0571'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION:

Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Customer Satisfaction Surveys.

OMB Control Number: 2900–0571.

Type of Review: Extension of a currently approved collection.

Abstract: Improving Customer Service through Effective Performance Management, NCA will conduct surveys to determine the level of satisfaction with existing services among their customers. The surveys will solicit voluntary opinions and are not intended to collect information required to obtain or maintain eligibility for a VA program or benefit. Baseline data obtained through these information collections are used to validate customer service standards.

Affected Public: Individuals and households interring Veterans or eligible dependents, and funeral directors facilitating such interments.

I. National Cemetery Mail Surveys

a. National Cemeteries Next of Kin/Family Member and Funeral Director Satisfaction Surveys

Estimated Annual Burden: 14,500 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 29,000.

b. State or Tribal Veterans Cemeteries Next of Kin/Family Member and Funeral Director Satisfaction Surveys

Estimated Annual Burden: 9,500 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 19,000.

II. Program/Specialized Service Survey

a. VA Memorial Products Next of Kin/ Family Member and Funeral Director Satisfaction Surveys

Estimated Annual Burden: 1, 500 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,000.

III. National Cemetery Focus Groups

a. Focus Groups With Next of Kin

Estimated Annual Burden: 150 hours.

Estimated Average Burden per Respondent: 3 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50.

b. Focus Groups With Funeral Directors

Estimated Annual Burden: 150 hours.

Estimated Average Burden per Respondent: 3 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50.

c. Focus Groups With Veteran Service Organizations

Estimated Annual Burden: 150 hours.

Estimated Average Burden Per Respondent: 3 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50.

IV. National Cemetery Visitor Comment Cards (Local Use)

Estimated Annual Burden: 208 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,500.

By direction of the Secretary.

Danny S. Green,

Department Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–04094 Filed 2–27–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Parts 210, 229, 239, et al.

Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 239, 240, and 249

[Release No. 33–10750; 34–88093; IC–33795; File No. S7–01–20]

RIN 3235–AM48

Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to modernize, simplify, and enhance certain financial disclosure requirements in Regulation S–K. Specifically, we are proposing to eliminate Item 301 of Regulation S–K, Selected Financial Data and Item 302 of Regulation S–K, Supplementary Financial Information because they are largely duplicative of other requirements and to amend Item 303 of Regulation S–K, Management's Discussion & Analysis of Financial Condition and Results of Operations (''MD&A'') to modernize and enhance MD&A disclosures. In combination, the proposed amendments are intended to eliminate duplicative disclosures and modernize and enhance MD&A disclosures for the benefit of investors, while simplifying compliance efforts for registrants.

DATES: Comments should be received by April 28, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment forms (*https://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–01–20 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–01–20. This file number should be included in the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (*https://www.sec.gov/rules/proposed.shtml*). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

We or the staff may add studies, memoranda, or other substantive items to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Angie Kim, Special Counsel, or Courtney Lindsay, Special Counsel, Office of Rulemaking, at (202) 551–3430, or Ryan Milne, Associate Chief Accountant, Office of the Chief Accountant, at (202) 551–3400 in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing to remove and reserve 17 CFR 229.301 (''Item 301'') and 17 CFR 229.302 (''Item 302'') of Regulation S–K under the Securities Act of 1933 (the ''Securities Act'') and the Securities Exchange Act of 1934 (the ''Exchange Act''). The Commission is also proposing to amend 17 CFR 210.1–02(bb) of Regulation S–X (''Rule 1–02(bb)''); 17 CFR 229.303 (''Item 303'') and 17 CFR 229.914 (''Item 914'') of Regulation S–K under the Securities Act and the Exchange Act; 17 CFR 229.1112 (''Item 1112''), 17 CFR 229.1114 (''Item 1114'') and 17 CFR 229.1115 (''Item 1115'') of Regulation AB (a subpart of Regulation S–K) under the Securities Act and the Exchange Act; 17 CFR 239.11 (''Form S–1''), 17 CFR 239.20 (''Form S–20''), 17 CFR 239.25 (''Form S–4''), 17 CFR 239.31 (''Form F–1'') and 17 CFR 239.34 (''Form F–4'') under the Securities Act; 17 CFR 240.14a–101 (''Schedule 14A'') under the Exchange Act; and 17 CFR 249.220f (''Form 20–F''), 17 CFR 249.240f (''Form 40–F''), and 17 CFR 249.308 (''Form 8–K'') under the Exchange Act.

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I. Introduction

A. Background

We are proposing certain amendments to Regulation S–K, and related rules and forms. Specifically, we are proposing (1)

to eliminate Item 301, Selected Financial Data and Item 302, Supplementary Financial Information; and (2) to modernize, simplify, and enhance the disclosure requirements in Item 303, MD&A.[1] We are also proposing certain parallel amendments applicable to financial disclosures provided by foreign private issuers (''FPIs'').[2]

Based on a recommendation in the *Report on Review of Disclosure Requirements in Regulation S–K* (''S–K Study''),[3] Commission staff initiated a comprehensive evaluation of the Commission's disclosure requirements, which included an assessment of the information our rules require registrants to disclose, how and where this information is presented, and how we can better leverage technology as part of these efforts (collectively, the ''Disclosure Effectiveness Initiative'').[4] The objective of the Disclosure Effectiveness Initiative is to improve our disclosure regime for the benefit of both investors and registrants. In connection with the S–K Study and the launch of the Disclosure Effectiveness Initiative, Commission staff received public input on how to improve registrant disclosures.[5] Additionally, in a concept release issued in 2016,[6] the Commission solicited comment on the business and financial disclosure requirements in Regulation S–K. Specifically, the Commission solicited comment on whether these requirements provide the material information that investors need to make informed investment and voting decisions, and whether any of our rules have become outdated or unnecessary, or could otherwise be improved. These proposals also are informed by the objectives of the Fixing America's Surface Transportation Act (the ''FAST Act''), which, among other things, required the Commission to study ways that Regulation S–K could be modernized and simplified.[7] The JOBS Act and the FAST Act, and the work on the Disclosure Effectiveness Initiative and the S–K Study, have focused on modernizing and improving disclosure to reduce costs and burdens while continuing to provide investors with all material information. These proposals continue that work with a particular focus on performance and financial disclosure.

In developing the proposed amendments, we considered input from comment letters the Commission received on the initiatives described above. We also took into account the staff's experience with Regulation S–K arising from the Division of Corporation Finance's disclosure review program and changes in the regulatory and business landscape since the adoption of Regulation S–K over 40 years ago. Regulation S–K was adopted in 1977 to foster uniform and integrated disclosure for registration statements under both the Securities Act and the Exchange Act, and other Exchange Act filings, including periodic and current reports.[8] In 1982, the Commission expanded and reorganized Regulation S–K to be the central repository for its non-financial statement disclosure requirements.[9] The Commission's goals in adopting integrated disclosure were to revise or eliminate overlapping or unnecessary disclosure requirements wherever possible, thereby reducing burdens on registrants and enhancing readability

[1] Concurrent with this release we are issuing guidance on key performance indicators and metrics in MD&A. *See* Commission Guidance on Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–10751 (Jan. 30, 2020) (the ''Companion Guidance'').

[2] *See* Section II.D below. An FPI is any foreign issuer other than a foreign government, except for an issuer that (1) has more than 50% of its outstanding voting securities held of record by U.S. residents; and (2) any of the following: (i) A majority of its officers or directors are citizens or residents of the United States; (ii) more than 50% of its assets are located in the United States; or (iii) its business is principally administered in the United States. *See* 17 CFR 230.405. *See also* 17 CFR 240.3b–4(c).

While the disclosure requirements for Item 9 of Form 1–A for Regulation A issuers are similar to the MD&A requirements under Item 303, we are not proposing to amend Form 1–A at this time. *See* Amendments for Small and Additional Issues Exemptions Under the Securities Act (Regulation A), Release No. 33–9741 (Mar. 25, 2015) [80 FR 21805 (Apr. 20, 2015)], at 21830. With that said, in the preparation of Part II of Form 1–A, Regulation A issuers have the option of disclosing either the information required by (i) the Offering Circular format (including Item 9 referenced above) or (ii) Part I of Forms S–1 or S–11 (except for the financial statements, selected financial data, and supplementary information called for by those forms). Thus, even though the proposed changes would not amend Item 9 of Form 1–A, they would still impact Regulation A issuers that choose to disclose the information required by Part I of Forms S–1 or S–11. *See* Section (a)(1)(ii) of Part II of Form 1–A.

[3] *See Report on Review of Disclosure Requirements in Regulation S–K* (Dec. 2013), available at *https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf.* The report was mandated by Section 108 of the Jumpstart Our Business Startups Act (''JOBS Act''). Public Law 112–106, Sec. 108, 126 Stat. 306 (2012). Section 108 required the Commission to conduct a review of Regulation S–K to comprehensively analyze the current registration requirements and to determine how such requirements can be updated to modernize and simplify the registration process and to reduce the costs and other burdens associated with these requirements for emerging growth companies. Section 108 also required the Commission to provide a report on this review to Congress.

[4] *See SEC Spotlight on Disclosure Effectiveness,* available at *https://www.sec.gov/spotlight/disclosure-effectiveness.shtml.*

[5] In connection with the S–K Study, the Commission received public comments on regulatory initiatives to be undertaken in response to the JOBS Act. *See* Comments on SEC Regulatory Initiatives Under the JOBS Act: Title I—Review of Regulation S–K, available at *http://www.sec.gov/comments/jobs-title-i/reviewreg-sk/reviewreg-sk.shtml.*

Similarly, to facilitate public input on the Disclosure Effectiveness Initiative, members of the public were invited to submit comments. *See* Request for Public Comment, available at *http://www.sec.gov/spotlight/disclosure-effectiveness.shtml.* Public comments received to date on the Disclosure Effectiveness Initiative are available on our website. *See* Comments on Disclosure Effectiveness, available at *https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness.shtml.*

[6] *See Business and Financial Disclosure Required by Regulation S–K,* Release No. 33–10064 (Apr. 13, 2016) [81 FR 23915 (Apr. 22, 2016)] (''Concept Release''). Comment letters related to the Concept Release are available at *https://www.sec.gov/comments/s7-06-16/s70616.htm.* Unless otherwise indicated, comments cited in this release are to the public comments on the Concept Release.

[7] Public Law 114–94, Sec. 72003, 129 Stat. 1311 (2015) (requiring, among other things, that the SEC conduct a study, issue a report, and issue a proposed rule on the modernization and simplification of Regulation S–K). Among other things, the FAST Act directed the Commission to study Regulation S–K to: Determine how to best modernize and simplify such requirements in a manner that reduces costs and burdens on registrants while continuing to provide all material information; emphasize a company-by-company approach that allows relevant and material information to be disseminated without boilerplate language or static requirements while preserving completeness and comparability of information across registrants; and evaluate methods of information delivery and presentation and explore methods for discouraging repetition and the disclosure of immaterial information. In 2016, the staff published the Report on Modernization and Simplification of Regulation S–K (the ''FAST Act Report''). *See Report on Modernization and Simplification of Regulation S–K* (Nov. 23, 2016), available at *https://www.sec.gov/reportspubs/sec-fast-act-report-2016.pdf.* Comment letters received in response to the FAST Act Report are available at *https://www.sec.gov/comments/fast/fast.htm.*

In connection with the FAST Act Report, the Commission proposed and then adopted certain amendments to Regulation S–K. *See FAST Act Modernization and Simplification of Regulation S–K,* Release No. 33–10425 (Oct. 11, 2017) [82 FR 50988 (Nov. 2, 2017)] (''FAST Act Proposing Release'') and *FAST Act Modernization and Simplification of Regulation S–K,* Release No. 33–10618 (Mar. 20, 2019) [84 FR 12674 (Apr. 20, 2019)] (''FAST Act Adopting Release'').

[8] The Commission adopted the initial version of Regulation S–K following issuance of the report by the Advisory Committee on Corporate Disclosure led by former Commissioner A.A. Sommer, Jr., which recommended adoption of a single integrated disclosure system. *See H. Comm. on Interstate and Foreign Commerce, Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission,* 95th Cong., 1st Sess., at 95–29 (Comm. Print 1977), available at *http://3197d6d14b5f19f2f440-5e13d29c4c016cf96cbbfd197c579b45.r81.cf1.rackcdn.com/collection/papers/1970/1977_1103_AdvisoryDisclosure.pdf.* This version of Regulation S–K included only two disclosure requirements—a description of business and a description of properties.

[9] *See Adoption of Integrated Disclosure System,* Release No. 33–6383 (Mar. 3, 1982) [47 FR 11380 (Mar. 16, 1982)] (''1982 Integrated Disclosure Adopting Release'').

without affecting the provision of material information to investors.[10] The amendments we are proposing in this release would continue to advance these goals.

Additionally, we reviewed Items 301, 302, and 303 in light of advancements in technology (in particular the availability of past financial statements and other disclosure made in filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system) and changes in requirements under U.S. Generally Accepted Accounting Principles (''U.S. GAAP''). We also considered the benefits and appropriateness of a principles-based approach in reviewing these Items and our proposals are intended to promote the principles-based nature of MD&A.[11]

B. Overview of the Proposed Amendments

We are proposing changes to Items 301, 302, and 303 of Regulation S–K that would reduce duplicative disclosure and focus on material information. Specifically, we propose to eliminate:

- Item 301—Selected Financial Data;
- Item 302—Supplementary Financial Information; and
- Item 303(a)(5)—MD&A, *Tabular disclosure of contractual obligations.*

We are also proposing changes to modernize, simplify, and enhance disclosure requirements in Item 303 in order to improve these disclosures for investors and simplify compliance efforts for registrants. Specifically, these proposed revisions would:

- Add a new Item 303(a), *Objective,* to state the principal objectives of MD&A;
- Amend Item 303(a), *Full fiscal years* (proposed Item 303(b)) and Item 303(b), *Interim periods* (proposed Item 303(c)) to modernize, clarify, and streamline the items;
- Replace Item 303(a)(4), *Off-balance sheet arrangements,* with an instruction regarding the need to discuss such obligations in the broader context of MD&A;
- Add a new Item 303(b)(4), *Critical accounting estimates,* to clarify and codify Commission guidance on critical accounting estimates;[12]
- Eliminate current Item 303(c), *Safe harbor,* in light of the proposed replacement of Item 303(a)(4) and elimination of Item 303(a)(5); and
- Eliminate Item 303(d), *Smaller reporting companies*[13] in light of the proposed elimination of Items 303(a)(3)(iv) and 303(a)(5).

We are also proposing certain parallel amendments to Forms 20–F and 40–F, including Item 3.A of Form 20–F (Selected Financial Information), Item 5 of Form 20–F (Operating and Financial Review and Prospects), General Instruction B.(11) of Form 40–F (Off-Balance Sheet Arrangements), and General Instruction B.(12) of Form 40–F (Tabular Disclosure of Contractual Arrangements).[14] The following table summarizes some of the changes we are proposing, as described more fully in Section II (Proposed Amendments):[15]

Current item or issue	Summary description of proposal	Principal objective(s)	Corresponding FPI change(s)?	Discussed below in section
Item 301, *Selected financial data.*	Registrants would no longer be required to provide 5 years of selected financial data.	Modernize disclosure requirement in light of technological developments and simplify disclosure requirements.	Yes	II.A & II.D.1.
Item 302(a), *Supplementary financial information.*	Registrants would no longer be required to provide 2 years of selected quarterly financial data.	Reduce repetition and focus disclosure on material information. Modernize disclosure requirement in light of technological developments.	N/A	II.B.1.
Item 303(a), *MD&A*	Clarify the objective of MD&A and streamline the fourteen instructions.	Simplify and enhance the purpose of MD&A	Yes	II.C.1 & II.D.1.
Item 303(a)(2), *Capital resources.*	Registrants would disclose material cash requirements, including commitments for capital expenditures, as of the latest fiscal period, the anticipated source of funds needed to satisfy such cash requirements, and the general purpose of such requirements.	Modernize and enhance disclosure requirements to account for capital expenditures that are not necessarily capital investments.	Yes	II.C.2 & II.D.1.
Item 303(a)(3)(ii), *Results of operations.*	Registrants would disclose known events that are reasonably likely to cause a material change in the relationship between costs and revenues, such as known or reasonably likely future increases in costs of labor or materials or price increases or inventory adjustments.	Clarify item requirement by using a disclosure threshold of ''reasonably likely,'' which is consistent with the Commission's interpretative guidance on forward-looking statements.	Yes	II.C.3 & II.D.1.
Item 303(a)(3)(iii), *Results of operations.*	Clarify that a discussion of the *reasons* underlying material *changes* in net sales or revenues is required.	Clarify MD&A disclosure requirements by codifying existing Commission guidance.	Yes	II.C.4 & II.D.1.

[10] *See id.*

[11] *See Concept Release on Management's Discussion and Analysis of Financial Condition and Operations,* Release No. 33–6711 (Apr. 23, 1987) [52 FR 13715 (Apr. 24, 1987)] (stating that when the Commission adopted MD&A as a separate disclosure requirement, the rules remained intentionally general in nature: ''The Commission believed that a flexible approach would elicit more meaningful disclosure and avoid boilerplate discussions which a more specific approach could foster. Further, the Commission reasoned that, because each registrant is unique, no one checklist could be fashioned to cover all registrants comprehensively.'').

[12] *See Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operation,* Release No. 33–8350 (Dec. 19, 2003) [68 FR 75056 (Dec. 29, 2003)] (the ''2003 MD&A Interpretive Release'').

[13] Item 10 of Regulation S–K defines a smaller reporting company (''SRC'') as a registrant that is not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent that is not an SRC that: Had a public float of less than $250 million; or had annual revenues of less than $100 million, and either no public float or a public float of less than $700 million. Business development companies (''BDCs'') do not fall within the SRC definition and are a type of closed-end investment company that is not registered under the Investment Company Act.

[14] We discuss our proposals that would affect FPIs in Section II.D below.

[15] The information in this table is not comprehensive and is intended only to highlight some of the more significant aspects of the current rules and proposed amendments. It does not reflect all of the proposed amendments or all of the rules and forms that are affected. All changes are discussed in their entirety below. As such, this table should be read together with the referenced sections and the complete text of this release.

Current item or issue	Summary description of proposal	Principal objective(s)	Corresponding FPI change(s)?	Discussed below in section
Item 303(a)(3)(iv), *Results of operations*. Instructions 8 and 9 (Inflation and price changes).	The item and instructions would be eliminated. Registrants would still be required to discuss these matters if they are part of a known trend or uncertainty that has had, or the registrant reasonably expects to have, a material favorable or unfavorable impact on net sales, or revenue, or income from continuing operations.	Encourage registrants to focus on material information that is tailored to a registrant's businesses, facts, and circumstances.	Yes	II.C.5.
Item 303(a)(4), *Off-balance sheet arrangements*.	The item would be replaced by a new instruction added to Item 303. Under the new instruction, registrants would be required to discuss commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have, or are reasonably likely to have, a material current or future effect on such registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements, or capital resources even when the arrangement results in no obligation being reported in the registrant's consolidated balance sheets.	Prompt registrants to consider and integrate disclosure of off-balance sheet arrangements within the context of their MD&A.	Yes	II.C.6, II.D.1, & II.D.2.
Item 303(a)(5), *Contractual obligations*.	Registrants would no longer be required to provide a contractual obligations table.	Promote the principles-based nature of MD&A and simplify disclosures by reducing redundancy.	Yes	II.C.7, II.D.1, & II.D.2.
Instruction 4 (Material changes in line items).	Incorporate a portion of the instruction into proposed Item 303(b). Clarify that where there are material changes in a line item, including where material changes within a line item offset one another, disclosure of the underlying reasons for these material changes in quantitative and qualitative terms is required.	Enhance analysis in MD&A. Clarify MD&A disclosure requirements by codifying existing Commission guidance on the importance of analysis in MD&A.	Yes	II.C.1 & II.D.1.
Item 303(b), *Interim periods*	Registrants would be permitted to compare their most recently completed quarter to either the corresponding quarter of the prior year or to the immediately preceding quarter. Registrants subject to Rule 3–03(b) of Regulation S–X would be afforded the same flexibility.	Allow for flexibility in comparison of interim periods to enhance the disclosure provided to investors.	N/A	II.C.9.
Critical Accounting Estimates	Explicitly require disclosure of critical accounting estimates.	Facilitate compliance and improve resulting disclosure. Eliminate disclosure that duplicates the financial statement discussion of significant policies. Promote meaningful analysis of measurement uncertainties.	Yes	II.C.8 & II.D.1.

We discuss the proposed amendments below in the order that each Item appears in Regulation S–K. We welcome feedback and encourage interested parties to submit comments on any or all aspects of the proposals. When commenting, it would be most helpful if you include the reasoning behind your position or recommendation.

II. Description of the Proposed Amendments

A. Selected Financial Data (Item 301)

Item 301 [16] requires registrants to furnish selected financial data in comparative tabular form for each of the registrant's last five fiscal years and any additional fiscal years necessary to keep the information from being misleading. Instruction 1 to Item 301 states that the purpose of the item is to supply in a convenient and readable format selected financial data that highlights certain significant trends in the registrant's financial condition and results of operations. Instruction 2 to Item 301 lists specific items that must be included, subject to appropriate variation to conform to the nature of the registrant's business, and provides that registrants may include additional items they believe would enhance an understanding of, and highlight, other trends in their financial condition or results of operations.[17]

SRCs are not required to provide Item 301 information.[18] Emerging growth companies (''EGCs'') [19] that are providing the information called for by Item 301 in a Securities Act registration statement, need not present selected financial data for any period prior to the earliest audited financial statements presented in connection with the EGC's initial public offering (''IPO'') of its common equity securities.[20] In addition, an EGC that is providing the information called for by Item 301 in a registration statement, periodic report, or other report filed under the Exchange Act need not present selected financial

[16] *See also* Section II.D below for a discussion of related amendments to Form 20–F.

[17] Instruction 2 to Item 301 of Regulation S–K states that, subject to appropriate variation to conform to the nature of the registrant's business, the following items shall be included in the table of financial data: Net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock (including long-term debt, capital leases, and redeemable preferred stock); and cash dividends declared per common share.

[18] Item 301(c) of Regulation S–K [17 CFR 229.301(c)].

[19] An EGC is defined as a company that has total annual gross revenues of less than $1.07 billion during its most recently completed fiscal year and, as of December 8, 2011, had not sold common equity securities under a registration statement. A company continues to be an EGC for the first five fiscal years after it completes an IPO, unless one of the following occurs: Its total annual gross revenues are $1.07 billion or more; it has issued more than $1 billion in non-convertible debt in the past three years; or it becomes a ''large accelerated filer,'' as defined in Exchange Act Rule 12b–2. *See* Securities Act Rule 405 and Exchange Act Rule 12b–2.

[20] Item 301(d)(1) of Regulation S–K.

data for any period prior to the earliest audited financial statements presented in connection with its first registration statement that became effective under the Exchange Act or Securities Act.[21]

In the Concept Release, the Commission solicited comment on whether to retain, modify, or eliminate Item 301.[22] The Commission also solicited comment on the cost of this disclosure and whether information on the earliest two of the last five fiscal years is available without unreasonable cost or expense. Additionally, the Commission solicited comment on the utility of this disclosure.

Many commenters recommended eliminating Item 301 completely or questioned its usefulness.[23] One of these commenters stated that ''absent a requirement to provide narrative discussions of trends, the current requirement under [Item 301] seems less useful in an electronic era where historical financial information is easily accessible.'' [24] Another commenter stated that it did not believe that presenting five years of information is useful to an investor and similarly noted that the information is accessible through EDGAR.[25] An additional commenter questioned whether selected financial data was necessary in light of data-tagged financial statements.[26] A number of commenters recommended revising the item to reduce burdens, if retained.[27]

One of these commenters noted the potentially significant costs in public offerings for comfort letters associated with this disclosure.[28] This commenter stated that where prior years have been audited by a different accounting firm, companies typically incur significant additional costs, both in terms of direct costs and internal resources, to obtain comfort letters. Additionally, this commenter stated that if Item 301 information is required for periods where no audited financial statements are otherwise required, the costs can be much more substantial.

Another commenter encouraged the Commission to ask investors whether the utility of the information provided in response to Item 301 justify the costs of presenting it.[29] This commenter stated that, while this required disclosure is limited to a small number of line items, certain of these items effectively require preparation of a full income statement and balance sheet to derive information for the earlier two years.

Many commenters recommended revising Item 301 to allow registrants to omit the earliest two years.[30] Some of these commenters noted that providing disclosure of the earliest two years often creates challenges for registrants, including non-EGC issuers conducting IPOs.[31] A few of these commenters recommended a practicability exception allowing registrants to omit the earliest two years when the information cannot be provided without unreasonable cost or expense.[32] Others recommended that the earliest two years should be required only when necessary to make the current financial data not misleading,[33] or to illustrate material trends.[34]

A few commenters supported retaining Item 301.[35] Some of these commenters stated that having the information in one place keeps investors from having to review multiple sources to obtain this information,[36] with one of these commenters noting that investors sometimes rely on printed copies.[37] Two of the commenters also stated that requiring this disclosure for five years is an appropriate timeframe,[38] with one stating that five years is more likely to capture the effects that business cycles may have on a registrant.[39] Another stated that Item 301 information should be easy for companies to disclose because the information is already in company records.[40]

We propose to eliminate Item 301. When the precursor to Item 301 was adopted in 1970, prior annual reports were not quickly and easily accessible.[41] Today, the information required by Item 301 can be readily accessed and compiled through prior filings on EDGAR.[42] In addition, this information is tagged using eXtensible Business Reporting Language (''XBRL'') data format. As noted above, there are currently certain exceptions to Item 301 for EGC and SRC registrants.[43] Our proposals would not affect these exceptions or result in any further loss of information from these registrants.[44]

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[21] Item 301(d)(2) of Regulation S–K.

[22] *See* Concept Release, at 23940.

[23] *See, e.g.,* letters from New York State Society of Certified Public Accountants (July 19, 2016) (''NYSSCPA''), Aflac, Inc. (July 19, 2016) (''AFLAC''), Ernst & Young LLP (July 21, 2016) (''E&Y''), PNC Financial Services Group (July 21, 2016) (''PNC''), Edison Electric Institute and American Gas Association (July 21, 2016) (''EEI and AGA''), XBRL US, Inc. (July 21, 2016), Chevron Corporation (July 22, 2016) (''Chevron''), Fenwick West LLP (Aug. 1, 2016) (''Fenwick''), Grant Thornton LLP (July 21, 2016) (''Grant Thornton''), Northrop Grumman Corporation (Sept. 27, 2016) (''Northrop Grumman''), General Motors Company (Sept. 30, 2016) (''General Motors''), and Financial Executives International (Oct. 3, 2016) (''FEI'').

[24] *See* letter from Grant Thornton.

[25] *See* letter from NYSSCPA.

[26] *See* letter from E&Y. This commenter also suggested that the Commission ''encourage registrants to include tables of selected financial data in the summary section of their annual reports if the information would highlight the key content and developments disclosed in the full report.''

[27] *See, e.g.,* letters from NYSSCPA, AFLAC, E&Y, Fenwick, General Motors, and FEI. These commenters suggested: Limiting the disclosure requirement to two or three years (letters from NYSSCPA and AFLAC); making disclosure of the earlier years voluntary and allowing all registrants to adopt a ''build up'' approach to Item 301 similar to the option available to EGCs (letters from E&Y and Fenwick); making the selected financial data table voluntary and permitting registrants to present only a retroactive accounting change for the periods presented in the financial statements if the periods prior to those presented in the financial statements cannot be recast without unreasonable effort or cost (letter from General Motors); and allowing hyperlinks to access five-year data if placed within a separate 'company profile' section of EDGAR (letter from FEI).

[28] *See* letter from Fenwick.

[29] *See* letter from PricewaterhouseCoopers LLP (July 21, 2016) (''PWC'') (stating that providing the earliest two years can be time consuming and costly, such as in circumstances where the information has not been previously provided (*e.g.,* in an initial registration statement)).

[30] *See, e.g.,* letters from Deloitte & Touche LLP (July 15, 2016) (''Deloitte''), BDO USA, LLP (July 20, 2016) (''BDO''), U.S. Chamber of Commerce (Jul. 20, 2016) (''Chamber''), FedEx Corporation (''FedEx'') (Jul. 21, 2016), Corporate Governance Coalition for Investor Value (July 20, 2016) (''CGCIV''), Center for Audit Quality (July 21, 2016) (''CAQ''), Securities Industry and Financial Markets Association (July 21, 2016) (''SIFMA''), National Association of Real Estate Investment Trusts (July 21, 2016) (''NAREIT''), Allstate Insurance Company (July 21, 2016) (''Allstate''), Davis Polk & Wardwell LLP (July 22, 2016) (''Davis Polk''), Stephen Percoco (July 24, 2016) (''S. Percoco''), and Shearman & Sterling LLP (Aug. 31, 2016) (''Shearman'').

[31] *See, e.g.,* letters from Deloitte and CAQ.

[32] *See, e.g.,* letters from BDO, Davis Polk, and S. Percoco.

[33] *See, e.g.,* letters from Chamber, FedEx, and CGCIV.

[34] *See, e.g.,* letters from NAREIT and SIFMA.

[35] *See, e.g.,* letters from R.G. Associates, Inc. (July 6, 2016) (''RGA''), California Public Employees' Retirement System (July 21, 2016) (''CalPERS''), California State Teachers' Retirement System (July 21, 2016), and CFA Institute (Oct. 6, 2016).

[36] *See* letters from RGA and CFA Institute.

[37] *See* letter from RGA.

[38] *See* letters from CalPERS and CFA Institute.

[39] *See* letter from CFA Institute.

[40] *See* letter from CalPERs.

[41] Before adopting the precursor to Item 301, the Commission implemented a microfiche system in 1968 that supplemented its hard copy reproduction service and was intended to ''facilitate wider, more economical and more rapid distribution'' of Exchange Act reports. *See Disclosure to Investors—A Reappraisal of Federal Administrative Policies under the '33 and '34 Acts, Policy Study,* Mar. 27, 1969, available at *http://www.sechistorical.org/museum/galleries/tbi/gogo_d.php,* at 313.

[42] In addition, filings are generally available on registrants' websites and other third-party websites.

[43] We recognize an exception to this accessibility would be SRCs and EGCs that are either filing an initial registration statement or those that have not been public for at least two fiscal years following their initial registration statement.

[44] Based on Ives Group's Audit Analytics data, during the period from April 5, 2012 through December 31, 2018, EGC issuers accounted for approximately 1,267 out of 1,440, or approximately 88%, of priced exchange-listed IPOs (excluding deals identified as mergers, spin-offs, or fund offerings). SRCs are often also EGCs so these statistics of IPOs conducted by EGCs likely

In adding the requirement for selected financial data to Regulation S–K, the Commission stated that Item 301 was ''relevant primarily where it can be related to trends in the registrant's continuing operations.'' [45] However, Item 303 specifically calls for disclosure of material trend information.[46] In addition, since Item 301 has been incorporated into Regulation S–K, the Commission has issued guidance emphasizing trend disclosure in MD&A.[47] In light of the requirement for discussion and analysis of trends in Item 303, we believe requiring five years of selected financial data is not necessary to achieve the original purpose of providing trend disclosure. Registrants may, however, continue to include a tabular presentation of relevant financial or other information discussed in MD&A, to the extent they believe that such a presentation would be useful to an understanding of the disclosure. We believe that eliminating Item 301 would continue to allow registrants the flexibility to present a meaningful MD&A discussing material trend information, while easing compliance burdens on registrants.

We acknowledge that some commenters suggested we revise Item 301 to require only presentation of the same number of years as included in the financial statements, or otherwise provide accommodations to limit the number of years presented. However, we believe that such an approach would result in disclosure that would be largely duplicative of information in the financial statements, and therefore may have limited utility. We also acknowledge that some commenters recommended that we retain Item 301 without any revisions or enhance the item requirement. We believe, however, that the incremental utility of having a full five years of selected financial information is not justified by the cost to prepare such disclosures, particularly since Item 303 already requires disclosure of material trends and such other information necessary to an understanding of the registrant's financial conditions, changes in financial condition, and results of operations.[48]

Request for Comment

1. Should we eliminate Item 301, as proposed? Would eliminating Item 301 result in the loss of material information that is otherwise not available to investors, such as through prior filings on EDGAR? If so, what information would be lost, and are there alternatives we should consider that would capture this information?

2. Is the option for investors to compile selected financial information from current or prior filings an adequate substitute for the separate presentation of that information in Item 301? Do current XBRL-tagging requirements facilitate compilation and comparison of selected financial information?

3. Are the requirements of Item 303 sufficient to provide investors with necessary disclosure regarding trends in a registrant's results of operations and financial condition?

4. Alternatively, if Item 301 should be retained, should registrants be allowed to provide less than five years of selected financial data? If so, what is the appropriate number of years that should be provided, and in what circumstances?

5. What are the costs to registrants of providing five years of selected financial data? Would those costs significantly decrease if the Commission limited selected financial data to only those years presented in the filing's historical financial statements?

6. How do market participants use the selected financial data disclosures? Do market participants rely on any particular fiscal year or years more than others (*e.g.,* the most recent two or three years)? Would there be a cost to obtain selected financial data disclosures elsewhere and, if so, what would that cost be?

7. Would registrants continue to provide selected financial data even if they are no longer required to do so? If so, for how many years?

8. If we were to retain Item 301, should we modify the line items required to be included in the presentation pursuant to Instruction 2? [49] For example, should we allow registrants more discretion regarding which line items to present?

9. The Commission recently proposed to extend to BDCs the requirement for registered closed-end investment companies to disclose ''financial highlights.'' [50] The disclosure required by Item 301 and the financial highlights requirement is similar in many respects. If we were to adopt the financial highlights requirement and retain Item 301, should we specifically exclude BDCs from the Item 301 requirement?

B. Supplementary Financial Information (Item 302)

1. Supplementary Financial Information (Item 302(a))

Item 302(a)(1) requires disclosure of selected quarterly financial data of specified operating results [51] and Item 302(a)(2) requires disclosure of variances in these results from amounts previously reported on a Form 10–Q.[52] Item 302(a) does not apply to SRCs or FPIs and, because it only applies to companies that already have a class of securities registered under Section 12 of the Exchange Act at the time of filing, it does not apply to first time registrants conducting an IPO and registrants who are only required to file reports pursuant to Section 15(d) of the Exchange Act.[53] When Item 302(a) applies, it requires certain information for each full quarter within the two most recent fiscal years and any subsequent period for which financial statements are included or required by Article 3 of Regulation S–X.[54] Item 302(a)(3) requires a description of the effect of any discontinued operations and unusual or infrequently occurring items recognized in each quarter, as well as the aggregate effect and the nature of year-end or other adjustments that are material to the results of that quarter.[55]

encompass the majority of IPOs conducted by SRCs. In addition, for reasons discussed in this release, registrants would still be required to discuss and analyze material trends, which was one of the intended purposes of Item 301. Accordingly, in the majority of instances, we believe that our proposal would not result in a loss of disclosure.

[45] *Amendments to Annual Report Form, Related Forms, Rules, Regulations, and Guides; Integration of Securities Acts Disclosure Systems,* Release No. 33–6231 (Sept. 2, 1980) [45 FR 63630 (Sept. 25, 1980)] (''1980 Form 10–K Adopting Release'').

[46] *See, e.g.,* Item 303(a)(3).

[47] *See, e.g., Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures,* Release No. 33–6835 (May 18, 1989) [54 FR 22427 (May 24, 1989)] (the ''1989 MD&A Interpretative Release'') and 2003 MD&A Interpretive Release.

[48] *See* Item 303(a).

[49] *See* Instruction 2 to Item 301, *supra* note 17.

[50] *See Securities Offering Reform for Closed-End Investment Companies,* Release No. 33–10619 (Mar. 20, 2019) [84 FR 14448 (Apr. 10, 2019)], at 14472.

[51] Item 302(a)(1) of Regulation S–K [17 CFR 229.302(a)(1)]. Item 302(a)(1) specifies disclosure of: Net sales; gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered); income (loss) from continuing operations; per share data based upon income (loss) from continuing operations; net income (loss); and net income (loss) attributable to the registrant.

[52] Item 302(a)(2) of Regulation S–K [17 CFR 229.302(a)(2)]. When the data supplied pursuant to Item 302(a) varies from amounts previously reported on the Form 10–Q filed for any quarter, such as when a combination between entities under common control occurs or where an error is corrected, the registrant must reconcile the amounts given with those previously reported and describe the reason for the difference.

[53] Item 302(a)(5) and (c) of Regulation S–K [17 CFR 229.302(a)(5) and (c)].

[54] Item 302(a)(1) and (a)(3) [17 CFR 229.302(a)(1) and (a)(3)].

[55] Item 302(a)(3) of Regulation S–K [17 CFR 229.302(a)(3)]. The requirement applies to items recognized in each full quarter within the two most

Continued

If a registrant's financial statements have been reported on by an accountant, Item 302(a)(4) requires that accountant to follow appropriate professional standards and procedures regarding the data required by Item 302(a).[56]

In the Concept Release, the Commission solicited input on whether to retain, eliminate, or modify Item 302(a). The Commission also solicited input on the importance of information required by Item 302(a) that is not duplicative of previously provided information, such as a separate presentation of certain fourth quarter information and the effect of a retrospective change in the earliest of the two years.[57] The Commission also sought input on the costs and benefits of this disclosure item.

A few commenters recommended retaining and expanding Item 302(a).[58] One of these commenters stated that it ''sense[d] that investors find it useful to see fourth quarter results presented discretely, rather than having to infer them based on the annual results and the interim results through the third quarter.'' [59] The commenter also stated that, where the data changes from what was previously reported, having the revised data in an annual report allows investors to understand the effects of the changes sooner. Another of these commenters noted the importance of fourth quarter data, stating that, in the absence of a Form 8–K filing containing such information, analysts must derive the information from the annual report and the three previously filed quarterly reports and that ''any numbers derived from this method are at best approximate.'' [60] This commenter stated that, ''if a requirement to file a full fourth-quarter report is too onerous . . . [Item 302(a)] could be enhanced to include more data from the income statement beyond revenues, net income, and earnings per share.'' Yet another commenter recommended that Item 302(a) be revised to ensure the information is presented in a consistent manner across registrants.[61]

Multiple commenters recommended streamlining Item 302(a).[62] Several of these commenters recommended revising Item 302(a)(5) to accommodate newly reporting registrants in an annual report or a follow-on offering where the registrant would be required to provide Item 302(a) data for interim periods prior to those presented in the IPO registration statement.[63] Another commenter recommended only requiring Item 302(a) disclosure when there is a material retrospective change in the financial statements that has not been previously filed.[64] The commenter also stated that some companies voluntarily provide fourth quarter data in earnings releases.

Most commenters recommended eliminating Item 302(a) altogether,[65] with many of these commenters stating that this item is duplicative of disclosures provided in prior filings.[66] Two of these commenters stated that ''the disclosure required under Item 302(a) is yet another example of duplicative information that unnecessarily complicates and lengthens disclosure documents, while increasing burdens for registrants and offering little value to investors.'' [67] Another commenter stated that, though the original intent of the item was ''to help investors understand the pattern of corporate activities throughout a fiscal year,'' not all businesses are seasonal and the information provided by Item 302(a) is already available in Form 10–Qs.[68] This commenter supported a flexible approach for Item 302(a) disclosure that would allow registrants to determine when and if this disclosure would be relevant and enhance an investor's understanding of the business throughout the year. This commenter also stated that fourth quarter data can be easily derived from prior filings without needing to separately reference the fourth quarter information.

We propose to eliminate Item 302(a). Like many commenters, we believe that this prescriptive requirement largely results in duplicative disclosures. The precursor to Item 302 was adopted at a time when quarterly data was ''reported on an extremely abbreviated basis.'' [69] The item was intended to help investors understand the pattern of corporate activities throughout a fiscal period by disclosing trends over quarterly periods to reflect seasonal patterns.[70] Today, most of the financial data required by Item 302(a) can be found in prior quarterly reports, which are readily available on EDGAR. While Item 302(a) requires separate disclosure of certain fourth quarter information, which is not otherwise required to be disclosed, we believe this data generally can be calculated from a registrant's Form 10–K and third quarter Form 10–Q. We believe that eliminating this prescriptive requirement will encourage registrants to take a more principles-based approach to presenting information called for by Item 302(a) in their filings and specifically, in MD&A.

Eliminating Item 302(a) may result in the loss of a separate presentation of certain fourth quarter information and, where applicable, the effect of a retrospective change in the earliest of the two years.[71] Where fourth quarter results are material or there is a material retrospective change, existing requirements would still elicit this disclosure. Specifically, Item 303 requires registrants to discuss unusual events that materially affected reported income and other matters that are necessary to understand their results of operations.[72] The item also requires

recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included.

[56] Item 302(a)(4) of Regulation S–K [17 CFR 229.302(a)(4)].

[57] Because Item 302(a)(2) requires disclosure of variances in results from amounts previously reported for the two most recent fiscal years, the effect of a retrospective change in any quarter for which a Form 10–Q is filed in the more recent of the two fiscal years will be disclosed in the selected quarterly data. However, absent Item 302(a)(2), this variance would not be specifically required to be disclosed until the following year in the corresponding fiscal quarter in which the retrospective change occurred. Additionally, disclosure in the Form 10–Q for this corresponding fiscal quarter would not include the effects of this change in the earliest of the two years presented in the Form 10–K, as this Form 10–Q would be limited to the current and prior-year interim periods.

[58] *See* letters from BDO, Bloomberg LP (July 21, 2016) (''Bloomberg''), and CFA Institute.

[59] *See* letter from BDO.

[60] *See* letter from Bloomberg.

[61] *See* letter from CFA Institute.

[62] *See, e.g.,* letters from Fenwick, Deloitte, CAQ, E&Y, Grant Thornton, and PWC.

[63] *See, e.g.,* letters from Deloitte, CAQ, E&Y, Grant Thornton, and PWC. Suggested accommodations included: Requiring registrants to begin presenting selected quarterly data in their second annual report (*see* letters from E&Y, PWC, and CAQ); and allowing new registrants to present supplementary financial data in registration statements and annual reports that ''build'' from the quarterly information that has been separately filed in Exchange Act reports subsequent to an IPO (*see* letters from Deloitte, CAQ, E&Y, Grant Thornton, and PWC).

[64] *See* letter from Fenwick. In this commenter's view, outside of such situations, quarterly financial information in a registrant's annual report is redundant with information available on EDGAR. *See also* letter from Crowe.

[65] *See, e.g.,* letters from AFLAC, Chamber, FedEx, CGCIV, UnitedHealth Group, Inc. (July 21, 2016) (''United Health''), SIFMA, PNC, EEI and AGA, NAREIT, Davis Polk, S. Percoco, National Investor Relations Institute (''NIRI''), Northrop Grumman, FEI, and General Motors.

[66] *See, e.g.,* letters from AFLAC, Chamber, FedEx, CGCIV, UnitedHealth Group, SIFMA, PNC, EEI and AGA, NAREIT, NIRI, Northrop Grumman, FEI, and General Motors.

[67] *See* letters from Chamber and CGCIV.

[68] *See* letter from FEI.

[69] *See Interim Financial Data: Proposals to Increase Disclosure,* Release No. 34–11142 (Dec. 19, 1974) [40 FR 1079 (Jan. 6, 1975)], at 1080.

[70] *See Interim Financial Reporting: Increased Disclosures,* Release No. 33–5611 (Sept. 10, 1975) [40 FR 46107 (Oct. 6, 1975)], at 46108.

[71] *See supra* note 51.

[72] Item 303(a)(3)(i) requires registrants to describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and indicate the extent to which income was so affected. In addition, the item requires registrants to describe any other significant

registrants to discuss known trends and uncertainties that have had or that registrants reasonably expect to have an impact on net sales, revenues, or operating income.[73] Also, U.S. GAAP requires disclosure of disposals of components of an entity and unusual or infrequently occurring items recognized for the fourth quarter if interim data and disclosures are not separately reported for the fourth quarter.[74] Additionally, Item 101(c)(1)(v) of Regulation S–K requires disclosure of the extent to which a business is seasonal.[75]

Request for Comment

10. Should we eliminate Item 302(a), as proposed? Would eliminating Item 302(a) result in the loss of material information that is otherwise not available to investors, such as through prior filings on EDGAR? If so, what material information would be lost, and are there alternatives we should consider that would capture this information?

11. Do market participants find Item 302(a) disclosures to be helpful? If so, how do market participants use the disclosures? Does the utility of the disclosures vary by industry or business? If so, for which industries or businesses are Item 302(a) disclosures helpful?

12. Is the option for investors to compile supplemental financial information through searches of prior filings an adequate substitute for Item 302(a)? Do current XBRL-tagging requirements reliably facilitate compilation and comparison of supplemental financial information? Would there be a cost to investors of compiling and/or calculating information presented in Item 302(a) from other sources and, if so, what would that cost be?

13. What are the burdens on registrants to provide the information required by Item 302(a)?

14. Is a separate presentation of certain fourth quarter data material to investors? If so, is such information material for all companies or industries? Are investors able to readily calculate this fourth quarter data from a registrant's Form 10–K and related third quarter Form 10–Q? What are the challenges to making such calculations?

15. Would registrants continue to provide fourth quarter data in the absence of a requirement to do so (*e.g.,* through voluntary earnings releases)? If we eliminate Item 302(a), should we require registrants to disclose certain fourth quarter data elsewhere in an annual report, such as in MD&A? What would be the cost of this approach? Should we require registrants to disclose any variances to its previously issued quarterly information that would inhibit the calculation of fourth quarter data by market participants? What would be the costs of this approach?

16. Should we retain Item 302(a) but allow a newly reporting registrant to exclude Item 302(a) data for interim periods prior to those presented in its IPO registration statement?[76]

2. Information About Oil and Gas Producing Activities (Item 302(b))

Item 302(b)[77] requires registrants engaged in oil and gas producing activities, other than SRCs, to disclose information about those activities for each period presented. The disclosure called for by Item 302(b) is also required by U.S. GAAP.[78] However, unlike the U.S. GAAP requirement, Item 302(b) incrementally requires that the disclosure be provided for each period presented.

In 2018, the Commission referred certain of its disclosure requirements to the FASB for potential incorporation into U.S. GAAP because these items largely overlapped with, but required information incremental to, U.S. GAAP.[79] Item 302(b) was among the items referred to the FASB.[80]

On May 6, 2019, the FASB issued proposed Accounting Standards Update, *Disclosure Improvements: Codification Amendments in Response to the SEC's Disclosure Update and Simplification,*[81] which would amend U.S. GAAP to require the incremental disclosure called for by Item 302(b), disclosure of oil and gas producing activities for each period presented. If FASB adopts amendments consistent with those it proposed, upon effectiveness of the amendments to U.S. GAAP, the requirements of Item 302(b) will be duplicative of U.S. GAAP. Therefore, we propose to eliminate Item 302(b), subject to the FASB finalizing its related amendments to U.S. GAAP.[82]

Request for Comment

17. As proposed, should we eliminate Item 302(b) if the FASB amends U.S. GAAP to require substantially similar disclosure?

C. Management's Discussion and Analysis of Financial Condition and Results of Operations (Item 303)

Item 303 of Regulation S–K requires disclosure of information relevant to assessing a registrant's financial condition, changes in financial condition, and results of operations. The disclosure requirements for full fiscal years in Item 303(a) specify five components: Liquidity, capital resources, results of operations, off-balance sheet arrangements, and contractual obligations.[83] Item 303(b) covers interim period disclosures and requires registrants to discuss material changes in the items listed in Item 303(a) (including the instructions), other than the impact of inflation and changing prices on operations and tabular disclosure of contractual obligations.[84] Item 303(c) acknowledges the application of a statutory safe harbor for forward-looking information provided in off-balance sheet arrangements and contractual obligations disclosures. Item 303(d) provides certain accommodations for SRCs.

The Concept Release solicited comment on the overall objectives of the current MD&A requirements, as well as specific subsections of Item 303, including how to improve the content and focus of MD&A. Many commenters responded to the Commission's request

components of revenues or expenses that, in the registrant's judgment, should be described in order to understand the registrant's results of operations.

[73] Item 303(a)(3)(ii) requires registrants to describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the registrant knows of events that will cause a material change in the relationship between costs and revenues (such as known future increases in costs of labor or materials or price increases or inventory adjustments), the change in the relationship must be disclosed.

[74] ASC 270–10–50–2 requires the disclosure of certain information if interim data and disclosures are not separately reported for the fourth quarter. This information includes ''disposals of components of an entity and unusual, or infrequently occurring items recognized in the fourth quarter, as well as the aggregate effect of year end adjustments that are material to the results of that quarter.''

[75] Item 101(c)(1)(v) [17 CFR 229.101(c)(1)(v)]. The Commission recently proposed changes to Item 101 and proposed retaining Item 101(c)(1)(v). *See Modernization of Regulation S–K Items 101, 103, and 105,* Release No. 33–10668 (Aug. 8, 2019) [84 FR 44358 (Aug. 23, 2019)].

[76] *See supra* note 63 and corresponding text.

[77] *See* Item 302(b) of Regulation S–K [17 CFR 229.302(b)].

[78] *See* ASC 932–235–50.

[79] *See Disclosure Update and Simplification,* Release No. 33–10532 (Aug. 17, 2018) [83 FR 50234 (Oct. 4, 2018)].

[80] *See id.*

[81] FASB, File Reference No. 2019–600, available at *https://www.fasb.org/jsp/FASB/Document_C/DocumentPage&cid=1176172611572.*

[82] Item 302(c) of Regulation S–K states that SRCs do not have to provide the information required by the Item. Since we are proposing to eliminate Items 302(a) and (b), we are likewise proposing to eliminate Item 302(c) since it will no longer be applicable.

[83] Item 303(a)(1)-(5) of Regulation S–K [17 CFR 229.303(a)(1)–(5)].

[84] *See* Item 303(b) and Instruction 7 to Item 303(b) of Regulation S–K [17 CFR 229.303(b)].

for input with a variety of suggestions, which we discuss below. The Commission recently addressed some of the Item 303(a) disclosure requirements referenced in the Concept Release and by commenters when it adopted amendments to modernize and simplify certain disclosure requirements in Regulation S–K.[85]

We propose further amendments to Item 303 of Regulation S–K that are intended to modernize, simplify, and enhance the MD&A disclosures for investors while reducing compliance burdens for registrants.[86] Specifically, we are proposing to:

- Establish a new paragraph 303(a) that incorporates much of the substance of Instructions 1, 2, and 3 to current Item 303(a) to emphasize the objective of MD&A for both full fiscal years and interim periods;
- Reception current Item 303(a) as Item 303(b), and make the following additional changes:
  - Streamline current Item 303(a) by eliminating unnecessary cross-references to industry guides in Instructions 13 and 14;[87]
  - Amend current Item 303(a)(2) to modernize and enhance the current requirement, which is limited to capital expenditures, to specifically require a discussion of material cash requirements;
  - Amend current Item 303(a)(3)(ii) to clarify that a registrant should disclose reasonably likely changes in the relationship between costs and revenues;
  - Amend current Item 303(a)(3)(iii) and Instruction 4 to Item 303(a) to enhance analysis in MD&A by clarifying that a registrant should include in its MD&A a discussion of the reasons underlying material changes from period-to-period in one or more line items;
  - Eliminate current Item 303(a)(3)(iv), which requires registrants to discuss the impact of inflation and changing prices where material, along with the related Instructions 8 and 9 to Item 303(a);
  - Replace current Item 303(a)(4), the requirement that registrants provide off-balance sheet arrangement disclosures in a separately captioned section, with an instruction emphasizing the importance of discussing these obligations in the broader context of MD&A disclosure when such obligations have or are reasonably likely to have a material current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements or capital resources; and
  - Eliminate current Item 303(a)(5), the requirement that registrants provide a tabular disclosure of contractual obligations;
- Reception Item 303(b) as Item 303(c) and:
  - Amend current Item 303(b) to allow for more flexibility in interim periods compared; and
  - Simplify current Item 303(b) by eliminating certain instructions and providing cross-references to similar instructions in Item 303(a); and
- Eliminate current Items 303(c) and (d) as conforming changes.

The following table outlines the current and proposed structure of Item 303:[88]

Current structure	Proposed structure	Discussed in section(s)
Item 303(a), *Full fiscal years*	Item 303(a), *Objective*	II.C.1.
Item 303(a) (combined liquidity and capital resources discussions).	Instruction 2 to Item 303(b)	II.C.1.
Item 303(a)(1), *Liquidity*	Item 303(b)(1), *Liquidity*	II.C.2.
Item 303(a)(2), *Capital resources*	Item 303(b)(2), *Capital resources*	II.C.2.
(i) Capital expenditures	(i) Capital expenditures.	
(ii) Known material trends	(ii) Known material trends.	
Item 303(a)(3), *Results of operations*	Item 303(b)(3), *Results of operations*	II.C.3, II.C.4, & II.C.5.
(i) Unusual or infrequent events	(i) Unusual or infrequent events.	
(ii) Known trends or uncertainties	(ii) Known trends or uncertainties.	
(iii) Material increases	(iii) Material changes.	
(iv) Inflation and changing prices.		
Item 303(a)(4), *Off-balance sheet arrangements*	Replace with Instruction 8 to Item 303(b)	II.C.6.
Instructions 1, 2, 3, 4, and 5 to Item 303(a)(4)	Replace with Instruction 8 to Item 303(b)	II.C.6.
Item 303(a)(5), *Contractual obligations*	Eliminate	II.C.7.
2003 MD&A Interpretative Release, Critical accounting estimates.	Item 303(b)(4), *Critical accounting estimates*	II.C.8.
Instruction 1 to Item 303(a)	Instruction 1 to Item 303(b)(with amendments)	II.C.1.
Instruction 2 to Item 303(a)	Eliminate (with content incorporated into *Objective*)	II.C.1.
Instruction 3 to Item 303(a)	Eliminate (with content incorporated into *Objective*)	II.C.1.
Instruction 4 to Item 303(a)	Instruction 3 to Item 303(b)(with amendments and some content incorporated into Item 303(b)).	II.C.4.
Instruction 5 to Item 303(a)	Instruction 4 to Item 303(b)	II.C.1.
Instruction 6 to Item 303(a)	Instruction 5 to Item 303(b)	II.C.1.

[85] *See* FAST Act Adopting Release. Specifically, the Commission amended Item 303 to: Revise Instruction 1 to Item 303(a) to allow registrants that provide financial statements covering three years in a filing to omit discussion of the earliest of the three years if such discussion was already included in the registrant's prior filings on EDGAR; eliminate the reference to year-over-year comparisons in Instruction 1 to Item 303(a); and eliminate the reference to five-year selected financial data in Instruction 1 to Item 303(a).

[86] We discuss below in Section II.D our proposals to make certain parallel amendments to Item 5 of Form 20–F (Operating and Financial Review and Prospects), General Instruction B.(11) of Form 40–F (Off-Balance Sheet Arrangements), and General Instruction B.(12) of Form 40–F (Tabular Disclosure of Contractual Obligations).

[87] *See* 17 CFR 229.802.

[88] The information in this table is not comprehensive and is intended only to highlight the general structure of the current rules and proposed amendments. It does not reflect all of the substance of the proposed amendments or all of the rules and forms that may be affected. All changes are discussed in their entirety throughout this release. As such, this table should be read together with the referenced sections and the complete text of this release.

Current structure	Proposed structure	Discussed in section(s)
Instruction 7 to Item 303(a)	Instruction 6 to Item 303(b)	II.C.1.
Instruction 8 to Item 303(a)	Eliminate	II.C.5.
Instruction 9 to Item 303(a)	Eliminate	II.C.5.
Instruction 10 to Item 303(a)	Instruction 7 to Item 303(b)	II.C.1.
Instruction 11 to Item 303(a)	Instruction 9 to Item 303(b)(with amendments)	II.D.3.
Instruction 12 to Item 303(a)	Instruction 10 to Item 303(b)	II.C.1.
Instruction 13 to Item 303(a)	Eliminate	II.C.1.
Instruction 14 to Item 303(a)	Eliminate	II.C.1.
Item 303(b), *Interim periods*	Item 303(c), *Interim periods*	II.C.9.
(1) Material changes in financial condition	(1) Material changes in financial condition.	
(2) Material changes in results of operations, Rule 3–03(b) of Regulation S–X matters.	(2) Material changes in results of operations	
	(i) Material changes in results of operations (year-to-date).	
	(ii) Material changes in results of operations (quarter comparisons).	
Instruction 1 to Item 303(b)	Instruction 1 to Item 303(c) (with amendments to reference Instructions 3, 6, 8, and 11 to proposed Item 303(b)).	II.C.9.
Instruction 2 to Item 303(b)	Eliminate	II.C.9.
Instruction 3 to Item 303(b)	Eliminate	II.C.9.
Instruction 4 to Item 303(b)	Instruction 2 to Item 303(c)	II.C.9.
Instruction 5 to Item 303(b)	Eliminate	II.C.9.
Instruction 6 to Item 303(b)	Eliminate	II.C.9.
Instruction 7 to Item 303(b)	Eliminate	II.C.9.
Instruction 8 to Item 303(b)	Instruction 11 to Item 303(b)	II.C.9.
Item 303(c), *Safe harbor*	Eliminate	II.C.10.
Item 303(d), *Smaller reporting companies*	Eliminate	II.C.11.

1. Restructuring and Streamlining (Item 303(a))

The first paragraph of current Item 303(a) instructs registrants to discuss their financial condition, changes in financial condition, and results of operations for full fiscal years.[89] The paragraph then sets forth the items that must be included in this discussion, including liquidity, capital resources, results of operations, off-balance sheet arrangements, contractual obligations, and any other information a registrant believes would be necessary to understand its financial condition, changes in financial condition, and results of operations. The paragraph also instructs that discussions of capital resources and liquidity may be combined when the topics are interrelated. Finally, the paragraph states that a registrant must provide a discussion of business segments and/or of subdivisions when, in the registrant's judgment, such a discussion would be appropriate for understanding its business. This discussion must focus on each relevant, reportable segment and/or other subdivision of the business and on the registrant as a whole. In addition to the text, there are fourteen instructions to Item 303(a).

We are proposing multiple changes that are intended to streamline and clarify the purposes of Item 303.[90] First, we propose adding a new Item 303(a) to succinctly state the purposes of MD&A by incorporating a portion of the substance of Instruction 1, and much of the substance of Instructions 2 and 3 into the item. Specifically, we propose to incorporate each of the following portions of current Instructions 1, 2, and 3 to describe the objectives of MD&A, which is for companies to provide disclosure regarding:

- Material information relevant to an assessment of the financial condition and results of operations of the registrant, including an evaluation of the amounts and certainty of cash flows from operations and from outside sources.
- The material financial and statistical data that the registrant believes will enhance a reader's understanding of the registrant's financial condition, changes in financial condition, and results of operations.[91]
- Material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include descriptions and amounts of matters that: (i) Would have a material impact on future operations and have not had an impact in the past, and (ii) have had a material impact on reported operations and are not expected to have an impact on future operations.

We are also proposing to codify Commission guidance that states that a registrant should provide a narrative explanation of its financial statements that enables investors to see a registrant ''through the eyes of management'' [92] into the description of MD&A objectives. We believe that emphasizing the purpose of MD&A at the outset of the Item will provide clarity and focus to registrants as they consider what information to discuss and analyze. Our intent is to facilitate a thoughtful discussion and analysis, and encourage management to disclose factors specific to the registrant's business, which management is in the best position to know, and underscore materiality as the overarching principle of MD&A.[93] Our proposal is intended to serve as a reminder to registrants as they prepare their MD&A that the general purpose of the disclosure is to provide both a historical and prospective analysis of the registrant's financial condition and

[89] Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[90] These proposed changes, along with the other proposed amendments and eliminations discussed elsewhere in this release, would result in some changes in the subsection labeling and headings.

[91] The remainder of the instruction also specifies periods that the discussion must cover, which our proposed amendments would retain.

[92] *See* 2003 MD&A Interpretative Release, at 75056. *See also* 1989 Interpretative Release, at 22428.

[93] *See, e.g.,* FAST Act Adopting Release, at 12679 (emphasizing that ''[m]ateriality remains, as always, the primary consideration'' of MD&A) and the 2003 MD&A Interpretative Guidance, at 75060 (noting that ''it is increasingly important for companies to focus their MD&A on material information. In preparing MD&A, companies should evaluate issues presented in previous periods and consider reducing or omitting discussion of those that may no longer be material or helpful, or revise discussions where a revision would make the continuing relevance of an issue more apparent.'').

results of operations, with particular emphasis on the registrant's prospects for the future.[94] This principles-based approach is also well-suited to elicit disclosure about complex and often rapidly evolving areas, without the need to continuously amend the text of the rule to impose bright-line or prescriptive requirements.[95]

In light of our proposal to add new Item 303(a), we propose to re-caption current Item 303(a) as Item 303(b), which will continue to apply to all MD&A disclosures.[96] As proposed, the introductory paragraph would retain the current language that outlines what is to be covered in the discussion of a registrant's financial condition, changes in financial condition, and results of operations.[97] Additionally, we propose to add product lines as an example of other subdivisions of a registrant's business that should be discussed where, in the registrant's judgment, such a discussion would be necessary to an understanding of the registrant's business.[98] We believe that this added example would provide registrants with additional clarity on the types of subdivisions that may require separate disclosure, though it is not intended to complete the list.

We also propose to move to proposed Item 303(b) the portion of current Instruction 4 to Item 303(a) that requires a description of the causes of material changes from year-to-year in line items of the financial statements to the extent necessary to an understanding of the registrant's business as a whole.[99] In response to general requests for comment on Item 303 in the Concept Release, a few commenters provided recommendations on how to revise Item 303(a) to facilitate a more meaningful analysis.[100] One commenter suggested amending Item 303 to require a description of material factors that contributed to any material change in results, and that quantitative and qualitative factors could be listed as examples of the types of factors that could be discussed in MD&A.[101]

Similarly, another commenter recommended revising Item 303(a)(3) to require a description of the major factors that caused changes in line items (*e.g.,* economic trends, industry conditions and sales and costs related to key products and services).[102] Yet another commenter stated that Item 303(a) and Instruction 4 should be revised to ''clearly instruct'' registrants that discussions about material changes should address quantitative and qualitative factors underlying the changes.[103] One commenter also noted that it would be preferable for the requirements to indicate that registrants cannot present line item changes without providing ''meaningful explanations.'' [104] Finally, another commenter recommended revising Instruction 4 to Item 303(a) to allow registrants to omit financial statement line item changes to the extent such an omission would not materially impair an investor's understanding of a registrant's results of operations.[105] This revision, the commenter stated, would allow registrants and investors to focus on line items that had the most impact on its results of operations.

We propose to amend the language of Instruction 4 to Item 303(a),[106] which would be moved to proposed Item 303(b), to clarify that MD&A requires a narrative discussion of the ''underlying reasons'' for material changes from period-to-period in one or more line items in quantitative and qualitative terms, rather than only the ''cause'' for material changes. We are also proposing to amend the language to clarify that registrants should discuss material changes within a line item even when such material changes offset each other.[107] We believe our proposals would enhance analysis in MD&A, and accordingly, would be responsive to concerns raised by commenters. We also believe the proposals would clarify MD&A's requirements by codifying some of the Commission's prior guidance on the importance of analysis in MD&A. The Commission has previously emphasized the importance of providing an analysis in MD&A and stated that a thorough analysis often will involve discussing both the intermediate effects of known material trends, events, demands, commitments, and uncertainties and the reasons underlying those intermediate effects.[108] Commission guidance has also stated that MD&A should include both qualitative and quantitative analysis.[109] We believe the proposed amendments would encourage registrants to provide a more nuanced discussion of the underlying reasons that may be contributing to material changes in line items.

We also are proposing several amendments to further streamline the text of Item 303:

[94] *See* 1989 MD&A Interpretive Release (''In preparing MD&A disclosure, registrants should be guided by the general purpose of the MD&A requirements: To give investors an opportunity to look at the registrant through the eyes of management by providing a historical and prospective analysis of the registrant's financial condition and results of operations, with particular emphasis on the registrant's prospects for the future.'').

[95] *See, e.g.,* Commission Guidance Regarding Disclosure Related to Climate Change, Release No. 33–9106 (Feb. 2, 2010) [75 FR 6290 (Feb. 8, 2010)] and Commission Statement and Guidance on Public Company Cybersecurity Disclosures (Feb. 21, 2018) [83 FR 8166 (Feb. 26, 2018)]. Commission staff has also provided its views on the application of our principles-based disclosure requirements to emerging issues. *See, e.g.,* Staff Statement on LIBOR Transition (July 12, 2019), available at *https://www.sec.gov/news/public-statement/libor-transition.*

[96] For interim periods, current Item 303(b) of Regulation S–K requires a ''discussion of material changes in those items specifically listed in [Item 303(a)], except that the impact of inflation and changing prices on operations for interim periods need not be addressed.'' *See* 1989 MD&A Interpretive Release at n. 38 and 39 and corresponding text (''The second sentence of Item 303(b) states that MD&A relating to interim period financial statements 'shall include a discussion of material changes in those items specifically listed in paragraph (a) of this Item, except that the impact of inflation and changing prices on operations for interim periods need not be addressed.' As this sentence indicates, material changes to each and every specific disclosure requirement contained in paragraph (a), with the noted exception, should be discussed.''); 2003 MD&A Interpretive Release (''Disclosure in MD&A in quarterly reports is complementary to that made in the most recent annual report and in any intervening quarterly reports.'').

[97] *See* Item 303(a).

[98] The current relevant Item 303(a) language states that where, in the registrant's judgment, a discussion of segment information and/or of other subdivisions (*e.g.,* geographic areas) of the registrant's business would be appropriate to an understanding of such business, the discussion shall focus on each relevant segment and/or other subdivision of the business and on the registrant as a whole.

[99] Instruction 4 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[100] *See, e.g.,* letters from Fenwick, Maryland State Bar Association (July 21, 2016) (''Maryland Bar Securities Committee''), S. Percoco, and NYSSCPA.

[101] *See* letter from Fenwick.

[102] *See* letter from S. Percoco.

[103] *See* letter from Maryland Bar Securities Committee.

[104] *See* letter from NYSSCPA. This commenter also expressed its belief that a significant number of registrants were providing narratives that did not allow an investor to view performance ''through the eyes of management.'' According to this commenter, such discussions ''generally [become] an exercise where management provides a quantitative analysis, which most investors can recompute—if they chose to—from the financial statements.''

[105] *See* letter from Davis Polk.

[106] Proposed to be renumbered as Instruction 3 to Item 303(b).

[107] *See, e.g.,* 1989 MD&A Interpretive Release (providing an example of material changes in revenue and in so doing, describing the effects of offsetting developments: ''Revenue from sales of single-family homes for 1987 increased 6 percent from 1986. The increase resulted from a 14 percent increase in the average sales price per home, partially offset by a 6 percent decrease in the number of homes delivered. Revenues from sales of single-family homes for 1986 increased 2 percent from 1985. The average sales price per home in 1986 increased 6 percent, which was offset by a 4 percent decrease in the number of homes delivered.'').

[108] *See, e.g.,* 2003 MD&A Interpretive Release.

[109] *See, e.g.,* 2003 MD&A Interpretive Release and 1989 MD&A Interpretive Release.

• We propose to move the text in current Item 303(a) stating that registrants may combine their discussions of liquidity and capital resources when the topics are interrelated to an instruction to the item.[110] We believe this language is an instruction given that it is not a substantive requirement or accommodation, but rather a clarification of how registrants may structure their disclosures.

• Instruction 8 to current Item 303(b) indicates that the term ''statement of comprehensive income'' is defined by Rule 1–02 of Regulation S–X.[111] We are proposing to move this language to proposed Instruction 11 to proposed Item 303(b) to clarify that the instruction applies to both full fiscal year and interim period MD&A disclosure.

• We also propose to eliminate current Instructions 13 and 14 to Item 303(a) as simplifying amendments. These instructions call the attention of bank holding companies and property-casualty insurance companies to Guide 3 [112] and Guide 6,[113] respectively. Registrants should still consider the Guides in preparing their disclosures generally, but we do not believe the cross-reference is necessary to an understanding of the requirements of Item 303.

Request for Comment

18. Should we adopt proposed Item 303(a)? Would proposed Item 303(a) clarify the purpose of MD&A disclosures for registrants and others? Would the proposed amendments aid registrants in determining what to disclose in their MD&A?

19. Should we incorporate the language from current Instruction 4 to Item 303(a) into proposed Item 303(b), as proposed? Should we amend this language to require disclosure of the underlying reasons for material changes in quantitative and qualitative terms, including material changes within a line item, as proposed?

20. Are there any instructions that we are proposing to delete or move that we should retain or leave as is? Are there any other current instructions that we should revise or clarify?

21. Should we eliminate Instructions 13 and 14 to Item 303(a) that reference Guides 3 and 6, as proposed? Should we instead include additional instructions to reference the other industry guides?

2. Capital Resources (Item 303(a)(2))

Item 303(a)(2) requires a registrant to discuss its material commitments for capital expenditures as of the end of the latest fiscal period, and to indicate the general purpose of such commitments and the anticipated sources of funds needed to fulfill such commitments.[114] A registrant also must discuss any known material trends, favorable or unfavorable, in its capital resources, and indicate any expected material changes in the mix and relative cost of such resources.[115] The discussion must consider changes between equity, debt, and any off-balance sheet financing arrangements.[116]

When adopting disclosure requirements for capital resources, the Commission recognized that the term ''capital resources'' lacked precision, but stated that ''additional specificity would decrease the flexibility needed by management for a meaningful discussion.'' [117] To that end, Item 303 does not define ''capital resources.'' [118] The current capital resources disclosure requirements in Item 303(a)(2) have remained largely the same since 1980.[119] Item 303(a)(2) specifies that registrants must disclose material commitments for capital expenditures, which generally relate to physical assets, such as buildings and equipment. Some registrants include disclosure beyond capital expenditures, which the Commission's guidance has encouraged.[120]

The Concept Release solicited comment on how the Commission could revise Item 303(a) to elicit a more meaningful analysis of a registrant's capital resources while maintaining flexibility.[121] The Concept Release also requested comment on how registrants interpret the term ''capital resources'' and whether defining the term would be helpful to registrants.[122]

Some commenters observed differences in how registrants apply the term ''capital resources.'' [123] One of these commenters stated that the Commission should adopt a definition of capital resources that is broader than currently implied by Item 303(a)(2)(i).[124] This commenter stated that registrants interpret ''capital resources'' as material commitments for capital expenditures and the source of funds related to such commitments. Another commenter stated that some registrants interpret ''capital resources'' to require ''disclosure of a registrant's sources of capital, while others interpret it to require disclosure of the sources of capital assets used in a registrant's business.'' [125]

Some commenters supported the Commission's current approach to the term ''capital resources.'' [126] One commenter urged the Commission not to depart from the existing policy of recognizing the term ''capital resources'' as a general term in a manner that might decrease the flexibility needed by management for a meaningful discussion.[127] Another commenter recommended that the Commission not further define the term ''capital resources'' beyond its current general use.[128]

We continue to believe that disclosure of capital resources is critical to an assessment of a registrant's prospects for the future and likelihood of its survival.[129] Therefore, we propose to

[110] Proposed Instruction 2 to Item 303(b).

[111] [17 CFR 210.1–02(cc)]. Rule 1–02 defines a ''statement of comprehensive income'' as follows: ''[t]he term statement(s) of comprehensive income means a financial statement that includes all changes in equity during a period except those resulting from investments by owners and distributions to owners. . . . A statement of operations or variations thereof may be used in place of a statement of comprehensive income if there was no other comprehensive income during the period.'' Thus, references to a statement of comprehensive income would include a statement of operations prepared by certain issuers, such as BDCs.

[112] [17 CFR 229.801(c) and 17 CFR 229.802(c)]. We recently proposed rules relating to Guide 3. *See Update of Statistical Disclosures for Bank and Savings and Loan Registrants,* Release No. 33–10688 (Sept. 17, 2019) [84 FR 52936 (Oct., 3, 2019)]. The proposed rules would update the disclosures that investors receive, codify certain Guide 3 disclosures and eliminate other Guide 3 disclosures that overlap with Commission rules, U.S. GAAP, or International Financial Reporting Standards (''IFRS''). In addition, the Commission proposed to relocate the codified disclosures to a new subpart of Regulation S–K and to rescind Guide 3.

[113] [17 CFR 229.801(f)].

[114] Item 303(a)(2)(i) of Regulation S–K [17 CFR 229.303(a)(2)(i)].

[115] Item 303(a)(2)(ii) [17 CFR 229.303(a)(2)(ii)].

[116] *Id.*

[117] 1980 Form 10–K Adopting Release, at 63636.

[118] Instruction 5 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)]. *See also* 1980 Form 10–K Adopting Release, *supra* note 45, at 63636.

[119] *See* 1980 Form 10–K Adopting Release.

[120] *See* 2003 MD&A Interpretive Release, at 75062.

[121] *See* Concept Release, at 23947.

[122] *See id.*

[123] *See* letters from NYSSCPA and BDO.

[124] *See* letter from NYSSCPA.

[125] *See* letter from BDO.

[126] *See* letters from Davis Polk and FEI.

[127] *See* letter from Davis Polk.

[128] *See* letter from FEI (''As noted above, we believe it would be helpful to consolidate the guidance on MD&A into a single source. In doing so, we recommend that the SEC not expand prescriptive requirements with respect to liquidity and capital resources, including not further defining the terms ''liquidity'' and ''capital resources'' beyond their current general terms.'').

[129] *See* 2003 MD&A Interpretive Release at note 41 and corresponding text. Much of the Commission's prior guidance has focused on enhancing disclosure of liquidity and capital resources. *See, e.g.,* 1989 MD&A Interpretive Release and 2003 MD&A Interpretive Release.

amend current Item 303(a)(2) [130] to specify, consistent with the Commission's 2003 MD&A Interpretive Release, that a registrant should broadly disclose material cash commitments, including but not limited to capital expenditures. Specifically, our proposed amendment would require a registrant to describe its material cash requirements, including commitments for capital expenditures, as of the latest fiscal period, the anticipated source of funds needed to satisfy such cash requirements, and the general purpose of such requirements.[131]

This proposal is intended to require registrants to identify and disclose known material cash requirements. Depending on the registrant, this could include items such as: Funds necessary to maintain current operations, complete projects underway, and achieve stated objectives or plans; or commitments for capital or other expenditures.[132] This proposal is also intended to modernize Item 303(a)(2) by specifically requiring disclosure of material cash requirements in addition to capital expenditures. While capital expenditures remain important in many industries, we recognize that certain expenditures and cash commitments that are not necessarily capital investments in property, plant, and equipment may be increasingly important to companies, especially those for which human capital or intellectual property are key resources. Our proposals are intended to encompass these and other material cash requirements.

These proposals, alongside the current requirement for registrants to discuss their ability to generate cash,[133] are intended to enhance disclosure and provide investors with a clear picture of a registrant's ability to meet its material cash requirements. We acknowledge the commenters who suggested that we define ''capital resources.'' We have decided, however, not to propose a definition of the term to allow for continued flexibility and business-specific discussions of the topic.[134] Lastly, and as discussed in Section II.C.7, our proposal to enhance discussion of capital resources is also intended to complement our proposed deletion of the contractual obligations table.

Request for Comment

22. Should we amend Item 303(a)(2), as proposed? Would the proposed amendments continue to allow management flexibility to provide a meaningful discussion of capital resources?

23. Are there other aspects of Item 303(a)(2) we should revise? If so, which aspects?

3. Results of Operations—Known Trends or Uncertainties (Item 303(a)(3)(ii))

Item 303(a)(3)(ii) requires a registrant to describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material impact (favorable or unfavorable) on net sales or revenues or income from continuing operations.[135] In addition, if the registrant knows of events that will cause a material change in the relationship between costs and revenues, the change in the relationship must be disclosed.[136]

We propose to amend Item 303(a)(3)(ii) [137] to provide that when a registrant knows of events that are *reasonably likely* to cause (as opposed to *will* cause) a material change in the relationship between costs and revenues, such as known or reasonably likely future increases in costs of labor or materials or price increases or inventory adjustments, the reasonably likely change must be disclosed. This proposed amendment would conform the language in this paragraph to other Item 303 disclosure requirements for known trends,[138] and align Item 303(a)(3)(ii) with the Commission's guidance on forward-looking disclosure.[139]

Request for Comment

24. Should we amend Item 303(a)(3)(ii) to provide that registrants must disclose events reasonably likely to cause a material change in the relationship between costs and revenue, as proposed? Are there other areas in Item 303 where we should provide a similar requirement?

4. Results of Operations—Net Sales and Revenues (Item 303(a)(3)(iii))

Item 303(a)(3)(iii) specifies that, to the extent financial statements disclose material increases in net sales or revenues, a registrant must provide a narrative discussion of the extent to which such increases are attributable to increases in prices, or to increases in the volume or amount of goods or services being sold, or to the introduction of new products or services.[140] The Commission previously clarified that a results of operations discussion should describe not only increases but also decreases in net sales or revenues.[141] Accordingly, we propose to amend Item 303(a)(3)(iii) to codify this guidance and clarify the requirement by tying the required disclosure to ''material changes'' in net sales or revenues, rather than solely to ''material increases'' in these line items.

Request for Comment

25. Should we revise Item 303(a)(3)(iii), as proposed?

26. Are there reasons other than changes in prices, or changes in volume or amount of goods or services being sold, or the introduction of new products or services that can contribute to changes in revenue or net sales, or other line items? If so, what are they? Would enumerating other reasons aid registrants in determining what information may be necessary to understand material changes in line items, or would this result in a *de facto* prescriptive or minimum disclosure standard?

[130] Proposed to be renumbered as Item 303(b)(2).

[131] *See* 2003 MD&A Interpretive Release, at 75063.

[132] *See id.*

[133] *See* Item 303(a)(1) and Instruction 5 of Item 303(a). *See also* 2003 MD&A Interpretive Release, at 75062–75064.

[134] *See* 1980 Form 10–K Adopting Release.

[135] Item 303(a)(3)(ii) of Regulation S–K [17 CFR 229.303(a)(3)(ii)].

[136] Examples given include known future increases in costs of labor or materials or price increases or inventory adjustments. *See id.*

[137] To be renumbered as Item 303(b)(3)(ii).

[138] *See, e.g.,* Item 303(a)(1), which requires registrants to ''[i]dentify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way.'' Item 303(a)(1) to Regulation S–K [17 CFR 229.303(a)(1)].

[139] *See* 1989 MD&A Interpretive Release, at 22430, where the Commission articulated a two-step test for assessing when forward-looking disclosure is required in MD&A:

''Where a trend, demand, commitment, event or uncertainty is known, management must make two assessments:

(1) Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required.

(2) If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur.''

[140] Item 303(a)(3)(iii) of Regulation S–K [17 CFR 229.303(a)(3)(iii)].

[141] *See* 1989 MD&A Interpretative Release, at n. 36 (''Although Item 303(a)(3)(iii) speaks only to material increases, not decreases, in net sales or revenues, the Commission interprets Item 303(a)(3)(i) and Instruction 4 as seeking similar disclosure for material decreases in net sales or revenues.'').

5. Results of Operations—Inflation and Price Changes (Item 303(a)(3)(iv), and Instructions 8 and 9 to Item 303(a))

Item 303(a)(3)(iv) [142] generally requires registrants, for the three most recent fiscal years, or for those fiscal years in which the registrant has been engaged in business, whichever period is shortest, to discuss the impact of inflation and price changes on their net sales, revenue, and income from continuing operations. Instruction 8 to Item 303(a) clarifies that a registrant must provide a discussion of the effects of inflation and other changes in prices only to the extent it is material. The instruction further states that the discussion may be made in whatever manner appears appropriate under the circumstances and that no specific numerical financial data is required, except as required by Rule 3–20(c) of Regulation S–X,[143] which applies to FPIs. Instruction 9 to Item 303(a) states that registrants that elect to disclose supplementary information on the effects of changing prices may combine such disclosures with the Item 303(a) discussion and analysis or provide it separately (with an appropriate cross-reference).[144]

The precursors to Item 303(a)(3)(iv) and Instructions 8 and 9 were adopted in 1980,[145] during a period of rapid domestic inflation.[146] At that time, the Commission was concerned with the adequacy of disclosures about the effect of inflation and changing prices on registrants.[147] Several years later, the Commission amended the instructions to, among other things, clarify that disclosure of inflation is only required if material.[148]

Although Instruction 8 to Item 303(a) specifies that a discussion of inflation and other changes in prices is required only when such matters are considered material, we believe that the reference to inflation and changing prices may give undue attention to the topic, even when such information is not necessary to an understanding of a registrant's financial condition or results of operations. In order to encourage registrants to focus their MD&A on material information that is tailored to their respective facts and circumstances, we propose to eliminate Item 303(a)(3)(iv) and current Instruction 8 and Instruction 9 to Item 303(a).

We do not believe that these proposed changes would result in a loss of material information. Despite these proposed deletions, registrants would still be expected to discuss the impact of inflation or changing prices if they are part of a known trend or uncertainty that has had, or the registrant reasonably expects to have, a material favorable or unfavorable impact on net sales, or revenue, or income from continuing operations.[149] The Commission has also specifically encouraged registrants to consider disclosure of economic or industry-wide factors where relevant.[150]

In addition, the proposed amendments to current Item 303(a)(3)(iii) [151] would require registrants to provide the reasons underlying material changes from period-to-period in one or more line items in the statement of comprehensive income.[152] Similarly, our proposed amendment to Instruction 4 to Item 303(a) would require that, where the financial statements reveal material changes in one or more line items, registrants would be required to disclose the underlying reasons for material changes in quantitative and qualitative terms. If there are material changes from inflation or changing prices, registrants would be required to discuss those reasons under both current Item 303 and amended Item 303, as proposed.

Request for Comment

27. Should we eliminate the references to inflation disclosure by eliminating Item 303(a)(3)(iv) and Instructions 8 and 9 to Item 303(a), as proposed? Would there be a loss of material information if we eliminate these provisions?

6. Off-Balance Sheet Arrangements (Item 303(a)(4))

Item 303(a)(4)[153] requires, in a separately-captioned section, a discussion of a registrant's off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures, or capital resources that is material to investors.[154] Generally, Item 303(a)(4)(ii) defines off-balance sheet arrangements as certain guarantees, retained or contingent interests in assets transferred to an unconsolidated entity, obligations under certain derivative instruments,[155] and variable interests in any unconsolidated entity. To the extent necessary to an understanding of such arrangements and effect, registrants must disclose the following items and such other information that the registrant believes is necessary for such an understanding:

- The nature and business purpose of such off-balance sheet arrangements; [156]
- The importance to the registrant of such off-balance sheet arrangements in respect of its liquidity, capital resources, market risk support, credit risk support, or other benefits; [157]
- The amounts of revenues, expenses, and cash flows arising from such arrangements; the nature and amounts of any interests retained, securities

[142] Item 303(a)(3)(iv) of Regulation S–K [17 CFR 229.303(a)(3)(iv)].

[143] Rules 3–20(c) and 3–20(d) of Regulation S–X provide the situations when a registrant must discuss hyperinflation. Rule 3–20(d) generally describes a hyperinflationary environment as one that has cumulative inflation of approximately 100 percent or more over the most recent three-year period.

[144] Instruction 9 to Item 303(a).

[145] 1980 Form 10–K Adopting Release.

[146] *See* One Hundred Years of Price Change: The Consumer Price Index and the American Inflation Experience (Apr. 2014) available at *https://www.bls.gov/opub/mlr/2014/article/one-hundred-years-of-price-change-the-consumer-price-index-and-the-american-inflation-experience.htm* (stating ''the period from 1968 to 1983 stands out as the definitive era of sustained inflation in the 20th-century United States'' and that during this time period, the largest 12-month increase in inflation of 14.8 percent occurred between March 1979 to March 1980).

[147] *See* 1980 Form 10–K Adopting Release (''[T]he Commission believes that Management's Discussion and Analysis should contain information which changes the potentially confusing situation involving inflation impact disclosure into a meaningful discussion of the effects of changing prices on the registrant's business.'').

[148] At that time, the Commission amended Instructions 8 and 9 to conform the requirement to the then-recently adopted SFAS No. 89 (Financial Reporting and Changing Prices) and stated ''Item 303(a) does not require registrants to discuss the impact of inflation when such impact does not materially affect the financial statements.'' *See Disclosure of the Effects of Inflation and Changes in Prices,* Release No. 33–6681 (Dec. 18, 1986), [51 FR 47026 (Dec. 30, 1986)), adopted in Release No. 33–6728 (Aug. 7, 1987), [52 FR 30917 (Aug. 18, 1987)].

[149] *See* Item 303(a)(3)(ii) [CFR 229.303(a)(3)(ii)] and proposed Item 303(b)(3)(ii).

[150] *See* 2003 MD&A Interpretive Release, at 75059.

[151] Proposed to be renumbered as Item 303(b)(3)(iii).

[152] *See supra* Section II.C.4.

[153] Item 5.E. of Form 20–F and General Instruction B.(11) of Form 40–F contain requirements for issuers that use those forms that are virtually identical to the requirements of Item 303(a)(4).

[154] Item 303(a)(4) of Regulation S–K [17 CFR 229.303(a)(4)].

[155] For registrants whose financial statements are prepared in accordance with U.S. GAAP, the definition includes a contract that would be accounted for as a derivative instrument, except that it is both indexed to the registrant's own stock and classified in the registrant's statement of stockholders' equity. *See* ASC 815–10–15–74. For other registrants, the definition includes derivative instruments that are both indexed to the registrant's own stock and classified in stockholders' equity, or not reflected, in the registrant's statement of financial position. *See* Item 5.E.2.(c) of Form 20–F.

[156] Item 303(a)(4)(i)(A) of Regulation S–K [17 CFR 229.303(a)(4)(i)(A)].

[157] Item 303(a)(4)(i)(B) of Regulation S–K [17 CFR 229.303(a)(4)(i)(B)].

issued, and other indebtedness incurred in connection with such arrangements; and the nature and amounts of any other obligations or liabilities (including contingent obligations or liabilities) of the registrant arising from such arrangements that are or are reasonably likely to become material and the triggering events or circumstances that could cause them to arise;[158] and

- Any known event, demand, commitment, trend, or uncertainty that will result in or is reasonably likely to result in the termination, or material reduction in availability, of a registrant's off-balance sheet arrangements that provide material benefits, and the course of action that the registrant has taken or proposes to take in response to any such circumstances.[159]

In 2002, the Commission issued a statement that the quality of disclosure of off-balance sheet arrangements in MD&A should be improved.[160] The Commission also noted that off-balance sheet arrangements often are integral to both liquidity and capital resources and that registrants should ''consider all of these items together, as well as individually,'' when drafting MD&A disclosure.[161] The Commission further noted that off-balance sheet arrangements and transactions with unconsolidated, limited purpose entities should be discussed pursuant to Item 303(a) when they are ''reasonably likely to affect materially liquidity or the availability of or requirements for capital resources.'' [162]

The 2002 Commission Statement was consistent with Commission rules and guidance at the time. For example, Item 303(a)(2)(ii) specifically requires registrants to disclose off-balance sheet financing arrangements in their discussion of capital resources.[163] Similarly, the 1989 MD&A Interpretive Release indicated that a registrant's discussion of long-term liquidity and long-term capital resources must address demands or commitments, including any off-balance sheet items.[164]

Several months after the 2002 Commission Statement, the Sarbanes-Oxley Act [165] was enacted and added Section 13(j) to the Exchange Act, which required the Commission to adopt rules providing that each annual and quarterly financial report required to be filed with the Commission disclose all material off-balance sheet arrangements.[166] To implement Section 13(j), in 2003 the Commission adopted specific disclosure requirements for off-balance sheet arrangements in current Item 303(a)(4).[167] When adopting Item 303(a)(4), the Commission reiterated that, while at that time only one item in Item 303 specifically identified off-balance sheet arrangements,[168] other requirements ''clearly require[d] disclosure of off-balance sheet arrangements if necessary to an understanding of a registrant's financial condition, changes in financial condition or results of operations.'' [169] The 2003 amendments supplemented and clarified the disclosures that registrants must make about off-balance sheet arrangements and required registrants to provide those disclosures in a separately designated section of MD&A.[170]

In the release proposing Item 303(a)(4), the Commission recognized that parts of the proposed off-balance sheet disclosure requirements might overlap with disclosure presented in the footnotes to the financial statements.[171] The Commission stated, however, that the proposed rules were designed to provide more comprehensive information and analysis in MD&A than the disclosure that U.S. GAAP required in footnotes to financial statements.[172]

Since the adoption of Item 303(a)(4), the FASB has issued additional requirements that have caused U.S. GAAP to further overlap with the item.[173] For example, U.S. GAAP now requires disclosure in the notes to the financial statements of the nature and amount of a guarantee,[174] retained or contingent interests in assets transferred to unconsolidated entities,[175] pertinent information of derivative instruments that are classified as stockholders' equity under U.S. GAAP,[176] and obligations under variable interests in unconsolidated entities.[177] In the Commission staff's experience, this overlap often leads to registrants providing cross-references to the relevant notes to their financial statements or providing disclosure that is duplicative of information in the notes in response to Item 303(a)(4). Nevertheless, while many of the requirements in Item 303(a)(4) overlap with U.S. GAAP, some of the requirements related to the location, presentation, and nature of the disclosure are not the same. Additionally, Item 303(a)(4) disclosure is not audited. Below we discuss these differences in greater detail.

Location of Disclosure. Item 303(a)(4)(i) specifies that off-balance sheet arrangements should be discussed in a separately-captioned section. The instructions to Item 303(a)(4) permit that discussion to cross-reference information in the footnotes to the financial statements, rather than repeat it, provided that the MD&A disclosure

[158] Item 303(a)(4)(i)(C) of Regulation S–K [17 CFR 229.303(a)(4)(i)(C)].

[159] Item 303(a)(4)(i)(D) of Regulation S–K [17 CFR 229.303(a)(4)(i)(D)].

[160] *See Commission Statement about Management's Discussion and Analysis of Financial Condition and Results of Operations,* Release No. 33–8056 (Jan. 22, 2002) [67 FR 3746 (Jan. 25, 2002)] (''2002 Commission Statement'').

[161] *See id.* at 3748.

[162] *See id.*

[163] Item 303(a)(2)(ii) of Regulation S–K [17 CFR 229.303(a)(2)(ii)]. The item specifies that the discussion shall consider changes between equity, debt, and any off-balance sheet financing arrangements.

[164] *See* 1998 MD&A Interpretive Release at 22431 (''The discussion of long-term liquidity and long-term capital resources must address material capital expenditures, significant balloon payments or other payments due on long-term obligations, and other demands or commitments, including any off-balance sheet items, to be incurred beyond the next 12 months, as well as the proposed sources of funding required to satisfy such obligations.'').

[165] Sarbanes-Oxley Act of 2002, Public Law 107–204, 116 Stat 745 (Jul. 2002) (''Sarbanes-Oxley Act'').

[166] Section 401(a) of the Sarbanes-Oxley Act added Section 13(j) to the Exchange Act [15 U.S.C. 78m(j)], which directed the Commission to adopt rules requiring each annual and quarterly financial report filed with the Commission to disclose ''all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.''

[167] *See Disclosure in Management's Discussion and Analysis about Off-Balance Sheet Arrangements and Aggregate Contractual Obligations,* Release No. 33–8182 (Jan. 28, 2003), [68 FR 5981(Feb. 5, 2003)] (''Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release''), at 5983.

[168] Item 303(a)(2)(ii) of Regulation S–K [17 CFR 229.303(a)(2)(ii)].

[169] *See* Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release, at 5983.

[170] *See id.*

[171] *See Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements, Contractual Obligations and Contingent Liabilities and Commitments,* Release No. 33–8144 (Nov. 4, 2002) 67 FR 68054 (Nov. 8, 2002), at n.72.

[172] *See id.*

[173] In June 2009, the FASB Issued SFAS No. 166, *Accounting for Transfers of Financial Assets an amendment of FASB Statement No. 140,* which requires enhanced disclosures about transfers of financial assets and a transferor's continuing involvement with transfers of financial assets accounted for as sales. Also in June 2009, the FASB issued SFAS No. 167, *Amendments to FASB Interpretation No. 46(R),* which requires enhanced disclosures about an enterprise's involvement in a variable interest entity, including unconsolidated entities. SFAS No. 166 and 167 have been codified as ASC Topics 860 (Transfers and Servicing) and 810 (Consolidation), respectively. *See also* Section II.D.1.b and note 315 below for a discussion of IFRS requirements that overlap with Item 5.E of Form 20–F.

[174] *See* ASC 460–10–50.

[175] *See* ASC 860–10–50–3, ASC 860–20–50.

[176] *See* ASC 815–40–50–5, ASC 505–10–50.

[177] *See* ASC 810–10–50–4.

integrates the substance of the footnotes in a manner designed to inform readers of the significance of the information that is cross-referenced.[178] By contrast, U.S. GAAP does not prescribe the location of these disclosures, which may be dispersed throughout the notes to the financial statements. However, the submission of this information in interactive data format, which is required in periodic reports on Forms 10–K, 10–Q, 20–F, 40–F and reports on Forms 8–K and 6–K that contain revised or updated financial statements, allows investors to isolate disclosures about off-balance sheet arrangements even when it is dispersed throughout the notes to the financial statements.

Presentation of Disclosure. Item 303(a)(4) requires disclosure for the most recent period and a discussion of changes from the previous year where necessary to an understanding of the disclosure.[179] U.S. GAAP does not require discussion of changes from the previous year.

Nature of Disclosures. While Item 303(a)(4) and U.S. GAAP both require disclosure of the nature and amounts associated with off-balance sheet arrangements, Item 303(a)(4)(i)(A) requires additional disclosure about the business purpose of the off-balance sheet arrangement and the importance of the off-balance sheet arrangement to the registrant's liquidity and capital resources. Item 303(a)(4) also requires disclosure of any known event, demand, commitment, trend, or uncertainty that will result in or is reasonably likely to result in the termination or material reduction in the availability of material off-balance sheet arrangements to the registrant and the course of action the registrant has taken or proposes to take to address such circumstances. U.S. GAAP does not require this disclosure.

In the Concept Release, the Commission solicited comment on the importance of disclosure elicited by Item 303(a)(4) and whether and how we should amend the requirements. Some commenters supported retaining the requirements.[180] One of these commenters stated that without this disclosure requirement, ''a registrant could create significant off-balance sheet liabilities that have the potential to impair its financial condition without investors knowing of it.'' [181] Another commenter stated that off-balance sheet arrangements disclosure requirements should be retained and expanded, and stated that it was comfortable with duplications between the financial statements and MD&A disclosures.[182] This commenter indicated that an executive overview analyzing the risks associated with off-balance sheet arrangements would be beneficial.

Several commenters encouraged the Commission to eliminate or amend Item 303(a)(4), stating that the requirements substantially overlap with U.S. GAAP.[183] Some commenters suggested that the Commission apply the principles-based disclosure framework in MD&A to off-balance sheet arrangements.[184] Other commenters recommended that the Commission make clear that no disclosure is required related to off-balance sheet arrangements that are not material.[185]

In light of the updates made to U.S. GAAP that result in substantial overlap between U.S. GAAP and Item 303(a)(4) of Regulation S–K, and consistent with our other proposed amendments intended to promote the principles-based nature of MD&A, we believe that the current more prescriptive off-balance sheet arrangement definition and related disclosure requirement in Item 303(a)(4) should be replaced with a principles-based instruction. Specifically, we propose to replace current Item 303(a)(4) with a new Instruction to Item 303(b) that would require registrants to discuss commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have, or are reasonably likely to have, a material current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements, or capital resources.[186] This proposed instruction would build on the current requirement in Item 303(a)(2) that specifically requires consideration of off-balance sheet financing arrangements as part of the capital resources discussion.[187]

The proposed amendment should result in greater integration of material off-balance sheet arrangements disclosure within the context of broader MD&A disclosures as those arrangements enumerated in Item 303(a)(4) may be discussed more cohesively with other off-balance sheet arrangements that are not enumerated in Item 303(a)(4). We believe this could result in more effective discussion of the impact of these arrangements. Commission staff and commenters have observed that the current requirements often result in boilerplate disclosure or a duplication of disclosures in the financial statements. Further, Item 303(a)(4)'s requirement for disclosure in a separately captioned section often results in a disjointed presentation of off-balance sheet arrangements that may lack the necessary context of how these obligations should be considered in light of a registrant's overall financial condition. We believe that the proposed amendment would result in disclosure that would be more useful to understanding the impact of off-balance sheet arrangements, and may help avoid boilerplate or disjointed disclosure.

We acknowledge that, as discussed above, certain Item 303(a)(4) requirements related to the location, presentation, and nature of the disclosure do not overlap with U.S. GAAP. However, we believe that proposed Instruction 8 would mitigate any potential loss of information by requiring a discussion of material matters of liquidity, capital resources, and financial condition as they relate to off-balance sheet arrangements. Below, we seek comment on what material information, if any, may be lost if we adopt the proposed amendments.

Unlike Item 303(a)(4), the proposed instruction would not define ''off-balance sheet arrangements.'' Rather, it states that discussion of commitments or obligations, including contingent obligations, of the registrant arising from arrangements with unconsolidated entities or persons that have or are reasonably likely to have a material current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements, or capital resources shall be provided even when the arrangement results in no obligations being reported in the registrant's consolidated balance sheets. The instruction provides examples of such arrangements that are substantially the same as those included in the current definition of off-balance sheet arrangements in Item 303(a)(4), including: Guarantees; retained or contingent interests in assets transferred; contractual arrangements that support the credit, liquidity, or market risk for assets transferred; obligations that arise or could arise from variable interests held in an

[178] Instruction 5 to Item 303(a)(4) of Regulation S–K [17 CFR 229.303(a)(4)].

[179] Instruction 4 to Item 303(a)(4) of Regulation S–K [17 CFR 229.303(a)(4)].

[180] *See, e.g.,* letters from CFA, CalPERS, and S. Percoco.

[181] *See* letter from CFA.

[182] *See* letter from CalPERS.

[183] *See. e.g.,* letters from Chamber, CGCIV, Davis Polk, E&Y, KPMG LLP (July 21, 2016) (''KPMG''), Arthur J. Radin, Janover LLC (''A. Radin''), and SIFMA.

[184] *See, e.g.,* letters from CGCIV, Chamber, and PWC.

[185] *See* letters from Davis Polk and Fenwick.

[186] *See* proposed Instruction 8 to Item 303(b).

[187] *See* Item 303(a)(2)(ii) of Regulation S–K [17 CFR 302(a)(2)(ii)].

unconsolidated entity; or obligations related to derivative instruments that are both indexed to and classified in a registrant's own equity under U. S. GAAP and are therefore not presented as liabilities on a registrant's balance sheet.

While the examples in the proposed instruction are substantially the same as those in the current off-balance sheet arrangements definition in Item 303(a)(4), the examples do not include references to specific paragraphs in U.S. GAAP. Despite the elimination of these cross-references, the amendments are not intended to broaden the types of arrangements for which MD&A disclosure would be required. In this regard, under existing MD&A requirements, registrants are required to discuss in MD&A any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity decreasing in any material way, even if the known demand did not meet the definition of an off-balance sheet arrangement in Item 303(a)(4). Under the proposed amendments, those same arrangements would continue to be required to be discussed in MD&A. For the same reason, the proposed amendments also would not narrow the scope of what would be required to be disclosed in MD&A. The primary difference from what is currently required, and would be required under the proposed amendments, is that the discussion would no longer occur in a separately-captioned section; but rather, it would be made in the context of a more holistic, principles-based analysis.

We considered whether our proposal is consistent with Section 13(j) of the Exchange Act, as added by Section 401(a) of the Sarbanes-Oxley Act, which required the Commission to adopt rules providing that each annual and quarterly financial report required to be filed with the Commission shall disclose all material off-balance sheet arrangements. We believe that Section 13(j) remains satisfied because, under proposed Instruction 8 to Item 303(b), disclosure of all material off-balance sheet arrangements would continue to be required in annual and quarterly reports. As discussed above, although a discussion of off-balance sheet arrangements would no longer be required to be provided in a separately captioned section, registrants would still be required to discuss such arrangements in the broader context of their MD&A disclosures.

We also propose to amend Items 2.03 and 2.04 of Form 8–K to include the definition of ''off-balance sheet arrangements'' that is currently in Item 303(a)(4). Currently, Form 8–K defines off-balance sheet arrangements by cross reference to Item 303(a)(4)(ii).[188] This proposed amendment would not result in any changes in reporting obligations under Item 2.03 and Item 2.04 of Form 8–K.[189]

Request for Comment

28. Should we amend the off-balance sheet arrangements disclosure requirement by replacing Item 303(a)(4) with Instruction 8 to Item 303(b), as proposed? Is the proposed instruction a sufficient replacement for the current requirement for a separately-captioned presentation of off-balance sheet arrangements?

29. Are there alternative approaches we should consider to address the potential for boilerplate or duplicative disclosure?

30. Would the proposed amendments result in the loss of material information to investors that would not be disclosed elsewhere? If so, what information would be lost? Are the proposed amendments sufficiently tailored to avoid discussion of immaterial off-balance sheet arrangements?

31. Would the proposed amendments result in more meaningful MD&A disclosures about off-balance sheet arrangements? Are the proposed amendments likely to reduce boilerplate or duplicative disclosure?

32. Should we amend Items 2.03 and 2.04 of Form 8–K to incorporate the definition of ''off-balance sheet arrangements'' that is currently in Item 303(a)(4), as proposed? Would the proposed amendments create any confusion as to when a reporting obligation under Item 2.03 or Item 2.04 of Form 8–K would be triggered?

7. Contractual Obligations Table (Item 303(a)(5))

Under Item 303(a)(5),[190] registrants other than SRCs must disclose in tabular format their known contractual obligations. The item requires a registrant to arrange its table to disclose contracts by type of obligations,[191] the overall payments due, and by four prescribed periods.[192] A registrant may disaggregate the categories of obligations, but it must disclose all obligations falling within the prescribed five categories and for the prescribed time periods. A registrant may provide footnotes to the table to the extent such information is necessary to understand the disclosures in the contractual obligations table. There is no materiality threshold for this item, meaning registrants must disclose all contractual obligations falling within the prescribed four categories.

When the Commission implemented this disclosure requirement, its purpose was to ensure that aggregated information about contractual obligations was presented in one place.[193] This was intended to aid investors in determining the effect such obligations would have in the context of off-balance sheet arrangements.[194] Commission guidance that followed the implementation of this requirement encouraged registrants to include narratives to the table to provide more context and analysis for the numbers presented.[195]

In the Concept Release, the Commission solicited comment on the meaningfulness of disclosure elicited by Item 303(a)(5). Several commenters recommended retaining and enhancing this item requirement,[196] with two of these commenters supporting an additional requirement to include pension obligations.[197] Another

[188] *See* Item 2.03(d) and Item 2.04(d) of Form 8–K. In 2004, as part of a broader effort to expand the events that registrants must report on a current basis, the Commission adopted additional requirements for disclosing off-balance sheet arrangements on Form 8–K. These provisions require registrants to file a Form 8–K upon the creation of a direct financial obligation or an obligation under an off-balance sheet arrangement (Item 2.03) and to file a Form 8–K if a triggering event occurs that causes the increase or acceleration of such an obligation and the consequences of the event are material to the registrant (Item 2.04). While the Form 8–K requirements rely on the definition of ''off-balance sheet arrangement'' in Item 303(a)(4)(ii), the purpose of the disclosure is different. Unlike Item 303(a)(4), Form 8–K does not require registrants to provide an analysis of off-balance sheet arrangements or their importance to the registrant.

[189] We believe it is appropriate to retain the current, prescriptive definition of ''off-balance sheet arrangements'' in Form 8–K in light of its four business day filing requirement. *See* Instruction B.1 and Instructions to Item 2.03 of Form 8–K. Our intent is that a prescriptive definition will provide registrants with greater certainty when filing a Form 8–K.

[190] Item 303(a)(5) of Regulation S–K [17 CFR 229.303(a)(5)].

[191] The types of obligations include long-term debt obligations, capital lease obligations, operating lease obligations, purchase obligations, and other long-term liabilities reflected on the registrant's balance sheet under GAAP.

[192] The payment obligations must be disclosed for the following timeframes: Less than one year; one to three years; three to five years; and more than five years.

[193] *See* Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release at 5990.

[194] *See id.*

[195] *See Commission Guidance on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis,* Release No. 33–9144 (Sept. 17, 2010) [75 FR 59894 (Sept. 28, 2010)] (''2010 MD&A Interpretive Release''), at 59896.

[196] *See, e.g.,* letters from RGA, Bloomberg, Better Markets, Inc. (Jul. 21, 2016) (''Better Markets''), S. Percoco, and CFA Institute.

[197] *See* letters from Bloomberg and S. Percoco.

commenter recommended enhancing this disclosure by requiring XBRL tagging and disclosure of single, discrete years (as opposed to grouped years).[198] Some of these commenters recommended requiring, or at least encouraging, registrants to provide a narrative to the contractual obligations table.[199]

Many commenters, however, recommended that we simplify or eliminate Item 303(a)(5).[200] Some commenters encouraged the Commission to consider whether the contractual obligations table is necessary given the overlap with the disclosure requirements of U.S. GAAP.[201] One commenter also noted that ''to the degree that elimination of duplicative topics is unavoidable, registrants should be able to cross-reference within a filing.'' [202] Another commenter broadly supported the idea of making MD&A contractual obligations disclosure more principles-based ''to highlight material issues regarding [a registrant's] liquidity'' and allowing the relevant factual information to be provided in the financial statements.[203] One commenter questioned whether the contractual obligations table, as currently structured, provides a complete picture of a registrant's obligations and liquidity concerns.[204]

Several commenters recommended the Commission eliminate Item 303(a)(5), stating that the disclosure requirement is largely redundant with what is required in the financial statements.[205] One of these commenters indicated that the Commission should eliminate disclosure requirements that are redundant with U.S. GAAP or IFRS, as applicable.[206] This commenter stated that ''[i]dentical, or even similar disclosures, to GAAP appear unnecessary considering that accounting standards undergo a high level of scrutiny in the standards-setting process and are subjected to ongoing FASB monitoring for needed revisions.'' [207] Another commenter stated that the information provided in response to Item 303(a)(5) is largely the same as that provided in a registrant's financial statements and questioned its utility.[208] The commenter went on to state that the information in the Item 303(a)(5) contractual obligations table did not provide insight as to whether a registrant could pay the obligations as they became due.

In the FAST Act Report, Commission staff recommended eliminating the contractual obligations table while enhancing the liquidity discussion requirements.[209] Under this recommendation, registrants would no longer be required to present contractual obligations in a table, but registrants would have to provide a hyperlink to the relevant information in the financial statements. One commenter on the FAST Act Report stated that eliminating the contractual obligations table would be a ''step backwards.'' [210] The commenter wrote that ''[t]he table as it exists is a user-friendly, central location for the complete display of all a firm's future cash obligations.''

Although the Commission did not propose to eliminate Item 303(a)(5) in the FAST Act Proposing Release,[211] we now propose to eliminate Item 303(a)(5), consistent with our objective to promote the principles-based nature of MD&A and streamline disclosures by reducing redundancy.[212] We do not believe that eliminating the requirement would result in a loss of material information to investors given the overlap with information required in the financial statements and our proposed expansion of the capital resources requirement, discussed above in Section II.C.2.

As many commenters pointed out,[213] much of the information presented in response to this requirement overlaps with U.S. GAAP and is therefore included in the notes to the financial statements.[214] As commenters also observed, the current table does not provide insight into the registrant's ability to pay its obligations as they become due [215] and may not provide a complete picture of the registrant's expected uses of cash.[216] Our proposals to enhance the liquidity and capital resources discussion are intended to address some of these commenter concerns. We recognize that some of the information in the contractual obligations table is not specifically called for under U.S. GAAP.[217] However, under our capital resources proposals, described above in Section II.C.2, registrants would be required to discuss material cash requirements, which would include material contractual obligations.

Request for Comment

33. Should we eliminate the contractual obligations disclosure requirement, as proposed?

34. Would investors be deprived of material information under the proposal?

35. Is the disclosure of information related to contractual obligations in the notes to the financial statements an adequate substitute for its separate tabular presentation in Item 303(a)(5)? Would there be any costs or challenges to investors of compiling information required in Item 303(a)(5) from other sources and, if so, what would the costs or challenges be? Do current XBRL-tagging requirements facilitate compilation and comparison of such information?

36. How do market participants use the ''payments due by period'' information in the contractual obligations table and is the disclosure material to an investor's investment decision? If we eliminate Item 303(a)(5), should we require registrants to disclose information regarding the time periods in which material contractual obligations will become due?

37. If we eliminate the required table of contractual obligations, as proposed,

[198] *See* letter from RGA.

[199] *See, e.g.,* letters from Better Markets, S. Percoco, and CFA Institute.

[200] *See, e.g.,* letters from E&Y, SIFMA, BDO, EEI and AGA, Davis Polk, General Motors, FEI, A. Radin, Deloitte, Chamber, FedEx, CGCIV, CAQ, KPMG, PWC, Chevron, Fenwick, and Grant Thornton.

[201] *See* letters from General Motors, PWC, Grant Thornton, CAQ, and Deloitte.

[202] *See* letter from General Motors.

[203] *See* letter from SIFMA.

[204] As an example, the commenter noted that a registrant can have a large or small amount of contractual obligations, but the disclosure of such amount does not necessarily provide investors with information about the registrant's ability to generate liquidity, its contractual obligations at any other point in time, or a complete picture of its expected uses of cash. *See* letter from E&Y.

[205] *See, e.g.,* letters from A. Radin, Deloitte, Chamber, FedEx, CGCIV, CAQ, KPMG, PWC, Chevron, Fenwick, E&Y, and Grant Thornton.

[206] *See* letter from KPMG.

[207] The commenter then also included a chart that, among other things, noted the items that overlap between Item 303(a)(5) and U.S. GAAP requirements.

[208] *See* letter from Grant Thornton.

[209] *See Report on Modernization and Simplification of Regulation S–K* (Nov. 23, 2016), available at *https://www.sec.gov/reportspubs/sec-fast-act-report-2016.pdf.*

[210] *See* letter to the FAST Act Report from Jack T. Ciesielski, R.G. Associates, Inc. (Dec. 12, 20016), available at *https://www.sec.gov/comments/fast/fast.htm.*

[211] *See* FAST Act Proposing Release.

[212] Item 2.03 of Form 8–K defines ''direct financial obligation'' by cross references to Item 303(a)(5)(ii)—*Definitions.* Accordingly, we are proposing to replace these cross references in Form 8–K with the definitions from Item 303(a)(5)(ii).

[213] *See, supra* note 201.

[214] For example, the following ASC requirements overlap with Item 303(a)(5): ASC 470–10–50 (debt); ASC 840–10–50 (leases); ASC 842 (leases); ASC 440–10–50 (purchase commitments); and ASC 410, 420, 450, and 710 (other long-term obligations).

[215] *See, e.g.,* letters from Grant Thornton, General Motors, CAQ, and E&Y.

[216] *See, e.g.,* letters from CAQ and E&Y.

[217] *See* Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release, at 5986 (''The preparation of financial statements in accordance with GAAP already requires registrants to assess payments under all of the above categories of contractual obligations, except for purchase obligations.'').

what information about contractual obligations are registrants likely to provide in their MD&A?

38. Should we retain the contractual obligations disclosure requirement in a modified form (*e.g.,* with a materiality threshold, but not require a tabular presentation, etc.)? If so, what modifications should we make to the requirement?

39. If we retain the current contractual obligations disclosure requirement, should we revise it to enhance the information provided to investors (*e.g.,* should we expressly require a narrative to the contractual obligations table)?

8. Critical Accounting Estimates

While not specified in Item 303, the Commission in prior guidance has stated that, while preparing MD&A, registrants should consider whether accounting estimates and judgments could materially affect reported financial information.

Specifically, in 2001, the Commission reminded registrants that, under the existing MD&A disclosure requirements, a registrant should address material implications of uncertainties associated with the methods, assumptions, and estimates underlying the registrant's critical accounting measurements.[218] The Commission also encouraged companies to explain the effects of the critical accounting policies applied and the judgments made in their application.[219] In 2002, the Commission proposed rules to require disclosure of critical accounting estimates, but it never adopted this proposal.[220]

In the 2003 MD&A Interpretive Release, the Commission addressed critical accounting estimates.[221] The Commission stated that when preparing MD&A disclosure, companies should consider whether they have made accounting estimates or assumptions where the nature of the estimates or assumptions is material due to the levels of subjectivity and judgment necessary to account for highly uncertain matters or the susceptibility of such matters to change; and the impact of the estimates and assumptions on financial condition or operating performance is material.[222] This guidance further stated that if critical accounting estimates or assumptions are identified, a registrant should analyze, to the extent material, factors such as how it arrived at the estimate, how accurate the estimate/assumption has been in the past, how much the estimate/assumption has changed in the past, and whether the estimate/assumption is reasonably likely to change in the future. This guidance also stated that a registrant should analyze its specific sensitivity to change based on other outcomes that are reasonably likely to occur. Any disclosure should supplement, not duplicate, the description of accounting policies that are already disclosed in the notes to the financial statements, and provide greater insight into the quality and variability of information regarding financial condition and operating performance.[223]

U.S. GAAP does not require a similar disclosure of estimates and assumptions in the notes to financial statements except in a limited number of circumstances.[224] Instead, U.S. GAAP requires disclosure of the accounting principles followed and the methods of applying those principles that materially affect the determination of financial position, cash flows, or results of operations.[225] Unlike U.S. GAAP, any discussion in MD&A should present a registrant's analysis of the uncertainties involved in applying the principles.[226] IFRS requires disclosures regarding sources of estimation uncertainty and judgments made in the process of applying accounting policies that have the most significant effect on the amounts recognized in the financial statements.[227]

In the Concept Release, the Commission noted that, despite its guidance, many registrants repeat the discussion of significant accounting policies from the notes to the financial statements in MD&A and provide limited additional discussion of the critical accounting estimates.[228] The Commission solicited comment on how to improve the discussion of critical accounting estimates in MD&A.

The Commission received a range of comments on critical accounting estimates. Many commenters acknowledged that registrants typically provide disclosure that is duplicative of their accounting policies or does not otherwise provide meaningful analysis of the estimates and assumptions involved.[229] Several commenters recommended revising Item 303 to include a critical accounting estimate requirement,[230] with some of these commenters suggesting this may improve the resulting disclosure.[231] While some of the commenters that recommended revising Item 303 supported a prescriptive rule for critical accounting estimates,[232] others suggested revising the item to provide a principles-based framework for critical accounting estimates.[233] One commenter stated that a critical accounting estimate requirement in Item 303 should specifically state that the disclosure is meant to supplement, and not duplicate, the description of accounting policies in the footnotes to the financial statements.[234] This same commenter also recommended that Item 303 require a discussion about the judgments and assumptions that management must make in order to prepare its financial statements and that have the most significant impact on such financial statements.

Some commenters suggested that, if Item 303 is revised to address critical accounting estimates specifically, the Commission should not codify the Commission's guidance on disclosure of critical accounting estimates and related disclosure requirements as set forth in the 2003 MD&A Interpretive Release.[235] One commenter suggested that disclosure of critical accounting estimates should be required when: (i) It is at least reasonably possible that the estimate of the effect on the financial statements of a condition, situation, or set of circumstances that existed at the date of the financial statements will change in the near term due to one or more future confirming events; and (ii) the effect of the change would be material to the financial statements.[236] Two commenters stated that the

[218] *See Cautionary Advice Regarding Disclosure,* Release No. 33–8040 (Dec. 12, 2001) [66 FR 65013 (Dec. 17, 2001)] (''Cautionary Advice Release'').

[219] *See id.*

[220] *See Disclosure in Management's Discussion and Analysis about the Application of Critical Accounting Policies,* Release No. 33–8098 (May 10, 2002) [67 FR 35620 (May 20, 2002)] (''2002 Critical Accounting Policies Proposal''). *See also,* Concept Release, at 239452, for a summary of the 2002 Critical Accounting Policies Proposal.

[221] *See* 2003 MD&A Interpretive Release.

[222] *See id.*

[223] *See id.*

[224] For example, ASC 820–10–50–1C requires similar disclosure related to fair value measurements.

[225] *See* ASC 235–10–50–3.

[226] *See* 2003 MD&A Interpretive Release, at 75064.

[227] International Accounting Standard (''IAS'') 1, paragraphs 122 to 133.

[228] *See* Concept Release, at 23953.

[229] *See, e.g.,* letters from A. Radin, NYSSCPA, Deloitte, PWC, Investment Program Association (Jul. 21, 2016), Davis Polk, Fenwick, CalPERS, NAREIT and American Bar Association (Dec. 15, 2017) (''ABA'').

[230] *See, e.g.,* letters from Deloitte, NYSSCPA, BDO, CAQ, Grant Thornton, PWC, CalPERS, S. Percoco, and ABA.

[231] *See, e.g.,* letters from Deloitte, BDO, and Grant Thornton.

[232] *See, e.g.,* letters from NYSSCPA and CalPERS.

[233] *See* letters from Deloitte, Grant Thornton, BDO, PWC, and CAQ.

[234] *See* letter from ABA.

[235] *See, e.g.,* letters from A. Radin, CalPERS, NAREIT, and S. Percoco.

[236] *See* letter from KPMG (citing KPMG, LLP letter (Dec. 9, 2002) to the 2002 Critical Accounting Policies Proposal).

disclosures should describe the process employed in creating the estimate.[237]

Other commenters suggested that the Commission coordinate with the FASB to enhance U.S. GAAP so that it requires these disclosures.[238] Yet others suggested that the Commission eliminate guidance related to critical accounting estimates because they believe the disclosures are not useful and the dynamic nature of uncertainties makes it overly challenging to quantify the reasonably likely range of outcomes with a solid basis for investor reliance.[239] A few commenters stated that current Commission guidance is sufficient but recommended that the Commission provide additional illustrative guidance.[240] Two of these commenters opposed revising Item 303 to require disclosure of critical accounting estimates and opposed adopting a ''strict definition'' of critical accounting estimates; these commenters stated that any clarification in this area should be done through a revised interpretive release.[241]

We propose to amend Item 303(a)[242] to explicitly require disclosure of critical accounting estimates.[243] We are persuaded by commenters who stated that a requirement in Item 303 would facilitate compliance and may improve the resulting disclosure.[244] As stated by many commenters, registrants often repeat the information in the financial statement footnotes about significant accounting policies. By proposing to codify this requirement, our intent is to eliminate disclosure that duplicates the financial statement discussion of significant accounting policies and, instead, promote enhanced analysis of measurement uncertainties.

Our proposed amendments are also intended to clarify for registrants the required disclosures related to critical accounting estimates. To this end, our proposals define a critical accounting estimate as an estimate made in accordance with generally accepted accounting principles that involves a significant level of estimation uncertainty and has had or is reasonably likely to have a material impact on the registrant's financial condition or results of operations. By focusing the definition on estimation uncertainties, we intend to avoid any unnecessary repetition of significant accounting policy footnotes. For each critical accounting estimate, the proposed amendments would require registrants to disclose, to the extent material, why the estimate is subject to uncertainty, how much each estimate has changed during the reporting period, the sensitivity of the reported amounts to the material methods, assumptions, and estimates underlying the estimate's calculation.[245]

We believe the proposed amendments would clarify for registrants the disclosures required to address any critical accounting estimates, help avoid boilerplate or duplicative disclosures, and provide investors with material information regarding critical accounting estimates. We also believe that the disclosure elicited by the proposed amendments would facilitate further understanding of an analysis of amounts reported in the financial statements by providing greater insight on the uncertainties involved in creating and applying an accounting policy and how significant accounting policies of registrants faced with similar facts and circumstances may differ.

We recognize that some of the disclosure that would be required under our proposals may be provided already under U.S. GAAP[246] or IFRS.[247] To discourage duplicative disclosures, we are proposing, as suggested by one commenter, to also include an instruction specifying that the disclosure of critical accounting estimates shall supplement, but not duplicate, the description of accounting policies or other disclosures in the notes to the financial statements.[248]

We considered the potential for overlap with auditor communications of critical audit matters.[249] A critical audit matter is defined as ''any matter arising from the audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) Relates to accounts or disclosures that are material to the financial statements; and (2) involved especially challenging, subjective, or complex auditor judgment.''[250] Beginning with audits of fiscal years ending on or after June 30, 2019,[251] audit reports are required, among other things, to include a description of ''the principal considerations that led the auditor to determine that the matter is a critical audit matter.''[252] The communications auditors are expected to provide on critical audit matters in an audit report have a different objective than disclosures related to critical accounting estimates. In this regard, critical audit matters provide insight into matters that are especially challenging, subjective, and complex to audit from the perspective of the auditor. On the other hand, critical accounting estimates disclosure should provide management's insights into estimation uncertainties that have had or are reasonably likely to have a material impact on reported financial statements. A critical accounting estimate may not be a critical audit matter because it may not involve especially challenging, subjective, or complex auditor judgment, but it would still require analysis in MD&A. Likewise, a critical audit matter that would require reporting in the audit report may not necessarily be a critical accounting estimate, as proposed, because it may not involve estimation uncertainty that can materially affect reported amounts.[253] For these reasons, we do

[237] *See* letters from CAQ and CalPERS.

[238] *See, e.g.,* letters from E&Y, Northrop Grumman, and KPMG.

[239] *See* letters from A. Radin, Davis Polk, and Fenwick.

[240] *See, e.g.,* letters from Chevron, CGCIV, and Chamber.

[241] *See* letter from Chamber and CGCIV.

[242] Proposed to be renumbered as Item 303(b).

[243] *See* proposed Item 303(b)(6).

[244] *See, e.g.,* letters from Deloitte, BDO and Grant Thornton.

[245] These disclosure requirements are similar to those found in IFRS. *See* IAS 1, paragraph 129.

[246] For example, with respect to recurring fair value measurements categorized with Level 3 of the fair value, ASC 820–10–50–2 requires a narrative description of the sensitivity of the fair value measurement to changes in unobservable inputs if a change in those inputs to a different amount might result in a significantly higher or lower fair value measurement. We are not proposing to eliminate any requirement that this information be provided.

[247] *See* IAS 1, paragraphs 125 to 133.

[248] *See* letter from ABA.

[249] *See* PCAOB Standard AS 3101, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion* (''AS 3101''). *See also* letter from Grant Thornton (stating that ''[w]hile the two concepts have different meanings, there may be some confusion amongst stakeholders as to the relationship between the two.'').

[250] *See* AS 3101.

[251] The requirements related to critical audit matters in AS 3101 apply to reports of independent registered public accounting firms that are included in certain registrant filings. These requirements are effective for audits of fiscal years ending on or after June 30, 2019 for large accelerated filers; and for fiscal years ending on or after December 15, 2020, for all other companies to which the requirements apply. *See Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rules on the Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion, and Departures from Unqualified Opinions and Other Reporting Circumstances, and Related Amendments to Auditing Standards,* Release No. 33–81916 (Oct. 23, 2017) [82 FR 49886 (Oct. 27, 2017)].

[252] *See* paragraph 14 of AS 3101.

[253] *See e.g.,* ''Implementation of Critical Audit Matters: A Deeper Dive on the Determination of CAMS'' (Mar. 18, 2019), at 6 available at *https://pcaobus.org/Standards/Documents/Implementation-of-Critical-Audit-Matters-Deeper-Dive.pdf.*

Additionally, our proposal to require critical accounting estimates would apply to EGCs. In contrast, disclosure of critical audit matters is not required for audits of EGCs. *See* paragraph 5 of AS 3101.

not believe that proposed Item 303(a)(4) would necessarily result in duplicative disclosure.

Request for Comment

40. Should we amend Item 303 to require disclosure of critical accounting estimates, as proposed?

41. Is the proposed definition of critical accounting estimates sufficiently clear? Are there alternative definitions that we should consider?

42. Should any registrants, such as SRCs, EGCs, or IPO issuers, be exempted from this proposed requirement? If so, which registrants, and should there be a time limitation on such an accommodation?

43. Would the proposed amendments result in disclosures that are duplicative of U.S. GAAP or IFRS, as applicable? If so, how? Are there alternatives we should consider to encourage registrants to provide disclosures that will supplement, rather than duplicate, disclosures that appear in the financial statements?

44. Would the proposed amendments provide clarity to registrants on disclosures regarding critical accounting estimates? Would the proposed amendments provide investors with material information regarding critical accounting estimates?

45. Some commenters suggested we issue a revised interpretive release addressing critical accounting estimates [254] and others suggested we provide illustrative examples to facilitate this disclosure.[255] Instead of amending Item 303, should we issue revised guidance addressing critical accounting estimates? Should we provide illustrative examples?

46. The Commission has previously encouraged registrants to include, in their MD&A, explanations of the judgments and uncertainties affecting application of their accounting policies.[256] For example, critical accounting judgments may include whether financial assets are held-to-maturity investments, whether an instrument is classified as debt or equity, or judgments made about the appropriate scope for a transaction. Should the Commission be more prescriptive in this area and, for example, adopt a requirement for registrants to disclose critical accounting judgments? Would such a requirement elicit material information that would not otherwise be provided, including as a result of the proposed critical accounting estimates requirement? As an alternative to a new requirement, should we refer the matter to the FASB for potential incorporation into U.S. GAAP?

9. Interim Period Discussion (Item 303(b))

Item 303(b) requires registrants to provide MD&A disclosure for interim periods that enables market participants to assess material changes in financial condition and results of operations between certain specified periods.[257] Item 303(b)(1) requires registrants to discuss any material change in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet.[258] Item 303(b)(2) requires registrants to discuss any material changes in their results of operations for the most recent fiscal year-to-date period presented in their income statement, along with a similar discussion of the corresponding year-to-date period of the preceding fiscal year. If a registrant is required or elects to provide an income statement for the most recent fiscal quarter, the discussion must also cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year.[259] Item 303(b)(2) also states that registrants subject to Rule 3–03(b) of Regulation S–X [260] providing statements of comprehensive income for the twelve-month period ended as of the date of the most recent interim balance sheet must discuss material changes of that twelve-month period as compared to the preceding fiscal year rather than the preceding period.

The Commission adopted the precursor to current Item 303(b) as part of its effort to integrate and simplify its disclosure system.[261] The Commission stated at the time that the amendments it was adopting formed ''an integral part of the Commission's program to integrate the disclosure requirements of the Exchange Act with those of the Securities Act, and to encourage and facilitate the integration of corporate reporting on formal Commission filings with informal corporate communications with shareholders.'' [262] The Commission also noted that the amendments were complements to the annual report amendments adopted around the same time.[263]

The Commission recently solicited comment on the current quarterly reporting process and how the Commission can reduce the administrative burdens on reporting companies associated with this process while enhancing the investor protections associated with periodic reporting under the Exchange Act.[264] The Commission also sought input on the benefits, costs, and burdens of the current quarterly reporting system, and possible approaches to simplifying the process through which investors access, process, and evaluate information.[265]

Multiple commenters responding to the Request for Comment recommended that the Commission consider allowing more flexibility in interim period MD&A, or otherwise streamline or eliminate certain discussion requirements.[266] One commenter recommended that the Commission

[254] *See, e.g.,* letters from Chamber and CGCIV.

[255] *See, e.g.,* letters from PWC, KPMG, and Chevron.

[256] *See* Cautionary Advice Release, at 65013.

[257] Item 303(b) of Regulation S–K [17 CFR 229.303(b)].

[258] If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding year, the registrant must also discuss any material changes in financial condition from that date to the date of the most recent interim balance sheet provided. At their discretion, registrants may combine discussions of changes from both the end and the corresponding interim date of the preceding fiscal year when such discussions are required. *See* Item 303(b)(1).

[259] In addition, if the registrant elects to provide a statement of comprehensive income for the twelve-month period ended as of the date of the most recent interim balance sheet provided, the registrant must also discuss material changes with respect to that twelve-month period and the twelve-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year. *See* Item 303(b)(2).

[260] These registrants include those primarily engaged in: The generation, transmission, or distribution of electricity; the manufacture, mixing transmission, or distribution of gas; the supplying or distribution of water; or the furnishing of telephone or telegraph services; or in holding securities of companies engaged in such business.

[261] *See New Interim Financial Information Provisions and Revisions of Form 10–Q for Quarterly Reporting,* Release No. 33–6288 (Feb. 9, 1981), 46 FR 12480 (Feb. 17, 1981) (adopting current Item 303(b) of Regulation S–K as then Item 11(b) of Regulation S–K) (''Item 303(b) Adopting Release''). *See also* 1982 Integrated Disclosure Adopting Release (reorganizing Regulation S–K to, among other things, move the substance of Item 11(b) of Regulation S–K to Item 303(b) of Regulation S–K).

[262] *See* Item 303(b) Adopting Release, at 12481.

[263] *Id.*

[264] *Request for Comment on Earnings Releases and Quarterly Reports,* Release No. 33–10588 (Dec. 18, 2018) [83 FR 65601 (Dec. 21, 2018)] (the ''Request for Comment''). Comment letters in response to the Request for Comment are available at *https://www.sec.gov/comments/s7-26-18/s72618.htm.* References to comment letters in this Section II.C.9 are to those letters received in response to the Request for Comment.

[265] The request for comment also addressed other items relating to (1) the use of earnings releases to satisfy the core disclosure requirements of Form 10–Q, (2) the frequency of interim reporting, and (3) earnings guidance.

[266] *See, e.g.,* letters in response to the Request for Comment from Bank of America (Mar. 21, 2019) (''BoA''), BDO USA, LLP (Mar. 21, 2019) (''BDO 2''), Center for Audit Quality (Mar. 20, 2019) (''CAQ 2''), Financial Executives International (''FEI 2''), Cleary Gottlieb Steen & Hamilton LLP (Mar. 27, 2019) (''Cleary Gottlieb''), and Institute of Management Accountants (Mar. 21, 2019).

evaluate whether registrants should *only* be required to discuss year-to-date results of operations in their MD&A (and not be required to provide a separate discussion of the results of operations of individual quarters).[267] Other commenters, however, recommended that the Commission assess whether registrants should be required to discuss year-to-date results and condition (*i.e.,* evaluate whether registrants should be permitted to exclude year-to-date discussions).[268] One of these commenters recommended that the Commission permit flexibility in how registrants present their MD&A by allowing registrants to choose the presentation that is most consistent with how they manage their respective businesses (*e.g.,* quarter over quarter vs. year over year).[269] Another commenter recommended the Commission consider allowing management to exercise judgment in omitting certain year-to-date and/or quarterly information from interim period MD&A if the omitted information is consistent with prior trends or repeats information provided elsewhere in a quarterly report.[270]

Other commenters noted that Form 10–Q's prescribed disclosures ensure uniformity among registrants.[271] One of these commenters stated that the structured format of quarterly reports allows certain market participants to analyze results and to produce tools that ''aid investors to make more informed investment decisions.'' [272] Another commenter stated that there should be some element of uniformity in required disclosures so that there is consistency among registrants.[273]

Several commenters encouraged the Commission to conduct further outreach with investors and companies.[274] On July 18, 2019, the Commission held a roundtable discussion on whether the quarterly reporting system should be modified to address the impact of short-termism on our capital markets.[275] During the roundtable discussion, multiple panelists discussed the need for streamlined MD&A disclosures, including interim period MD&A.[276] One panelist suggested that the Commission allow registrants to make MD&A comparisons to the preceding interim period or to discuss only year-to-date changes.[277] Another panelist noted that ''companies will want to talk about discrete quarters'' because ''that's how they do their earnings releases.'' [278]

We propose to amend Item 303(b) (to be renumbered as proposed Item 303(c)) to allow for flexibility in comparisons of interim periods and to simplify the item.[279] Specifically, we propose to permit registrants to compare their most recently completed quarter to either the corresponding quarter of the prior year (as is currently required) *or* to the immediately preceding quarter. Under the proposal, if a registrant elects to discuss changes from the immediately preceding sequential quarter, the registrant must provide summary financial information that is the subject of the discussion for that quarter or identify the prior EDGAR filing that presents such information so that a reader may have ready access to the prior quarter financial information being discussed. In addition, under the proposed amendment, if a registrant changes the comparison from the prior interim period comparison, the registrant would be required to explain the reason for the change and present both comparisons in the filing where the change is announced. For example, if a registrant in its third quarter Form 10–Q decides to compare its results to the preceding quarter after the registrant had compared such quarter to the corresponding quarter of the previous year in its earlier report, the registrant would be required to present both comparisons in that third quarter Form 10–Q and explain the reasons for the change in comparison.

We believe that these changes would allow registrants additional flexibility to provide an analysis that they believe is most relevant to an understanding of the frequency and amplitude of past business cycles while also ensuring that investors have appropriate information to assess the comparisons being presented. We recognize that not all businesses are seasonal and a comparison to the corresponding quarter of the preceding year may not be as meaningful as a comparison to the preceding quarter. We also believe that this proposal would respond to commenters' concern about the need for flexibility in MD&A.[280] These changes are intended to provide market participants with the most relevant information about a registrant while reducing comparisons that may obscure the most material trends. We believe that requiring registrants to provide both comparisons and explain the reasons for a change in comparison from prior periods would ensure that investors and other market participants have sufficient information to understand and adjust to any period over period change.

We are also proposing amendments to simplify Item 303(b) (to be renumbered as proposed Item 303(c)) that would:

- Eliminate the text that states that registrants need not provide a discussion of the impact of inflation and changing prices, consistent with the proposed amendments described above; [281] and
- Amend Item 303(b)(2) (proposed Item 303(c)(2)) material changes in results of operations—to break the requirements into two subsections:
  - Proposed Item 303(c)(2)(i) would continue to require registrants to discuss any material changes in their results of operations between the most recent year-to-date interim period(s) and the corresponding period(s) of the preceding fiscal year for which statements of comprehensive income are provided; and
  - Proposed Item 303(c)(ii) would, as discussed above, require registrants to compare their most recently completed quarter to either of the corresponding quarter of the prior year (as is currently required) *or* to the immediately preceding quarter.[282]

We are also proposing to eliminate language requiring registrants subject to Rule 3–03(b) of Regulation S–X [283] that

[267] *See* letter from Ernst & Young (Mar. 21, 2019) (''Ernst'').

[268] *See* letters from BoA, BDO 2, CAQ 2, CCR, Cleary Gottlieb, FEI 2, and IMA.

[269] *See* letter from BDO.

[270] *See* letter from CAQ 2.

[271] *See, e.g.,* letters from AFL–CIO (Mar. 21, 2019), BDO 2, Better Markets (Mar. 21, 2019), CAQ 2, CIT Group Inc. (Mar. 21, 2019) (''CIT''), Edison Electric Institute and American Gas Association (Mar. 21, 2019), Gallagher Co. (Mar. 14, 2019), Investment Company Institute (Mar. 21, 2019), KPMG LLP (Mar. 21, 2019), Marcum LLP (Mar. 21, 2019), Mazars USA LLP (Mar. 21, 2019), New York City Bar Association (Apr. 10, 2019), RSM US LLP (Mar. 20, 2019) (''RSM''), T. Rowe Price (Mar. 20, 2019), Think Computer Foundation (Mar. 20, 2019), and XBRL US (Mar. 21, 2019).

[272] *See* letter from Better Markets.

[273] *See* letter from CIT.

[274] *See, e.g,* letters from CAQ 2, FEI 2, Ernst, Grant Thornton, RSM, and Tapestry Networks.

[275] *Roundtable on Short-term/Long-term Management of Public Companies, our Periodic Reporting System and Regulatory Requirements* (July 18, 2019), archived at *https://www.sec.gov/video/webcast-archive-player.shtml?document_id=roundtable-short-long-term-071819.*

[276] *See id.* at 2:40:56, Statement of Steven Jacobs. *See also id.* at 3:22:20, Statement of Nicolas Grabar.

[277] *See supra* note 275 at 2:48:36, Statement of Nicolas Grabar.

[278] *See supra* note 275 at 2:40:56, Statement of Steven Jacobs.

[279] The proposed changes to Item 303(a) would flow through to Item 303(b) because Item 303(b) currently provides that the interim discussion and analysis must include a discussion of the material changes in items specified in Item 303(a) (with the exception of inflation and changing prices, which we propose to eliminate).

[280] *See supra* note 266.

[281] *See* discussion, *supra* at Section II.C.5.

[282] As described above, if a registrant changes the comparison from the prior interim period comparison, the registrant would be required to explain the reason for the change.

[283] *See supra* note 260.

elect to provide a statement of comprehensive income for the twelve-month period ended as of the date of the most recent interim balance sheet to discuss material changes in that twelve-month period with respect to the preceding fiscal year, rather than the corresponding preceding period. We propose giving these registrants the same flexibility as other registrants to make the most meaningful comparisons in their interim period MD&A. In addition to simplifying Item 303, this change is meant to modernize the current Item 303 requirement. We have not observed any registrants in recent history that provided the statements of comprehensive income in registration statements permitted by Rule 3–03(b) of Regulation S–X. Accordingly, we do not believe the elimination of the provisions in Item 303(b) would cause any impact. We also believe that the additional flexibility we are proposing for all registrants would allow registrants subject to Rule 3–03(b) of Regulation S–X [284] to make the most meaningful comparisons in their MD&A.

Finally, we are proposing to delete Instructions 2, 3, 5, 6, 7, and 8 to current paragraph (b).[285] We are proposing to eliminate Instruction 2 because we no longer believe it necessary that an instruction make explicit the presumption that readers have read or have access to the MD&A for the preceding fiscal year. We also propose to eliminate Instructions 3 and 6 because they duplicate current Instructions 4 [286] and 7 to Item 303(a), respectively.[287] Instead, we propose a new Instruction 1 to proposed Item 303(c) that would cross-reference the applicable instructions in proposed Item 303(b). We propose to eliminate Instruction 7 to Item 303(b) in light of our proposal to eliminate Item 303(a)(5), the subsection that requires disclosure of contractual obligations. We also propose to eliminate Instruction 5, which is currently reserved. Finally, we propose to move Instruction 8 to current Item 303(b) to Instruction 10 of proposed Item 303(b). The following table outlines the current and proposed structure of Item 303(b) (proposed Item 303(c)): [288]

Current structure	Proposed structure
Item 303(b), *Interim periods*	Item 303(c), *Interim periods*.
(1) Material changes in financial condition	(1) Material changes in financial condition.
(2) Material changes in results of operations, Rule 3–03(b) of Regulation S–X matters.	(2) Material changes in results of operations. (i) Material changes in results of operations (year-to-date). (ii) Material changes in results of operations (quarter comparisons).
Instruction 1 to Item 303(b)	Instruction 1 to Item 303(c) (with amendments to reference Instructions 2, 5, 9, and 10 to proposed Item 303(b)).
Instruction 2 to Item 303(b)	Eliminate.
Instruction 3 to Item 303(b)	Eliminate.
Instruction 4 to Item 303(b)	Instruction 2 to Item 303(c).
Instruction 5 to Item 303(b)	Eliminate.
Instruction 6 to Item 303(b)	Eliminate.
Instruction 7 to Item 303(b)	Eliminate.
Instruction 8 to Item 303(b)	Instruction 10 to proposed Item 303(b).

Request for Comment

47. Should we amend the interim period disclosure requirements in Item 303(b), as proposed? Alternatively, in order to permit registrants flexibility to choose their presentation in the manner that is most consistent with how their business is managed, should we allow registrants to include a discussion of material changes in the results of operations with respect to either the most recent fiscal year-to-date period or the most recent fiscal quarter? Are there other approaches we should consider?

48. What would the benefits and/or drawbacks be of allowing registrants more flexibility regarding the interim period comparisons they discuss in MD&A?

49. Would the ability to compare interim period information across registrants be significantly affected by allowing flexibility for interim period comparisons, as proposed?

50. How do market participants use Item 303(b) disclosures? What are the benefits and drawbacks of the current period-to-period comparisons requirements?

51. How would our proposed amendments affect registrants subject to Rule 3–03(b) of Regulation S–X? We are not proposing to eliminate Rule 3–03(b). If adopted, would the Commission's disclosure rules and guidance be sufficiently clear about disclosure these registrants must provide? What would the consequences of these proposed changes be for market participants?

10. Safe Harbor for Forward-Looking Information (Item 303(c))

Item 303(c) [289] states that the safe harbors provided in Section 27A of the Securities Act and 21E of the Exchange Act (together, ''statutory safe harbors'') apply to all forward-looking information provided in response to Item 303(a)(4) (off-balance sheet arrangements) and Item 303(a)(5) (contractual obligations), provided such disclosure is made by certain enumerated persons.[290] Item 303(c) confirms application of the statutory safe harbors to Item 303(a)(4) and Item 303(a)(5), and states that all of the required disclosures under these two items are deemed to be ''forward-looking statements'' as that term is defined in the statutory safe harbors,

[284] *See d.*

[285] Instruction 5 to Item 303(b) is currently reserved.

[286] As discussed in Section II.C.4, we are proposing to revise current Instruction 4 to Item 303(a) to clarify that registrants must discuss the ''underlying reasons'' for material changes in ''quantitative and qualitative terms.'' We are also proposing to clarify that registrants must discuss material changes within a line item.

[287] We also propose to move the text of Instruction 8 to a new Instruction 11 to Item 303(a) (proposed Item 303(b)), and reference it in proposed Instruction 1 to Item 303(c).

[288] The information in this table is not comprehensive and is intended only to highlight the general structure of the current rules and proposed amendments. It does not reflect all of the substance of the proposed amendments or all of the rules and forms that are proposed to be affected. All changes are discussed in their entirety throughout this release. As such, this table should be read together with this Section II.C.9.

[289] Item 303(c) of Regulation S–K [17 CFR 229.303(c)].

[290] Such persons are the issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

except for historical facts.[291] With respect to Item 303(a)(4), Item 303(c) further states that the ''meaningful cautionary statements'' element of the statutory safe harbors is satisfied if a registrant satisfies all of Item 303(a)(4) requirements.[292]

The Commission added Item 303(c) in 2003 when it adopted Items 303(a)(4) and (5).[293] Item 303(c) was intended to remove possible ambiguity about the application of the statutory safe harbors to these items.[294] Since we propose to eliminate both Items 303(a)(4) and (5), we are also proposing to eliminate Item 303(c), which specifically and exclusively refers to those disclosure requirements.

Nevertheless, forward-looking information included in off-balance sheet arrangement disclosures provided in response to proposed Instruction 8 to Item 303(b), along with disclosures regarding contractual obligations, would continue to be covered by existing safe harbors. The proposed amendments are intended to be conforming changes and would not alter the availability of the regulatory safe harbors in Securities Act Rule 175 [295] and Exchange Act Rule 3b–6,[296] which expressly apply to forward-looking information in MD&A disclosure.[297] These rules establish a safe harbor for ''forward-looking statements'' and define such statements to include statements of ''future economic performance contained in management's discussion and analysis.'' [298] These rules were adopted with the express purpose of encouraging forward-looking information and in response to commenters' recommendations stating that the absence of a safe harbor could discourage forward-looking information.[299]

Our proposed amendments are also not intended to alter the application of the statutory safe harbor provisions of the Private Securities Litigation Reform Act.[300] While these provisions apply more broadly, they also protect eligible forward-looking statements [301] in MD&A against private legal actions that are based on allegations of a material misstatement or omission. We continue to believe that the safe harbors for eligible forward-looking statements and the safe harbor provisions of the Private Securities Litigation Reform Act have encouraged greater disclosure of forward-looking information that has benefited investors and our markets.

Request for Comment

52. Should we eliminate Item 303(c), as proposed?

53. If we eliminate Item 303(c), is it necessary or helpful to provide a specific instruction referring to the statutory safe harbors for forward-looking statements that may apply to the proposed off-balance sheet arrangement disclosures? Should we instead retain Item 303(c) and acknowledge that the statutory safe harbors would apply to all of Item 303?

11. Smaller Reporting Companies (Item 303(d))

Item 303(d) [302] states that an SRC may provide Item 303(a)(3)(iv) information for the most recent two fiscal years if it provides financial information on net sales and revenues and income from continuing operations for only two years. Item 303(d) also states that an SRC is not required to provide the contractual obligations chart specified in Item 303(a)(5). In light of our proposals to eliminate Item 303(a)(3)(iv) and (a)(5), we are also proposing to eliminate Item 303(d), which specifically and exclusively references these two disclosure requirements. SRCs may continue to rely on Instruction 1 to Item 303(a),[303] which states that an SRC's discussion shall cover the two-year period required in Article 8 of Regulation S–X.

Request for Comment

54. Should we eliminate Item 303(d), as proposed?

55. Are there any proposed amendments to Item 303 where we should consider providing further accommodations to SRCs?

General Requests for Comment for Item 303

56. Are there any other changes we should consider to Item 303 to streamline, update, or modernize MD&A disclosure requirements?

57. Should we require MD&A to be structured in Inline eXtensible Business Reporting Language (''Inline XBRL'') format? [304] If so, should MD&A be structured using block tags, detail tags, or some combination of the two? How would investors and other market participants benefit from such a requirement, and what would be the costs and burdens to registrants? Would the costs and burdens be disproportionately high for any group of issuers?

58. Should we amend Item 9 of Form 1–A to reflect any of the proposals in this release?

D. Application to Foreign Private Issuers

We are proposing corresponding amendments that would apply to FPIs providing disclosure required by Form 20–F or Form 40–F.[305] We are also proposing amendments to current Instruction 11 to Item 303, which specifically applies to FPIs that choose to file on domestic forms. Similar to our discussions above and for the reasons discussed in greater detail below, our proposals to these forms are intended to

[291] Item 303(c)(2)(i) of Regulation S–K [17 CFR 229.303(c)(2)(i)].

[292] Item 303(c)(2)(ii) of Regulation S–K [17 CFR 229.303(c)(2)(ii)].

[293] *See* Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release at 5992 (''To encourage the type of information and analysis necessary for investors to understand the impact of off-balance sheet arrangements and to reduce the burden of estimating the payments due under contractual obligations, the amendments include a safe harbor for forward-looking information.'').

[294] *See id.*

[295] [17 CFR 230.175].

[296] [17 CFR 240.3b–6].

[297] Instruction 7 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)], Securities Act Rule 175 [17 CFR 230.175], and Exchange Act Rule 3b–6 [17 CFR 240.3b–6].

[298] *See* Rule 175(c)(3) and Rule 3b–6(c)(3) [17 CFR 230.175(c)(3) and 17 CFR 240.3b–6(b)(3)].

[299] *See Safe Harbor Rule for Projections,* Release No. 33–6084 (June 25, 1979) [44 FR 38810 (July 2, 1979)].

[300] *See* Sections 27A of the Securities Act and 21E of the Exchange Act.

[301] The statutory safe harbors by their terms do not apply to forward-looking statements included in financial statements prepared in accordance with generally accepted accounting principles. Notably, the statutory safe harbors also would not apply to MD&A disclosure if the MD&A forward-looking statements were made in connection with: An initial public offering; a tender offer; an offering by a partnership, limited liability company, or a direct participation investment program, or the forward-looking statement is made by an issuer of penny stock or is made by an issuer in connection with an offering of securities by a blank check company, or is made in connection with a roll-up transaction or a going private transaction. *See* Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act. Also, the statutory safe harbors do not, absent a rule, regulation, or Commission order, apply to forward-looking statements by issuers covered by Section 27A(b)(1)(A) of the Securities Act and Section 21E(b)(1)(A) of the Exchange Act. Because the statutory safe harbors only apply to forward-looking statements made by or on behalf of an issuer that is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, they would not apply to forward-looking statements made in connection with an offering under Regulation A unless the issuer is a reporting company and no other exclusions from the safe harbor apply.

[302] Item 303(d) of Regulation S–K [17 CFR 229.303(d)].

[303] Proposed renumbered Item 303(b).

[304] Registrants subject to the financial disclosure requirements of Regulation S–K are either currently required or will be required to file their financial statements and filing cover page disclosures in the Inline XBRL format. *See* [17 CFR 229.601(b)(101)]. *See also* Inline XBRL Filing of Tagged Data, Securities Act Release No. 10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018), at 40851] (''Inline XBRL Adopting Release'').

[305] These proposals would also apply to those forms calling for information in Forms 20–F, such as Form F–1.

modernize, clarify, and streamline these disclosure requirements.

1. Form 20–F

a. Selected Financial Data (Item 3.A of Form 20–F)

Similar to Item 301, Item 3.A of Form 20–F requires FPIs to provide selected historical financial data for the most recent five financial years (or such shorter period that the company has been in operation). Also similar to Item 301, Item 3.A specifies the information that must be included in the selected financial data and provides that EGCs are not required to present selected financial data for any period prior to the earliest audited financial statements presented in connection with the registrant's initial public offering of its common equity securities. In a registration statement, periodic report, or other report filed under the Exchange Act, an EGC need not present selected financial data for any period prior to the earliest audited financial statements presented in connection with the EGC's first registration statement that became effective under the Exchange Act or the Securities Act.[306] However, unlike Item 301, Item 3.A also permits a FPI to omit either or both of the earliest two years of data if it represents that it cannot provide the information, or cannot provide the information on a restated basis, without unreasonable effort or expense.

Given the similarities between Item 3.A and Item 301, we propose to delete Item 3.A and the related instructions. As with Item 301, trend disclosure elicited by Item 3.A typically would be discussed in disclosure provided in response to Item 5 of Form 20–F, which requires MD&A disclosure similar to Item 303. FPIs may, however, continue to include a tabular presentation of the line items discussed in the MD&A, to the extent they believe that such a presentation would be useful to an understanding of the disclosure.[307]

Request for Comment

59. Should we eliminate Item 3.A of Form 20–F, as proposed? Would the proposed elimination of Item 3.A result in the loss of material information that is otherwise not available to investors? If so, what information would be lost, and are there alternatives we should consider that would elicit this information?

60. The Commission revised Form 20–F in 1999 to conform in large part to the international disclosure standards endorsed by the International Organization of Securities Commissions (''IOSCO'') for the non-financial statement portions of a disclosure document, which have served as the basis for the disclosure requirements in several foreign jurisdictions.[308] One of the objectives of the IOSCO standards was to facilitate the cross-border flow of securities and capital by promoting the use of a single disclosure document that would be accepted in multiple jurisdictions. If we revise Item 3.A of Form 20–F as proposed, would such revision reduce the ability of FPIs to use a single document in multiple jurisdictions?

61. Would the proposed amendments conflict with home-country requirements in some jurisdictions if the FPI were engaging in a cross-border offering or listing? If so, please explain.

62. Unlike Item 301, Item 3.A provides an accommodation to FPIs for either or both of the earliest two years of data. Given this accommodation, should we retain this item? Does Item 3.A require disclosure that is duplicative of the financial statements?

63. Are there any unique considerations with respect to FPIs in this context?

64. Are the requirements of Item 5 of Form 20–F sufficient to provide investors with necessary disclosure of trends in a registrant's results of operations and financial condition? If we eliminate Item 3.A as proposed, should we amend Item 5 of Form 20–F to explicitly require a tabular presentation of line items discussed in the disclosure?

65. What are the costs to FPIs of providing required selected financial data?

66. How do market participants use the selected financial data disclosures provided by FPIs? Do market participants rely on any time segment of data more than others (*e.g.,* the most recent two or three years)?

b. Operating and Financial Review and Prospects (Item 5 of Form 20–F)

The disclosure requirements for Item 5 of Form 20–F (Operating and Financial Review and Prospects) are substantively comparable to the MD&A requirements under Item 303 of Regulation S–K.[309] To maintain a consistent approach to MD&A for domestic registrants and FPIs, our proposed amendments to Form 20–F generally conform to our proposed amendments to Item 303.

Some of our proposals would amend Item 5 of Form 20–F to incorporate portions of both current and proposed Item 303. Specifically, we are proposing to incorporate portions of current Instructions 1 and 3 to Item 303(a) that specify the purpose of MD&A, into the forepart of Item 5 of Form 20–F to highlight the item's objective. Our proposals would revise Item 5 to state that the discussion must:

- Include other statistical data that will enhance a reader's understanding of the company's financial condition, changes in financial condition, and results of operations; and
- Focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or future financial condition.

We are also proposing to codify into the forepart of Item 5 Commission guidance that states that a registrant should provide a narrative explanation of its financial statements that enables investors to see a registrant ''through the eyes of management.'' [310] Consistent with our rationale for proposing analogous changes to Item 303,[311] we believe that emphasizing the purpose of MD&A at the outset of the Item will provide clarity and focus to registrants as they consider what information to discuss and analyze. We are also proposing to revise the forefront of Item 5 to state that, in addition to providing information relating to all separate segments, FPIs must also provide information relating to other subdivisions, such as geographic areas or product lines. This proposed revision is intended to conform Form 20–F to both current Item 303, by referencing other subdivisions and including geographic areas as an example, and proposed Item 303, by adding product lines as an example.[312]

[306] *See* Instruction 3 to Item 3.A.

[307] *See* 2003 MD&A Interpretive Release (''Companies should consider whether a tabular presentation of relevant financial or other information may help a reader's understanding of MD&A.''). *See also* footnote 1 of 2003 MD&A Interpretive Release which states that the guidance in that release is intended to apply to FPIs.

[308] *See* International Disclosure Standards, Release No. 33–7745 (Sept. 28, 1999) [64 FR 53900 (Oct. 5, 1999)].

[309] When the Commission revised the wording of Item 5 of Form 20–F in 1999, the adopting release noted that the requirements correspond with Item 303 of Regulation S–K. *See International Disclosure Standards,* Release No. 33–7745 (Sept. 28, 1999) [64 FR 53900 (Oct. 5, 1999)], at 53904 (''International Disclosure Standards Release'').

[310] *See* 2003 MD&A Interpretative Release, at 75056. *See also* 1989 Interpretative Release, at 22428.

[311] *See* Section II.C.1 above.

[312] *See* footnote 98 above and corresponding sentence.

For the reasons discussed above, we are proposing to:

- Revise Item 5 to specify that the discussion must include a quantitative and qualitative description of the reasons underlying material changes, including where material changes within a line item offset one another; [313]
- Revise the liquidity and capital resources requirement in Item 5.B to specify that a registrant must broadly disclose material cash commitments, including but not limited to capital expenditures; [314]
- Replace Item 5.E, which covers off-balance sheet arrangements, with a principles-based instruction; [315]
- Eliminate Item 5.F., which covers tabular disclosure of contractual obligations; [316] and
- Eliminate Item 5.G, which acknowledges application of the statutory safe harbor and specifically and exclusively applies to Item 5.E and Item 5.F.[317]

Consistent with our proposal to amend Item 303 above, we are also proposing to revise Item 5 to explicitly require disclosure of critical accounting estimates.[318]

We are also proposing a change to the requirement in Form 20–F that requires disclosure of inflation for FPIs.[319] Item 5.A.2 requires disclosure of the impact of inflation, if material, and hyperinflation, if the currency in which the financial statements are presented is of a country that has experienced hyperinflation.[320] Instruction 1 to Item 5.A states that disclosure of hyperinflation must be provided if hyperinflation has occurred in any of the periods for which an FPI is required to provide audited financial statements or unaudited interim financial statements. We believe that for FPIs in a hyperinflationary economy, hyperinflation is a salient issue such that it merits specific mention. As it relates to hyperinflation, we are therefore not proposing to amend Item 5.A.2 or the related instruction. However, and consistent with our change to Item 303,[321] we are proposing to amend the portion of Item 5.A.2 calling for disclosure of the impact of inflation, if material. Some of our proposals to amend Form 20–F are unique to this form but are consistent with MD&A's focus on materiality. Specifically, we are proposing to:

- Amend Item 5.D of Form 20–F, which requires FPIs to identify ''the most significant recent trends,'' to instead, require disclosure of ''material trends,'' consistent with Item 303 and MD&A's focus on materiality; [322] and
- Amend Instruction 1 to Item 5, which currently references only the 1989 MD&A Interpretive Release, to add the 2002 Commission Statement, 2003 MD&A Interpretive Release, 2010 MD&A Interpretive Release [323] and the Companion Guidance, to direct FPIs to the Commission's guidance.

These and all of our proposals to Item 5 of Form 20–F are consistent with our policy of having the existing MD&A requirements for FPIs mirror the substantive MD&A requirements in Item 303.[324]

Request for Comment

67. Should we amend Item 5 of Form 20–F as proposed?

68. Would the proposed deletions in Item 5 result in the loss of material information that is otherwise not available to investors? If so, what information would be lost, and are there alternatives we should consider that would elicit this information?

69. Would the proposed additions to Item 5 create burdens for companies?

70. If we revise Item 5 of Form 20–F as proposed, would such revision reduce the ability of FPIs to use a single document in multiple jurisdictions?

71. Would the proposed amendments conflict with home-country requirements in some jurisdictions? If so, please explain.

72. Are there any unique considerations with respect to FPIs in the context of MD&A and Item 5 disclosures?

2. Form 40–F

Form 40–F generally permits eligible Canadian FPIs to use Canadian disclosure documents to satisfy the Commission's registration and disclosure requirements. As a result, the MD&A contained in Form 40–F is largely prepared in accordance with Canadian disclosure standards. General Instructions B.(11) and B.(12), however, were added when the Commission adopted the off-balance sheet arrangements and contractual obligations disclosure requirements.[325] For the reasons discussed above, we are proposing to eliminate the contractual obligations disclosure requirement in B.(12) of Form 40–F.[326] In addition, we are also proposing to make parallel changes (as discussed above) to the off-balance sheet disclosure requirement in Form 40–F by replacing General Instruction B.(11) with a principles-based instruction.[327] As noted above, unlike Item 303 and Form 20–F, the MD&A required under Form 40–F is defined as required by Canadian law.[328] Accordingly, our proposal to amend Item 40–F would only require

[313] *See* Section II.C.4 above.

[314] *See* Sections II.C.2 and II.C.7 above.

[315] *See* proposed Instruction 7 to Item 5 of Form 20–F. For FPIs filing on Forms 20–F and 40–F that apply IFRS, the overlap between the requirements of those Forms and IFRS are similar to the overlap between Item 303(a)(4) and U.S. GAAP, as described in Section II.C.6 above.

IFRS now requires the following disclosures that substantially overlap with the requirements of Item 5.E. of Form 20–F: The nature and amount of a guarantee (*see* Paragraph 35M of IFRS 7, Financial Instruments: Disclosures (''IFRS 7'')); retained or contingent interests in assets transferred to unconsolidated entities (*see* Paragraphs 42B and 42E of IFRS 7); the significance of financial instruments for the entity's financial position and performance; and the nature and extent of risks arising from financial instruments to which the entity is exposed and how the entity manages those risks (*see* Paragraphs 1 of IFRS 7); and obligations under interests in unconsolidated entities (*see* Paragraphs 1 and 24 to 31 of IFRS 12, Disclosure of Interests in Other Entities).

We believe our proposed amendments to Item 5.E of Form 20–F are consistent with the statutory mandate in Section 13(j) of the Exchange Act for the same reasons discussed above in Section II.C.6.

[316] *See* Sections II.C.6 and II.C.7 above. Similar to our discussion above, current IFRS requirements overlap with the contractual obligations table. For example, IFRS 7.39(a), requires disclosure of a maturity analysis for long-term debt obligations; IFRS 16.58 requires disclosure of a maturity analysis of lease obligations; and IAS 37.85 requires disclosure of the expected timing of outflows of economic benefits related to each class of provision. IFRS does not have a specific requirement to disclose the timing of purchase obligations.

We are also proposing to delete the Instructions to Item 5.E and 5.F.

[317] *See* Section II.C.10 above. Similar to this discussion above, we remind FPIs of the existing regulatory and statutory safe harbors. Additionally, Form 20–F reminds companies that forward-looking information is expressly covered by statutory safe harbor provisions. *See* Instruction 3 to Item 5 of Form 20–F.

[318] *See* Section II.C.8 above. As discussed in this section, the 2003 MD&A Interpretive Release addressed critical accounting estimates. The guidance in the 2003 MD&A Interpretive Release applies to MD&A drafted pursuant to Item 5 of Form 20–F. *See* footnote 1 of the 2003 MD&A Interpretive Release.

[319] *See* Section II.C.5 above.

[320] Rules 3–20(c) and 3–20(d) of Regulation S–X provide the situations when a registrant must discuss hyperinflation in a company's financial statements. Rule 3–20(d) generally describes a hyperinflationary environment as one that has cumulative inflation of approximately 100 percent or more over the most recent three-year period.

[321] *See* Section II.C.5 above.

[322] *See, e.g.,* 2003 MD&A Interpretive Release, at 75060.

[323] *See* 2010 MD&A Interpretive Release.

[324] *See* International Disclosure Standards Release. *See also* Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release.

[325] *See Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release.*

[326] *See* Section II.C.7 and footnote 316 above.

[327] See Section II.C.6 and footnote 153 above. We believe our proposed amendments to General Instruction B.(11) of Form 40–F is consistent with the statutory mandate in Section 13(j) of the Exchange Act for the same reasons discussed above in Section II.C.6.

[328] *See* General Instruction B.(3) of Form 40–F.

disclosure of off-balance sheet arrangements to the extent it is not already provided under the MD&A required by Canadian law. Lastly, and consistent with our proposals above, we are proposing to eliminate General Instruction B.(13), which acknowledges application of the statutory safe harbor and specifically and exclusively applies to General Instructions B.(11) and B.(12).[329]

Request for Comment

73. Should we amend Form 40–F, as proposed?

74. Would replacing General Instruction B.(11) of Form 40–F with a more principles-based instruction result in the loss of material information that is otherwise not available to investors? If so, what information would be lost, and are there alternatives we should consider that would elicit this information?

75. Would the proposed deletion of General Instruction B.(12) of Form 40–F result in the loss of material information that is otherwise not available to investors? If so, what information would be lost, and are there alternatives we should consider that would elicit this information?

76. If we eliminate General Instruction B.(13) of Form 40–F, is it necessary or helpful to provide a specific instruction referring to the statutory safe harbors for forward-looking statements that may apply to the proposed off-balance sheet arrangement disclosures? Should we instead retain General Instruction B.(13) of Form 40–F and acknowledge that the statutory safe harbors would apply?

77. Are there any unique considerations with respect to eligible Canadian FPIs in this context?

3. Item 303 of Regulation S–K

FPIs may voluntarily choose to file on forms that would require disclosure under Item 303. Current Instruction 11 to Item 303 requires ''foreign private registrants'' to discuss briefly any pertinent governmental economic, fiscal, monetary, or political policies or factors that have materially affected or could materially affect, directly or indirectly, their operations or investments by United States nationals.[330]

For consistency with the requirements of Form 20–F,[331] we are proposing to amend this FPI instruction to incorporate the requirement for FPIs to discuss hyperinflation in a hyperinflationary economy.[332] Proposed Instruction 9 would also replace ''foreign private registrants'' with the defined term ''foreign private issuer.''[333]

Request for Comment

78. Should we retain and amend the FPI instruction to Item 303, as proposed?

E. Additional Conforming Amendments

We propose additional conforming amendments that are consistent with the proposed amendments described above.[334]

1. Roll-Up Transactions—Item 914 of Regulation S–K

We propose to delete references to Items 301 and 302 in Item 914(a) of Regulation S–K. This item applies to roll-up transactions, which generally involve the combination or reorganization of one or more partnerships, directly or indirectly, where some or all of the investors in any such partnerships will receive new securities, or securities in another entity.[335] Item 914(a) provides that, for each partnership to be included in a roll-up transaction, certain financial information, including disclosure under Item 301 and Item 302, must be provided.

In the context of Item 914(a), disclosure provided under Items 301 and 302 would not be duplicative of the financial statements and would otherwise be unavailable. However, Item 914(a) specifies disclosure of other financial information[336] and states that additional or other information should be provided if material to an understanding of each partnership proposed to be included in a roll-up transaction. In light of these other requirements, we believe deleting references to Items 301 and 302 in Item 914(a) would not result in a loss of material information.

Request for Comment

79. If we eliminate Items 301 and 302 should we also delete these references in Item 914(a) and not specify additional disclosure requirements, as proposed? Are there any unique considerations for roll-up transactions that would necessitate some or all of the information required by Items 301 and 302?

2. Regulation AB—Items 1112, 1114, and 1115

Item 1112 of Regulation AB requires disclosure of financial information required by Item 301 or Item 3.A of Form 20–F about significant obligors of pool assets if the pool assets relating to the significant obligor represent 10% or more, but less than 20%, of the asset pool in an asset-backed securities (''ABS'') transaction. Similarly, Items 1114 and 1115 of Regulation AB require disclosure of financial information required by Item 301 or Item 3.A of Form 20–F about credit enhancement providers and derivatives counterparties, respectively, whose support represents a similar level of concentration in an ABS transaction. With our proposal to eliminate Item 301 and Item 3.A of Form 20–F for corporate issuers, financial information about these third parties to an ABS transaction, including any trend information comparable to information required by Item 303 or Item 5 of Form 20–F, may not otherwise be available. Therefore, we propose to replace in Regulation AB those requirements to disclose selected financial data under Item 301 or Item 3.A of Form 20–F with requirements to disclose summarized financial information, as defined by Rule 1–02(bb) of Regulation S–X,[337] for

[329] *See* Section II.C.10 and footnote 317.

[330] *See* Instruction 11 to Item 303(a) of Regulation S–K.

[331] *See* Section II.D.1.b above.

[332] *See* proposed Instruction 9.

[333] *See* Rule 405 and Rule 3b–4(c).

[334] If the proposed amendments are adopted, the Commission will also amend certain rules and forms to update references to the items we are proposing to amend. Specifically, if adopted as proposed, conforming amendments will be made to: Remove references to Item 301 or Item 3.A of Form 20–F (Item 10 of Regulation S–K [17 CFR 229.10]; Forms S–1 [17 CFR 239.11], N–2 [17 CFR 274.11a–1], S–11 [17 CFR 239.18], S–4 [17 CFR 239.25], F–1 [17 CFR 239.31], F–4 [17 CFR 239.34], 1–A [17 CFR 239.90], 10 [17 CFR 249.208c], and 10–K [17 CFR 249.310]; Schedule 14A [17 CFR 240.14a–101]; and Exchange Act Rule 14a–3 [17 CFR 240.14a–3]); remove references to Item 302 (Items 10 [17 CFR 229.10; Forms S–1 [17 CFR 239.11], N–2 [17 CFR 274.11a–1], S–11 [17 CFR 239.18], S–4 [17 CFR 239.25], 1–A [17 CFR 239.90], 10 [17 CFR 249.208c], and 10–K [17 CFR 249.310]; Schedule 14A [17 CFR 240.14a–101]; Securities Act Rule 175 [17 CFR 230.175]; Exchange Act Rules 3b–6 [17 CFR 240.3b–6] and 14a–3 [17 CFR 240.14a–3]; and Trust Indenture Act of 1939 Rule 0–11 [17 CFR 260.0–11].); and update references to subparagraphs of Item 303 (Securities Act Rule 419 [17 CFR 230.419]).

[335] *See* Rule 901 of Regulation S–K [17 CFR 229.901].

[336] In addition to disclosure under Items 301 and 302, Item 914(a) calls for the following financial disclosures: Ratio of earnings to fixed charges, cash and cash equivalents, total assets at book value, total assets at the value assigned for purposes of the roll-up transaction (if applicable), total liabilities, general and limited partners' equity, net increase (decrease) in cash and cash equivalents, net cash provided by operating activities, distributions; and per unit data for net income (loss), book value, value assigned for purposes of the roll-up transaction (if applicable), and distributions (separately identifying distributions that represent a return of capital).

[337] [17 CFR 210.1–02(bb)]. We are also proposing amendments to Rule 1–02(bb) of Regulation S–X, which calls for disclosure of summary financial information. To eliminate any implication that a

each of the last three fiscal years (or the life of the relevant entity or group of entities, if less). We believe the information required under Rule 1–02(bb) is similar to the information currently required, and is consistent with other types of financial statement disclosures that are required to be disclosed when certain significance thresholds have been met.[338] As proposed, these requirements span the same periods as the historical data that the ABS registrant is required to provide for the pool assets under Item 1111 of Regulation AB.[339] While this proposal would generally result in fewer periods being presented under these items, we do not believe requiring disclosure beyond three years is necessary. Such disclosure would cover periods beyond those presented for the underlying pool assets to which the third-party financial information would relate.

Request for Comment

80. If we eliminate Item 301 and Item 3.A of Form 20–F, should we replace these references in Items 1112, 1114, and 1115 of Regulation AB with a reference to Rule 1–02(bb) of Regulation S–X, as proposed? Would the potential fewer earlier periods being presented under these items result in the loss of material information? Are there alternatives that we should consider? Should we explicitly require a tabular presentation of the summarized financial information for ABS?

3. Summary Prospectus in Forms S–1 and F–1

We are proposing to replace references to Item 301 and Item 3.A of Form 20–F in Form S–1 and Form F–1, respectively, with Rule 1–02(bb) of Regulation S–X, where these forms provide for use of a summary prospectus under Rule 431.[340] A summary prospectus is intended to provide prospective investors with a condensed statement of the more important information in the registration statement.[341] Consistent with this purpose, the Instructions as to Summary Prospectuses in Forms S–1 and F–1 call for disclosure of selected financial data under Item 301 or Item 3.A of Form 20–F, respectively. These instructions also state that, with the exception of these items, the summary prospectus shall not contain any other financial information.[342] To preserve disclosure of financial information in summary prospectuses, we propose to replace the requirement for selected financial data in Forms S–1 and F–1 with summarized financial information under Item 1–02(bb) of Regulation S–X. We believe the information required under Rule 1–02(bb) is similar to the information currently required and is consistent with other types of financial statement disclosures that should be included when certain significance thresholds have been met.

Request for Comment

81. If we eliminate Item 301 and Item 3.A of Form 20–F, as proposed, should we replace these references in the Instructions as to Summary Prospectuses of Forms S–1 and F–1 with Item 1–02(bb) of Regulation S–X, as proposed?

4. Business Combinations—Form S–4, Form F–4 and Schedule 14A

We are proposing to eliminate references to Items 301 and 302 in Form S–4, Form F–4, and Schedule 14A. Where these forms are used in conjunction with a business combination, pro forma financial statements for the most recent fiscal year and interim period under Article 11 of Regulation S–X are required.[343] Additionally, Item 3(e) and (f) in both Forms S–4 and F–4 require Item 301 or Item 3.A of Form 20–F information, respectively, on a pro forma basis. Item 14(b)(9) and (10) of Schedule 14A generally call for similar pro forma information in the context of a business combination. A related instruction stipulates that, for a business combination accounted for as a purchase, financial information is required for the same periods required by Article 11 of Regulation S–X. Because these pro forma requirements are effectively duplicative of the pro forma financial statements required elsewhere by the form, we propose to delete them.[344]

Similarly, we are proposing to eliminate references to Item 301 and Item 3.A of Form 20–F in Item 17(b)(3) of both Form S–4 and Form F–4. We are also proposing to delete the reference to Item 302 in Item 17(b)(4) of Form S–4. Because Item 17(b) of Forms S–4 and F–4 applies to non-reporting target companies in a business combination, this disclosure may not be available elsewhere. We believe, however, consistent with the discussion above,[345] that the requirement for discussion and analysis of trends in Item 303 would also be sufficient to address material information related to a target company in a business combination context.

Request for Comment

82. If we eliminate Item 301 and Item 3.A of Form 20–F as proposed, should we also eliminate references to these items in Form S–4 and F–4 and Schedule 14A, as proposed? Are there any unique considerations in the context of a business combination?

83. In Forms S–4 and F–4, pro forma information of selected financial data is required as part of the prospectus summary. Are there any unique considerations in the context of a business combination such that Item 301 and Item 3.A of Form 20–F pro forma information should be required as part of the prospectus summary?

84. Should we eliminate the requirement to provide Item 301, Item 3.A of Form 20–F, and Item 302 disclosure in Forms S–4 and F–4 for non-reporting target companies, as proposed?

5. Form S–20

We are proposing a conforming change to Form S–20 to remove references to Item 302 of Regulation S–K.[346] Form S–20 is used to register standardized options under the Securities Act and requires limited information about the clearing agency registrant and the options being registered. Since the adoption of Rule 238 in 2002, which exempts from Securities Act Section 5 the registration of offerings of standardized options that are issued by a registered clearing agency and traded on a national

registrant would need to prepare disclosure that is not consistent with the disclosure in the entity's financial statements, the proposed amendments would clarify that the disclosure of summary financial information may vary, as appropriate, to conform to the nature of the entity's business.

[338] For example, Rule 4–08(g) of Regulation S–X [17 CFR 210.4–08(g)] requires disclosure of summarized financial information for equity method investees when significance thresholds are met.

[339] While ABS registrants are generally not required to provide financial statements, under Item 1111 of Regulation AB, ABS registrants must provide historical data on the pool assets as appropriate (*e.g.,* the lesser of three years or the time such assets have existed) to allow material evaluation of the pool data. *See* 17 CFR 229.1111.

[340] *See* 17 CFR 230.431. *See also* Instruction 1(f) under Instructions as to Summary Prospectuses in Form S–1 and Instruction 1(c)(v) under Instructions as to Summary Prospectuses in Form F–1.

[341] *See* Adoption of Summary Prospectus Rule and Amendments to Form S–1 and S–9, Release No. 33–3722 (Nov. 26, 1956) [21 FR 9642 (Dec. 6, 1956)].

[342] *See* Instruction 2 under Instructions as to Summary Prospectuses for Form S–1 and Form F–1.

[343] *See* Item 5 under Part 1 of Forms F–4 and S–4.

[344] We are also proposing to delete the related instruction to these items.

[345] *See* Section II.A above.

[346] 17 CFR 239.20. Current references in Form S–20 to Item 302 are references to the item's predecessor, Item 12.

securities exchange, Form S–20 is rarely used.[347]

Request for Comment

85. If we eliminate Item 302, should we also eliminate reference to this item in Form S–20? Are there any unique considerations in the context of Form S–20?

F. Compliance Date

We propose to provide a transition period after the publication of a final rule in the **Federal Register** to provide registrants with adequate time to adjust their disclosures in light of the proposed amendments. Though companies would be able to begin voluntarily complying with the proposed amendments upon effectiveness, we propose a compliance date of 180 days after effectiveness of any final rule, if adopted. The Commission believes that this transition period would allow sufficient time to prepare for and come into compliance with the amended reporting requirements, but we request comment on whether this time period is appropriate.

Request for Comment

86. Is the proposed transition period necessary and appropriate? If not, what time period would be necessary for registrants to comply with the proposed amendments?

87. Would certain proposed amendments (*e.g.,* critical accounting estimates) require more time to prepare for than other requirements?

III. General Request for Comments

We request and encourage any interested person to submit comments on any aspect of our proposals, other matters that might have an impact on the proposed amendments, and any suggestions for additional changes. With respect to any comments, we note that they are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to our proposals where appropriate.

IV. Economic Analysis

A. Introduction

As discussed above, we are proposing amendments to modernize, simplify, and enhance certain financial disclosure requirements in Regulation S–K. Specifically, we are proposing (1) to eliminate Item 301 of Regulation S–K, Selected Financial Data, and Item 302 of Regulation S–K, Supplementary Financial Information; and (2) to amend Item 303 of Regulation S–K, Management's Discussion & Analysis of Financial Condition and Results of Operations. The proposed amendments are intended to eliminate duplicative disclosures and enhance MD&A disclosures for the benefit of investors, while simplifying compliance efforts for registrants.

Overall, investors and registrants may benefit from the proposed amendments if they would help avoid duplicative disclosure and if emphasizing the current principles-based approach to MD&A results in more tailored disclosures that allow investors to better understand the registrant's business through the eyes of management. We acknowledge the risk that emphasizing the current principles-based approach may result in certain loss of information to investors. However, we believe that any loss of information would be limited because the proposed eliminations are mostly duplicative. Additionally, under the proposed principles-based approach, registrants would still be required to provide disclosure about these topics if they are material to an investment decision, further mitigating the potential loss of information.

We are mindful of the costs and benefits of the proposed amendments. The discussion below addresses the potential economic effects of the proposed amendments, including the likely benefits and costs, as well as the likely effects on efficiency, competition, and capital formation.[348] At the outset, we note that, where possible, we have attempted to quantify the benefits, costs, and effects on efficiency, competition, and capital formation expected to result from the proposed amendments. In many cases, however, we are unable to quantify the potential economic effects because we lack information necessary to provide a reasonable estimate. For example, we are unable to quantify, with precision, the costs to investors of accessing alternative information sources (*e.g.,* footnotes to financial statements or earnings announcements) under each disclosure item. We are also unable to quantify the potential information processing cost savings that may arise from the elimination of disclosures that are duplicative or not material to an investment decision. Where we are unable to quantify the economic effects of the proposed amendments, we provide a qualitative assessment of the potential effects and encourage commenters to provide data and information that would help quantify the benefits, costs, and the potential impacts of the proposed amendments on efficiency, competition, and capital formation.

B. Baseline and Affected Parties

The current disclosure requirements under Items 301, 302, and 303 of Regulation S–K, and the related requirements under Items 3.A and 5 of Form 20–F, and General Instructions B.(11), (12), and (13) of Form 40–F, together with the current disclosure practices registrants have adopted to comply with these requirements, form the baseline from which we estimate the likely economic effects of the proposed amendments.[349] The disclosure requirements apply to various filings, including registration statements, periodic reports, and certain proxy statements filed with the Commission. Thus, the parties that are likely to be affected by the proposed amendments include investors and other market participants that use the information in these filings (such as financial analysts, investment advisors, and portfolio managers), as well as registrants subject to the relevant disclosure requirements discussed above.

The proposed amendments may affect both domestic registrants and FPIs.[350]

[347] *See Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934,* Release No. 33–8171 (Dec. 23, 2002) [68 FR 188 (Jan. 2, 2003)] (''New Securities Act Rule 238 does not make Form S–20 obsolete. We are retaining Form S–20 for use by an issuer of standardized options that is not a clearing agency registered under Section 17A of the Exchange Act, such as a foreign clearing agency, or for use by issuers of standardized options that do not trade on a registered national securities exchange or on a registered national securities association.''). Since the effective date of Rule 238 in 2003, we estimate that approximately one entity has used Form S–20.

[348] Section 2(b) of the Securities Act [15 U.S.C. 77b(b)] and Section 3(f) of the Exchange Act [17 U.S.C. 78c(f)] require the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Section 23(a)(2) of the Exchange Act [17 U.S.C. 78w(a)(2)] requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.

[349] *See supra* Section I.

[350] The number of domestic registrants and FPIs affected by the proposed amendments is estimated as the number of unique companies, identified by Central Index Key (CIK), that filed a Form 10–K, Form 10–Q, Form 20–F, and Form 40–F or an amendment thereto with the Commission during calendar year 2018. The estimates for the percentages of SRCs, are based on information from Form 10–K, Form 20–F, and Form 40–F. For purposes of this economic analysis, these estimates do not include issuers that filed only initial Securities Act registration statements during calendar year 2018, and no Exchange Act reports,

We estimate that during calendar year 2018 there were approximately 6,919 registrants that filed on domestic forms [351] and 806 FPIs that filed on F-forms, other than registered investment companies. Among the registrants that filed on domestic forms, approximately 29 percent were large accelerated filers, 19 percent were accelerated filers, and 52 percent were non-accelerated filers. In addition, we estimate that approximately 33 percent of these domestic issuers were SRCs [352] and 21.3 percent were EGCs. The proposed amendments would also affect ABS issuers. ABS issuers are required to file on Forms SF–1 and SF–3 and, as a result, may be subject to the proposed changes to Regulation AB requirements in this release. We estimate that during calendar year 2018, there were 36 unique depositors filing at least one Form SF–1 or Form SF–3.

C. Potential Benefits and Costs of the Proposed Amendments

In this section, we discuss the anticipated economic benefits and costs of the proposed amendments. We first analyze the overall economic effects of the proposed amendments. We then discuss the potential benefits and costs of specific proposed amendments.

1. Overall Potential Benefits and Costs

We anticipate the proposed amendments [353] would benefit registrants in several ways. First, by eliminating certain duplicative disclosure requirements, the proposed amendments could reduce registrants' disclosure burden and associated compliance costs. Second, by modernizing and simplifying Item 303 disclosure requirements, the proposal may benefit registrants by reducing disclosure burdens and associated compliance costs. In addition, to the extent the proposed amendments result in more tailored and informative disclosure, they could potentially reduce information asymmetry between registrants and investors, improve firms' liquidity, and decrease the cost of capital. Finally, certain of the proposed amendments emphasize a more principles-based approach to MD&A, which we believe would benefit registrants by underscoring the flexibility available in presenting financial results that are more indicative of their business.[354] A more principles-based approach, however, could lead to registrants incurring increased costs associated with assessing materiality.

We believe investors could also benefit from the proposed amendments. First, proposed amendments that clarify and codify existing guidance, such as the proposed amendments related to critical accounting estimates and capital resources, could enhance MD&A disclosure. More robust and informative disclosure on these topics could facilitate investors' decision making and enhance investor protection. Second, if the proposed amendments result in more enhanced and principles-based disclosure, they could allow investors to more efficiently process the disclosure and make better-informed investment decisions. In particular, investors may benefit from more tailored disclosures that allow them to better understand the registrant's business through the eyes of management. Investors also could benefit from the reduction of duplicative disclosure, because reducing such duplication may improve the readability and conciseness of the information provided, help investors focus on material information, and facilitate more efficient information processing.[355]

However, investors could incur certain costs under the proposed amendments. For example, investors who are used to the current disclosure format might experience costs when adjusting to the new format. However, this cost should decrease over time. Investors could also incur monetary costs such as database subscriptions, or opportunity costs such as time spent, if they need to obtain or reconstruct information through alternative sources. However, we do not expect such costs to be significant since registrants would still need to disclose material information. There could be certain additional costs associated with the proposed amendments to the extent that they result in the elimination of disclosure material to an investment decision if registrants misjudge what information is material, or if disclosure becomes less comparable across firms.[356] The risk of misjudgment may

in order to avoid including entities, such as certain co-registrants of debt securities, which may not have independent reporting obligations and therefore would not be affected by the proposed amendments. Nevertheless, the proposed amendments would affect any registrant that files a Securities Act or Exchange Act registration statement or is subject to Exchange Act reporting obligations. We believe that most registrants that have filed a Securities Act or Exchange Act registration statement, other than the co-registrants described above, would be captured by this estimate through their annual or quarterly filings. The estimates for the percentages of SRCs, EGCs, accelerated filers, large accelerated filers, and non-accelerated filers are based on data obtained by Commission staff using a computer program that analyzes SEC filings, with supplemental data from Ives Group Audit Analytics.

[351] This number includes fewer than 25 FPIs that filed on domestic forms in 2018 and approximately 100 BDCs.

[352] This estimate is based on the definition of SRCs prior to the September 2018 effective date of recent amendments to this definition. *See* Amendments to the Smaller Reporting Company Definition, Release No. 33–10513 (June 28, 2018) [83 FR 31992 (July 10, 2018)]. As these amendments increased the number of registrants who are eligible to be SRCs, it is likely that the percentage of registrants that are SRCs is now higher than 33 percent.

[353] *See supra* Sections II.A. through II.E.

[354] A number of academic studies have explored the use of prescriptive thresholds and materiality criteria. Many of these papers highlight a preference for principles-based materiality criteria. *See, e.g.,* Eugene A. Imhoff Jr. and Jacob K. Thomas, *Economic consequences of accounting standards: The lease disclosure rule change,* 10.4 J. Acct. & Econ. 277–310 (1988) (providing evidence that management modifies existing lease agreements to avoid crossing rules-based criteria for lease capitalization); Cheri L. Reither, *What are the best and the worst accounting standards?,* 12.3 Acct. Horizons 283 (1998) (documenting that due to the widespread abuse of bright-lines in rules for lease capitalization, SFAS No. 13 was voted the least favorite FASB standard by a group of accounting academics, regulators, and practitioners); Christopher P. Agoglia, Timothy S. Doupnik, and George T. Tsakumis. *Principles-based versus rules-based accounting standards: The influence of standard precision and audit committee strength on financial reporting decisions,* 86.3 The Acct. Rev. 747–767 (2011) (conducting experiments in which experienced financial statement preparers are placed in a lease classification decision context and finding that preparers applying principles-based accounting are less likely to make aggressive reporting decisions than preparers applying a more precise rules-based standard and supporting the notion that a move toward principles-based accounting could result in better financial reporting); Usha Rodrigues and Mike Stegemoller, *An inconsistency in SEC disclosure requirements? The case of the ''insignificant'' private target,* 13.2–3 J. Corp. Fin. 251–269 (2007) (providing evidence, in the context of mergers and acquisitions, where rule-based [disclosure] thresholds deviate from investor preferences). Papers that highlight a preference for rules-based materiality criteria are cited below.

[355] *See* A. Lawrence, *Individual Investors and Financial Disclosure,* 56 J. Acct. & Econ., 130–147 (2013). Using data on trades and portfolio positions of 78,000 households, this article shows that individuals invest more in firms with clear and concise financial disclosures. This relation is reduced for high frequency trading, financially literate investors, and speculative individual investors. The article also shows that individuals' returns increase with clearer and more concise disclosures, implying such disclosures reduce individuals' relative information disadvantage. A one standard deviation increase in disclosure readability and conciseness corresponds to return increases of 91 and 58 basis points, respectively. The article acknowledges that, given the changes in financial disclosure standards and the possible advances in individual investor sophistication, the extent to which these findings, which are based on historical data from the 1990s, would differ from those today is unknown. Recent advances in information processing technology, such as machine learning for textual analysis, may also affect the generalizability of these findings.

[356] *See* Mark W. Nelson, *Behavioral evidence on the effects of principles- and rules-based standards,* 17.1 Accounting Horizons 91–104 (2003); and Katherine Schipper, *Principles-based accounting standards,* 17.1 Accounting Horizons 61–72 (2003) (noting potential advantages of rules-based accounting standards, including: Increased comparability among firms, increased verifiability

Continued

be mitigated by factors including accounting, financial reporting, and disclosure controls or procedures,[357] as well as the antifraud provisions of the securities laws. In terms of the potential loss of comparability, the cost related to it should be minimal since investors can pull data from the financial statements via XBRL.

Some of the costs of the proposed amendments could be mitigated by external disciplining mechanisms, such as the Commission staff's filing review program. In general, registrants would remain subject to the antifraud provisions of the securities laws.[358] There also may be incentives for registrants to voluntarily disclose additional information if the benefits of reduced information asymmetry exceed the disclosure costs.

The proposed amendments likely would affect registrants and investors differently. For example, any compliance cost reduction might be more beneficial to smaller registrants that are financially constrained. Similarly, although eliminating information that is not material should benefit all investors, retail investors could benefit more as they are less likely to have the time and resources to devote to reviewing and evaluating disclosure. On the other hand, retail investors could also incur additional costs as a result of the proposed amendments because they may need to obtain information from alternative sources, which could involve monetary costs, such as database subscriptions, or opportunity costs, such as time spent searching for alternative sources. These costs may be higher for retail investors than for institutional investors.

2. Benefits and Costs of Specific Proposed Amendments

We expect the proposed amendments would result in costs and benefits to registrants and investors, and we discuss those costs and benefits item by item in this section. The proposed changes to each item would impact the compliance burden for registrants in filing forms that require disclosures that are responsive to such items. Overall, we expect the net effect of the proposed amendments on a registrant's compliance burden to be limited. As explained in this section, we expect certain aspects of the proposed amendments to increase compliance burdens, and others to decrease the burdens. The quantitative estimates of changes in those burdens for purposes of the Paperwork Reduction Act of 1995 (''PRA'') [359] are further discussed in Section V below. For purposes of the PRA, we estimate that the effect of the proposed amendments would vary for different forms. However, taken together, the amendments are likely to result in a net decrease in burden hours for all forms, ranging from 0.1 to 6.5 burden hours per form.[360]

a. Selected Financial Data (Item 301)

Item 301 requires certain registrants [361] to furnish selected financial data in comparative tabular form for each of the registrant's last five fiscal years and any additional fiscal years necessary to keep the information from being misleading.[362] The purpose of this disclosure is to supply in a convenient and readable format selected financial data that highlights certain significant trends in the registrant's financial conditions and results of operations. For certain registrants, information disclosed under Item 301 has also been disclosed in historical financial data and related XBRL data submissions that can be accessed through prior filings on EDGAR.

The current disclosure requirement under Item 301 could result in duplicative disclosure, and it can be costly for registrants to provide such disclosures under certain circumstances. For example, as discussed above, providing disclosure of the earliest two years often creates challenges for registrants when such information has not been previously provided.[363] Therefore, eliminating this requirement may facilitate capital raising activity and increase efficiency for non-EGC issuers contemplating an IPO. Overall, we expect the proposed elimination of Item 301 would benefit registrants by eliminating duplicative disclosures and reducing compliance costs. We also note that the benefit associated with eliminating the costs of providing Item 301 disclosure may be offset by the costs associated with making materiality determinations under a principles-based disclosure framework. In general, we do not expect the proposed elimination of Item 301 would affect the cost of capital given that the eliminated disclosures are largely duplicative. To the extent that there is information loss under certain circumstances, such as in the case of non-EGC IPOs, these registrants could potentially experience an increase in the cost of capital as a result of reduced disclosure. However, in these circumstances registrants would likely voluntarily provide the disclosures to the extent the increase in cost of capital would be significant.

To the extent the proposed amendments result in the elimination of disclosure that is not material, investors may benefit. In particular, if the readability and conciseness of the information provided improves,[364] investors may be able to process information more effectively by focusing on the material information. Also, a principles-based approach may permit or encourage registrants to present more tailored information, which also may benefit investors by allowing them to better understand the registrant's business.

Investors may incur costs to the extent the proposed amendments result in a loss of information. While we do not anticipate significant information loss from the elimination of Item 301, we recognize that selected financial information for the two earliest years would no longer be disclosed in non-EGC IPOs. However, the purpose of the item is to highlight certain significant

for auditors, and reduced litigation for firms). *See also* Randall Rentfro and Karen Hooks, *The effect of professional judgment on financial reporting comparability,* 1 Journal of Accounting and Finance Research 87–98 (2004) (finding that comparability in financial reporting may be reduced under principles-based standards, which rely more heavily on the exercise of professional judgment, but comparability may improve as financial statement preparers become more experienced and hold higher organizational rank); Andrew A. Acito, Jeffrey J. Burks, and W. Bruce Johnson, *The Materiality of Accounting Errors: Evidence from SEC Comment Letters,* 36.2 Contemp. Acct. Res. 839, 862 (2019) (studying managers' responses to SEC inquiries about the materiality of accounting errors and finding that managers are inconsistent in their application of certain qualitative considerations and may omit certain qualitative considerations from their analysis that weigh in favor of an error's materiality).

[357] *See, e.g.,* Exchange Act Rules 13b–2b [17 CFR 240.13b–2b], 13a–15e [17 CFR 240.13a–15e], and 13a–15f [17 CFR 240.13a–15f].

[358] *See, e.g.,* Exchange Act Rule 10b–5(b) [17 CFR 240.10b–5(b)].

[359] Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (codified at 44 U.S.C. 3501 *et seq.*).

[360] *See infra* Section V.B.

[361] As discussed above in Section II.A, SRCs are not required to provide Item 301 information and EGCs that are providing the information called for by Item 301 in a Securities Act registration statement need not present selected financial data for any period prior to the earliest audited financial statements presented in connection with the EGC's IPO of its common equity securities. In addition, an EGC that is providing the information called for by Item 301 in a registration statement, periodic report, or other report filed under the Exchange Act need not present selected financial data for any period prior to the earliest audited financial statements presented in connection with its first registration statement that became effective under the Exchange Act or Securities Act. *See* Item 301(c) of Regulation S–K; Item 301(d)(1) of Regulation S–K.

[362] *See supra* Section II.A.

[363] *See supra* Section II.A.

[364] *See supra* note 355.

trends in the registrant's financial condition and results of operations and we expect that any material trend information that would have been disclosed pursuant to Item 301 would be disclosed under Item 303. We also recognize investors may incur certain other costs. In particular, investors would incur search costs if they have to spend more time to retrieve the information from prior filings. Additionally, to the extent investors are used to the current format and rely on the compiled comparable data, they may incur costs to adjust to new disclosure formats.

Elimination of Item 301 would affect the financial information disclosure by ABS issuers. As discussed above, the currently available financial information set forth in Item 301 or Item 3.A of Form 20–F about significant obligors of pool assets, credit enhancement providers, and derivatives counterparties as required by Item 1112, Items 1114, and 1115 of Regulation AB may not otherwise be available. To mitigate this potential information loss, we propose to replace in Regulation AB those requirements to disclose selected financial data under Item 301 or Item 3.A of Form 20–F with requirements to disclose summarized financial information, as defined by Rule 1–02(bb) of Regulation S–X, for each of the last three fiscal years (or the life of the relevant entity or group of entities, if less).

Since the proposed changes related to ABS issuers are intended to conform to the other changes related to selected financial data and MD&A, our analysis of the costs and benefits for registrants and their investors under the proposed amendments to Item 301 and Item 3.A of Form 20–F can be carried over to ABS issuers. While this proposal would generally result in fewer periods being presented, we do not expect it to have a significant effect on ABS issuers and their investors, because the disclosure of the earlier years would cover periods beyond those presented for the underlying pool assets to which the third-party financial information would relate.

b. Supplementary Financial Information (Item 302)

Under Item 302(a), certain registrants are required to disclose quarterly financial data of specified operating results and variances in these results from amounts previously reported on a Form 10–Q.[365] Registrants must provide quarterly information for each full quarter within the two most recent fiscal years and any subsequent period for which financial statements are included or required by Article 3 of Regulation S–X. Item 302(a) also requires disclosure related to effects of any discontinued operations and unusual or infrequently occurring items.

Since the financial data required under this item (including disclosure related to the effect of any discontinued operations and unusual or infrequently occurring items), other than fourth-quarter data, typically can be found in prior quarterly filings through EDGAR, the prescriptive disclosure requirements under existing Item 302(a) result in duplicative disclosures. By eliminating the duplicative disclosure and associated compliance costs, the proposed amendments would benefit registrants. We do not expect the proposed elimination of Item 302(a) to affect registrants negatively. While a decrease in disclosure could potentially increase the company's cost of capital in general, registrants can always choose to disclose the quarterly financial information through other channels, such as an earnings release.

Investors could benefit to the extent that the proposed amendments result in less duplicative disclosure and less disclosure of immaterial information. The proposed amendments may result in improved readability and conciseness of the information provided, help investors focus on material information, and facilitate more efficient information processing by investors. The proposed amendments would also allow registrants to present financial information that is more reflective of their own industry and firm operating cycles, which could allow investors to better understand their business.

We anticipate information loss from the proposed elimination of fourth quarter financial information currently required under Item 302(a), which is otherwise not explicitly required to be disclosed. Though fourth quarter financial data could be calculated from annual report and cumulative third quarter data, it may be costly for investors to calculate or obtain. While such costs might be minimal for institutional investors, which have both resources and sophistication to obtain the needed financial information, for retail investors, the search costs might be substantially larger, which could involve monetary costs such as database subscriptions, or opportunity costs such as time spent searching for alternative sources and cross-referencing. Additionally, investors could make mistakes in deriving the fourth quarter financial information. Finally, in the case of a restatement, investors, including more sophisticated institutional investors, might not be able to accurately back out the fourth quarter information. To the extent that there is lack of accurate fourth quarter information which cannot be obtained through alternative means, investors' decision making could be affected.

However, the potential information loss from the elimination of Item 302(a) might be mitigated under MD&A's principles-based framework. We believe that fourth quarter data may not be material to all registrants or in every fiscal year. For example, for investors in companies with long operating cycles, fourth quarter data might not be as incrementally important as annual data. However, to the extent that there are material trends or events in the fourth quarter or throughout the fiscal year, registrants would be required to address those matters in their MD&A.

Item 302(b) requires issuers engaged in oil and gas producing activities, other than SRCs, to disclose information about those activities that is required by U.S. GAAP for each period presented. The FASB has recently proposed to amend U.S. GAAP to require the incremental disclosure called for by Item 302(b). Thus, because the disclosure required by Item 302(b) would be included in the notes to the registrant's financial statements, the proposed elimination of Item 302(b) would remove duplicative disclosure on this topic, benefiting both registrants and investors. Registrants could benefit from the reduced compliance burden. Investors should not face information loss from this aspect of the proposed amendments, as this requirement completely overlaps with the proposed amendments to U.S. GAAP. However, investors may incur costs to adjust to the new disclosure format. Such costs are likely to be one-time costs or to decrease over time.

c. Item 303(a) Restructuring and Streamlining

The proposal includes multiple changes that are intended to clarify and streamline the requirements of Item 303. For example, we are proposing a new Item 303(a) to provide a succinct and clear description of the purpose of MD&A. As discussed above, emphasizing the purpose of MD&A at the outset of the item is intended to provide clarity and focus to registrants as they consider what information to discuss and analyze, which could

[365] As discussed in Section II.B.1, SRCs, FPIs, issuers conducting an IPO, and registrants that have a class of securities registered under Section 15(d) of the Exchange Act are not subject to Item 302(a).

encourage management to disclose those factors that are most specific and relevant to a registrant's business. Other changes include restructuring and streamlining language in Item 303 and the related instructions.

We anticipate that the proposed amendments would provide registrants with more clarity on disclosure requirements. When there is confusion related to disclosure requirements, registrants may either over-disclose and incur additional compliance costs, or under-disclose and face increased litigation risk. To the extent that the proposed amendments reduce registrants' confusion, registrants could potentially benefit from reduced compliance costs and litigation risk. More informative disclosure could potentially benefit both registrants and investors by reducing information asymmetry in the market. Reduced information asymmetry could help investors make more informed investment decisions, which may benefit registrants in their capital raising. For registrants, reduced information asymmetry could also potentially improve firm liquidity and reduce cost of capital.

d. Capital Resources (Item 303(a)(2))

Item 303(a)(2), which requires a registrant to discuss its material commitments for capital expenditures as of the end of the latest fiscal period, does not define the term ''capital resources.'' The lack of specificity was intended to provide management flexibility for a meaningful discussion when this disclosure requirement was adopted in 1980. Nonetheless, the Commission has previously provided guidance to clarify the nature of this requirement.[366] Further, while the required disclosure of material commitments of capital expenditures generally relates to physical assets, such as buildings and equipment, this requirement may not fully reflect market developments. While capital expenditures remain important in many industries, certain expenditures that are not necessarily capital investments may be increasingly important to companies. For example, expenditures for human resources or intellectual property may be essential for companies in certain industries. The proposed amendments to Item 303(a)(2) are intended to encompass these types of expenditures. The proposed amendments would also require, consistent with the Commission's 2003 MD&A Interpretive Release, that registrants broadly disclose material cash commitments, including but not limited to capital expenditures. We believe the proposed amendments would modernize the requirement and make the disclosure more reflective of current and future industry outlays.

We believe that the proposed amendments could benefit registrants by providing additional clarity on the term ''capital resources'' and reducing confusion, thereby eliciting appropriate disclosure from registrants and potentially decreasing litigation risk. Capital expenditures vary across industries. While firms in traditional industries rely more on physical assets, firms in other industries such as the technology sector may invest more heavily in intellectual property and human capital. Specifying only capital expenditures in the rule could lead to confusion about what information should be provided. As a result, registrants may over-disclose and incur additional compliance costs, or under-disclose and face increased litigation risk. Further, we expect that registrants would benefit from decreased compliance costs to the extent that the proposed amendments reduce the need to consult existing Commission guidance to process and understand the disclosure requirements.

The proposed amendments should also benefit investors through improved disclosure. As discussed above, lack of clarity might lead to under- or over-disclosure by registrants. For example, disclosure focusing only on capital expenditures rather than on material cash commitments more generally might lead to under-disclosure for less capital intensive industries. As a result, investors might not receive adequate or consistent information to make informed investment decisions. By providing clarity on the requirement, the proposed amendments may facilitate more informative disclosure.

The proposed amendments might increase the disclosure burden for some registrants because they may prompt disclosure of material investments in non-physical assets that registrants might not otherwise be disclosing. However, we do not anticipate a significant increase in compliance costs. As discussed above, some registrants already include disclosure beyond capital expenditures, which the Commission's MD&A guidance has encouraged.[367] Also, better disclosure should eventually benefit registrants, because it could reduce information asymmetry between management and investors, reduce the cost of capital, and thereby improve firms' liquidity and their access to capital markets.[368]

e. Results of Operations—Known Trends or Uncertainties (Item 303(a)(3)(ii))

Item 303(a)(3)(ii) requires a registrant to describe any known trends or uncertainties that have had or that the registrant expects will have a material impact (favorable or unfavorable) on net sales or revenues or income from continuing operations. The proposed amendments clarify that when a registrant knows of events that are reasonably likely to cause a material change in the relationship between costs and revenues, such as known or reasonably likely future increases in costs of labor or materials or price increases or inventory adjustments, the reasonably likely change must be disclosed. This proposed amendment would conform the language in this paragraph to other Item 303 disclosure requirements for known trends and align Item 303(a)(3)(ii) with the Commission's guidance on forward-looking disclosure.[369]

As discussed above, the language in the existing Item 303(a)(3)(ii) differs from other Item 303 disclosure requirements for forward-looking information.[370] This differing language

[366] *See* 2003 MD&A Interpretive Release.

[367] *See supra* Section II.C.2 and footnote 129.

[368] *See* Douglas W. Diamond and Robert E. Verrecchia, Disclosure, Liquidity, and the Cost of Capital, 46 J. Fin. 1325 (1991) (finding that revealing public information to reduce information asymmetry can reduce a firm's cost of capital through increased liquidity). *See also* Christian Leuz and Robert E. Verrecchia, The Economic Consequences of Increased Disclosure, 38 J. Acct. Res. 91 (2000) (providing empirical evidence that increased disclosure leads to lower information asymmetry component of the cost of capital in a sample of German firms); Christian Leuz and Peter D. Wysocki, The Economics of Disclosure and Financial Reporting Regulation: Evidence and Suggestions for Future Research, 54 J. Acct. Res. 525 (2016) (providing a comprehensive survey of the literature on the economic effect of disclosure). Studies that provide both theoretical and empirical evidence on the link between information asymmetry and cost of capital include Thomas E. Copeland and Dan Galai, Information Effects on the Bid-Ask Spread, 38 J. Fin. 1457 (1983) (proposing a theory of information effects on the bid-ask spread); David Easley and Maureen O'Hara, Price, Trade Size, and Information in Securities Markets, 19 J. Fin. Econ. 69 (1987) (using a model to provide explanation for the price effect of block trades); David Easley and Maureen O'Hara, Information and the Cost of Capital, 59 J. Fin. 1553 (2004) (showing that differences in the composition of information between public and private information affect the cost of capital, with investors demanding a higher return to hold stocks with greater private information); Yakov Amihud and Haim Mendelson, Asset Pricing and the Bid-Ask Spread, 17 J. Fin. 223 (1986) (predicting that market-observed expected return is an increasing and concave function of the spread, and providing empirical results that are consistent with the predictions of the model).

[369] *See supra* note 139.

[370] *See supra* Section II.C.3. *See also supra* note 138 and 139.

may have led to confusion and inconsistent practice regarding what events should be disclosed. While the Commission has sought to alleviate some of these concerns by clarifying the standard for forward-looking information in its MD&A guidance,[371] the proposed amendment could further benefit registrants by reducing any residual confusion, eliciting more consistent disclosure, and potentially decreasing compliance costs and litigation risk. In addition, more consistent disclosure may allow investors to make more meaningful comparisons across firms and make more informed investment decisions.

Some registrants may experience an increased cost of compliance under the proposed amendments to the extent that these registrants have been disclosing events that *will* cause a material change in the relationship between costs and revenues as opposed to events that are *reasonably likely* to cause the change. Also, some registrants might need to spend resources to evaluate the future likelihood that such events might occur. However, such registrants might be few in light of existing Commission guidance, and the increase in compliance costs could be offset by the potential decrease in cost of capital as a result of enhanced disclosure and reduced information asymmetry.[372]

f. Results of Operations—Net Sales, Revenues, and Line Item Changes (Item 303(a)(3)(iii) and Instruction 4)

Item 303(a)(3)(iii) currently requires management to discuss certain factors, such as changes in prices or volume, that led to certain material increases in net sales or revenues. The proposed amendments broaden the current requirement focusing on ''material increases in net sales or revenue'' in the ''financial statements'' to instead require disclosure of ''material changes from period to period in one more line items'' in the ''statement of comprehensive income.'' Additionally, the proposed amendments would amend Item 303(a)(3)(iii) to require disclosure specifying the *reasons underlying* these material changes. Instead of specifying disclosure of ''material increases'' in net sales or revenue, our proposed revisions would tie the required disclosure to ''material changes'' in net sales or revenues. The proposed amendments to Instruction 4 would similarly clarify that MD&A requires a narrative discussion of the underlying reasons for material changes in quantitative and qualitative terms.

The proposed amendments are intended to codify Commission guidance on results of operations disclosure. The Commission has previously stated that MD&A disclosure should include both qualitative and quantitative analysis and clarified that a results of operations discussion should describe increases or decreases in any line item, including net sales or revenues.[373] The need for registrants to consult both existing Item 303(a)(3)(iii) and the Commission's guidance to understand the requirement could lead to confusion and inconsistent disclosure practice in registrants. The additional clarity provided by the proposed amendments could benefit registrants by reducing any confusion, eliciting more consistent disclosure, and potentially decreasing compliance costs and litigation risk.

The proposed amendments could increase disclosure burdens for registrants, thus potentially increasing compliance costs. However, since many registrants may already be following relevant Commission guidance, the marginal increase in compliance costs is not expected to be significant. Additionally, to the extent that registrants do incur additional compliance costs, such costs could be offset by the potential decrease in cost of capital as a result of increased disclosure and reduced information asymmetry.[374]

The proposed amendments would require registrants to provide a nuanced discussion of the underlying reasons that may be contributing to material changes in line items, and therefore should enhance the disclosure. More consistent and informative disclosure would allow investors to make more meaningful comparisons across firms and make more informed investment decisions. However, any potential benefits to investors may be limited to the extent registrants already are following the relevant Commission guidance.

g. Results of Operations—Inflation and Price Changes (Item 303(a)(3)(iv), Instruction 8, and Instruction 9)

We propose to eliminate Item 303(a)(3)(iv) and related Instructions 8 and 9, which generally require that registrants specifically discuss the impact of inflation and price changes on their net sales, revenue, and income from operations for the three most recent fiscal years, to the extent material. The purpose of the proposed elimination is to streamline Item 303 by eliminating the specific reference to these topics, which may not be material to most registrants. This proposed change is consistent with the principles-based disclosure framework of Item 303.

We do not believe that these proposed changes would result in a loss of material information for market participants. Registrants would still be required to discuss in their MD&A the impact of inflation and changing prices, if material.

The proposed elimination of this item could benefit registrants by streamlining Item 303 and reducing compliance costs. Similar to what we have discussed above,[375] to the extent that the elimination encourages registrants that currently disclose inflation and changing prices even if not material to modify such disclosure,[376] investors could potentially benefit from a focus on material information, which would allow them to process information more effectively. Also, emphasizing a principles-based approach may encourage registrants to present more tailored information, which also may benefit investors.

h. Off-Balance Sheet Arrangements (Item 303(a)(4))

Current Item 303(a)(4) requires, in a separately-captioned section, disclosure of a registrant's off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures, or capital resources that is material to investors. We propose to replace Item 303(a)(4) with a new principles-based instruction that would require registrants to discuss commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have, or are reasonably likely to have, a material current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements, or capital resources.

We do not believe the proposed amendments would lead to significant information loss, as we expect the proposed principles-based instruction would continue to elicit material information about off-balance sheet arrangements. As discussed above, we believe that the proposed amendments would encourage registrants to consider

[371] *See* 1989 MD&A Interpretive Release.

[372] *See supra* note 368.

[373] *See, e.g.,* 2003 MD&A Interpretative Release and 1989 MD&A Interpretative Release.

[374] *See supra* note 368.

[375] *See supra* Section III.B.2.i.

[376] *See supra* note 354.

and integrate disclosure of off-balance sheet arrangements in the context of their broader MD&A disclosures and may avoid boilerplate disclosure that either duplicates information in the financial statements, or cross-references the financial statements without additional disclosure to put such information into appropriate context.

The proposed amendments could benefit registrants by avoiding duplicative disclosure and reducing compliance costs. As discussed above, to the extent the proposed amendments improve the readability and conciseness of the information provided, they may help investors process information more effectively. Also, emphasizing a principles-based approach may encourage registrants to provide disclosure that is tailored and informative, which could be more beneficial to investors.

Investors might need to spend time searching for the information and adjusting to the new format and location of the disclosure as the proposal would no longer require the relevant disclosure in a separately captioned section. Such costs are likely to be one-time or decrease over time.

i. Tabular Disclosure of Contractual Obligations (Item 303(a)(5))

Under existing Item 303(a)(5), registrants other than SRCs must disclose in tabular format their known contractual obligations. There is no materiality threshold for this item. A registrant must arrange its chart to disclose the aggregate amount of contractual obligations by type and with subtotals by four prescribed periods. The Commission adopted this requirement so that aggregated information about contractual obligations was presented in one place.[377] However, as discussed above, most of the information presented in response to this requirement is already included in the notes to the financial statements. In order to promote the principles-based nature of MD&A and streamline disclosures by reducing overlapping requirements, we propose to eliminate Item 303(a)(5).

We believe the proposal could lead to reduced compliance costs by avoiding duplicative disclosure, therefore benefiting registrants. On the other hand, we also recognize that there might be increased costs associated with assessing the materiality of contractual obligations under the proposed principles-based approach. However we do not expect such costs to be significant given that the materiality standard is already used by registrants when preparing MD&A disclosures. As discussed above, to the extent the elimination of redundant or immaterial disclosure improves the readability and conciseness of the information provided, the proposed amendment could potentially benefit investors, because it may help them process information more effectively by focusing on material information. Also, since a principles-based approach allows registrants to present more tailored information, it could lead to more informative disclosure, which would benefit investors.

We recognize that there could be a loss of certain information due to the proposed elimination of the item. As discussed in Section II.C.7, some of the information in the contractual obligations table such as purchase obligations is not specifically called for under U.S. GAAP. Additionally, information related to the ''payments due by period'' currently required by the item may be difficult to ascertain from a registrant's financial statements. However, since the proposed amendments to capital resources disclosure would encompass material contractual obligations, we believe any loss of information would not be significant.

We expect investors could experience certain additional costs. A centralized location and tabular format make it convenient for investors to extract and analyze information. Under the proposed amendments, the absence of a centralized location and tabular format may cause investors to incur search costs to derive the data from the financial statements, or monetary costs to obtain the information through alternative channels, such as database subscriptions. Investors may also incur opportunity costs, such as time spent searching for alternative sources, and these costs may fall more heavily on retail investors than on other types of investors, such as institutional investors.

j. Critical Accounting Estimates

Item 303(a) does not currently include a subsection requiring registrants to disclose critical accounting estimates. U.S. GAAP also does not require similar disclosure of estimates and assumptions in the notes to financial statements, except in limited circumstances. However, IFRS requires disclosures regarding sources of estimation uncertainty and judgments made in the process of applying accounting policies that have the most significant effect on the amounts recognized in the financial statements.[378] Although the Commission has issued guidance on disclosure of critical accounting estimates, many registrants repeat the discussion of significant accounting policies from the notes to the financial statements in their MD&A and provide limited additional discussion of critical accounting estimates. We propose amending Item 303 to explicitly require such disclosure due to the importance of critical accounting estimates in providing meaningful insight into the uncertainties related to these estimates and reported financials and how accounting policies of registrants faced with similar facts and circumstances may differ.

As discussed above, commenters have suggested that there is confusion as to how and whether to disclose critical accounting estimates, resulting in inconsistent disclosure practice among registrants. As noted above, many registrants simply repeat the discussion of significant accounting policies from the notes to the financial statements in their MD&A, which is duplicative and may not be particularly informative to investors. Providing a clear disclosure framework could benefit registrants by reducing confusion and duplicative disclosure, thereby decreasing compliance costs.

Investors would also likely benefit from the proposed amendments. The proposed amendments could elicit more informative disclosure from registrants related to their estimates and assumptions, which would help investors better understand any potential risk or uncertainty related to these estimates and make more informed investment decisions. The proposed amendments could also promote more consistent disclosure practices among registrants by providing more clarity, allowing investors to make more meaningful comparisons across registrants and better informed investment decisions.

We recognize that the proposed disclosure requirement could introduce additional costs to market participants. While we do not anticipate that investors would incur any direct costs (other than information processing costs) associated with this proposal, compliance costs might increase for registrants because of the proposed more prescriptive disclosure compared to the existing more principles-based approach. However, the potential increase in compliance costs might decline over time as registrants become more accustomed to the new filing requirements. We also note that,

[377] *See* Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release, at 5990.

[378] *See supra* note 227.

consistent with Commission guidance, some registrants may already provide disclosures related to critical accounting estimates that do not duplicate the financial statement disclosures, thus the increase in compliance costs might be minimal to those registrants. In addition, the increase in compliance costs could be offset by a potential decrease in registrants' cost of capital, because such disclosure could reduce information asymmetry between investors and firms.[379] Taken together, we expect any potential increase in registrants' disclosure-related costs to be small.

k. Interim Period Discussion (Item 303(b))

Item 303(b) requires registrants to provide MD&A disclosure for interim periods that enables market participants to assess material changes in financial condition and results of operations between certain specified periods. The proposal would amend current Item 303(b) to allow for flexibility in comparisons of interim periods and to streamline the item. Specifically, under the proposed Item 303(c), registrants would be allowed to compare their most recently completed quarter to either the corresponding quarter of the prior year (as is currently required) or to the immediately preceding quarter. The proposed amendments would also streamline the instructions to current Item 303(b), consistent with the proposed amendments to current Item 303(a) and the related instructions.

This more flexible approach is intended to allow registrants to provide analysis that is better tailored to their business cycles. This may result in more informative disclosure that could reduce information asymmetry and firms' cost of capital, benefiting registrants.[380] In addition, streamlining the item could avoid duplicative disclosure and reduce associated compliance costs.

Investors also may benefit from the proposed amendments. As noted above, the proposed amendments would provide registrants flexibility to choose the interim period presented, which could allow them to provide a more tailored analysis. This, in turn, could allow investors to make better informed investment decisions. On the other hand, more flexibility in disclosure could also decrease comparability across firms, potentially increasing the cost of investors' decision-making. However, we do not expect the flexibility in reporting to significantly reduce comparability, since registrants in the same industry may be likely to have similar business cycles and choose similar interim periods. Therefore, the concern about a reduction of comparability across firms in the same industry could be mitigated. Streamlining this item is potentially beneficial to investors, as the resultant reduction of duplicative disclosure might increase the effectiveness of information processing by investors, thus helping them make more informed decisions.

l. Safe Harbor for Forward-Looking Information (Item 303(c))

Item 303(c)[381] states that the safe harbors provided in Section 27A of the Securities Act and 21E of the Exchange Act apply to all forward-looking information provided in response to Item 303(a)(4) (off-balance sheet arrangements) and Item 303(a)(5) (contractual obligations), provided such disclosure is made by certain enumerated persons.[382] We propose to eliminate this item to conform to the proposed elimination of Items 303(a)(4) and 303(a)(5). We do not believe this proposed change would have any economic effect by itself. Disclosure would continue to be protected by the existing safe harbors, and therefore, we do not expect changes in market behavior. To the extent that the elimination of the section may result in any confusion as to the application of the safe harbors, there could be a cost to registrants. However, we believe such cost should be de minimis.

m. Smaller Reporting Companies (Item 303(d))

Item 303(d)[383] states that an SRC may provide Item 303(a)(3)(iv) information for the most recent two fiscal years if it provides financial information on net sales and revenues and income from continuing operations for only two years. Item 303(d) also states that an SRC is not required to provide the contractual obligations chart specified in Item 303(a)(5). To conform to the proposals to eliminate Item 303(a)(3)(iv) and (a)(5), we propose to eliminate Item 303(d). SRCs may continue to rely on Instruction 1 to Item 303(a),[384] which states that an SRC's discussion shall cover the two-year period required in Article 8 of Regulation S–X. As we propose to eliminate this item as a conforming change, we do not believe this proposed change would have any economic effect by itself.

n. Foreign Private Issuers

The proposed changes related to Item 3.A and Item 5 of Form 20–F and General Instructions B.(11), (12), and (13) of Form 40–F for FPIs are intended to conform to the other changes related to selected financial data and MD&A. Therefore, our analysis of the costs and benefits for domestic issuers and their investors under the proposed amendments to Item 301 can be carried over to FPIs and their investors under the amended items. The proposed changes could benefit FPIs through a reduction in compliance costs, although the benefits are likely to be smaller given that current Item 3.A permits a FPI to omit either or both of the earliest two years of data under certain conditions and registrants that file on Form 40–F use Canadian disclosure documents to satisfy the Commission's registration and disclosure requirements. Since FPIs would have more flexibility to provide information that is better tailored to their industry or country, investors could benefit from more informative disclosure. However, investors might incur additional search costs when looking for information through alternative channels.

To maintain a consistent approach to MD&A for domestic registrants and FPIs, we are proposing changes to Forms 20–F and 40–F that generally conform to our proposed amendments to Item 303. Therefore, our discussion of the costs and benefits for domestic issuers and their investors under the proposed amendments to Item 303 generally can be carried over to FPIs under the amended item. The proposal adds to Item 303 the current Form 20–F instruction that requires FPIs that are not subject to the multijurisdictional disclosure system to discuss hyperinflation in a hyperinflationary economy. This disclosure can be important to investors when analyzing FPIs, as hyperinflation in some FPIs' home countries might be an important risk factor for the firm's results of operations or financial health.

D. Anticipated Effects on Efficiency, Competition, and Capital Formation

We believe the proposed amendments could have positive effects on efficiency, competition, and capital formation. As discussed above, we expect the proposed amendments could reduce duplicative disclosure and elicit disclosure that is more focused on material information and tailored to a

[379] *See supra* note 368.

[380] *Id.*

[381] Item 303(c) of Regulation S–K.

[382] Such persons are: An issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

[383] Item 303(d) of Regulation S–K.

[384] Proposed renumbered Item 303(b).

registrant's business, making the disclosure more informative. We believe more informative disclosure could reduce information asymmetry between firms and investors, thereby improving firm liquidity and price efficiency.[385] We also believe the proposed amendments could promote competition in the capital markets and facilitate capital formation. This is because more informative disclosure could allow investors to make more meaningful comparisons across firms and make more informed investment decisions, and as a result, more value-enhancing projects may receive more capital allocation.

However, as discussed above, since registrants no longer need to present certain information (*e.g.,* five-year comparable data), investors could incur costs when searching for alternative channels to obtain or reconstruct the information. Since each investor would have to consider the need for alternative sources of information, it could result in inefficiency in the information distribution process. Additionally, if registrants misjudge what information is material, there could be an increase in information asymmetries between registrants and investors, negatively affecting efficiency, competition, and capital formation. However, we expect this risk to be offset by mitigating factors, including accounting controls and the antifraud provisions of the securities laws.

The proposed amendments, in particular by simplifying and codifying certain positions expressed in various Commission guidance, might reduce the compliance costs of private companies considering going public and this cost reduction may be more significant for SRCs. For companies considering an IPO, the benefit of easing the burdens associated with preparing these disclosures for the first time could decrease the costs of going public and thus leave more capital for future investment. This could lead to more efficient capital formation.

E. Alternatives

As an alternative to the proposed elimination of Item 301, which requires registrants to furnish selected financial data in comparative tabular form for each of the registrant's last five fiscal years, we considered amending the item to require only the same number of years of data as presented in the registrant's financial statements in that same filing. Similarly, another alternative we considered is expanding the current EGC accommodation to all initial registrants. The EGC accommodation generally provides that an EGC need not present selected financial data for any period prior to the earliest audited period presented in its initial filing.[386] This accommodation allows EGCs to build up to the full five years of selected financial data.

The benefit of these alternatives would be potential cost savings from a reduction in compliance burdens by not having to reproduce the earliest years of selected financial data. These alternatives might be sufficient for investors to make a quick comparison with the most recent financial data without cross-referencing to other sources. However, given the nature of electronic access to financial data through EDGAR, we think the potential benefits of these alternatives would be more limited than the proposed elimination of Item 301. We decided not to propose the alternative of requiring the same number of years of data as presented in the registrant's financial statements in that same filing because such disclosure would be largely duplicative and therefore, have limited utility. Regarding the alternative that we expand the current EGC accommodation to all initial registrants, while this approach could provide cost savings to non-EGC initial registrants at the beginning, in the long run, these registrants would still face the same duplicative disclosure problem that other registrants do currently. As a result, we decided not to propose this alternative.

As another alternative, we considered amending Item 301 to require the earliest years only in circumstances where the company can represent that the information cannot be provided without unreasonable effort and expense, as is currently allowed under Item 3.A of Form 20–F. For example, as a commenter noted, there are several situations where such disclosure can be costly.[387] Under this approach, registrants would experience reduced compliance costs under the exempted circumstances, albeit a smaller reduction compared to the proposed approach, because they would still need to disclose selected financial data for the earliest years when it is deemed not time consuming and costly. On the other hand, while investors would still incur search costs if they prefer to analyze five years' financial data, such costs would be smaller compared to the proposed approach. We decided not to propose this alternative because the lack of a consistent or objective standard to determine when additional financial disclosure is required could be time consuming or burdensome for registrants.

As an alternative to the proposed elimination of Item 302, which requires disclosure of quarterly financial data of selected operating results and variances in these results from amounts previously reported on a Form 10–Q, we considered requiring a registrant to separately disclose fourth quarter data elsewhere in its annual report, such as in MD&A. This approach could prevent or mitigate the potential loss of the fourth quarter financial data under the proposed approach. We decided not to propose this alternative because the fourth quarter information may not be material or significant to investors in all circumstances. Therefore, separate presentation of the fourth quarter information might not justify its cost.

We are proposing to amend current Item 303(a)(2) to specify that a registrant should broadly disclose material cash commitments, including but not limited to capital expenditures. We considered proposing a definition for the term ''capital resources.'' While defining the term could provide more clarity for registrants, it would also result in a disclosure requirement more prescriptive in nature, inconsistent with our current objective to promote the principles-based nature of MD&A. We therefore decided not to propose this alternative.

As an alternative to the proposed elimination of Item 303(a)(5), which requires registrants to disclose in tabular format contractual obligations by type of obligation, overall payments due and prescribed periods, we considered maintaining the contractual obligations disclosure requirement in a modified form. For example, we considered allowing this disclosure in a non-tabular format. While this approach could prevent any potential information loss, the non-tabular presentation of information may not be as clear as the tabular format. Also, this approach may not generate meaningful savings for registrants through reduced compliance costs. Another alternative we considered was to reduce the prescribed time periods that need to be disclosed. For example, we could require disclosures of only short-term or long-

[385] *See supra* note 368. *See also* David Hirshleifer and Siew Hong Teoh, *Limited attention, information disclosure, and financial reporting,* 36 J. Acct. & Econ. 337–386 (2003) (developing a theoretical model where investors have limited attention and processing power and showing that, with partially attentive investors, the means of presenting information may have an impact on stock price reactions, misvaluation, long-run abnormal returns, and corporate decisions).

[386] *See* Item 301(d) of Regulation S–K [17 CFR 229.301].

[387] *See supra* note 28 and 29 and corresponding text.

term obligations rather than requiring disclosure to be grouped in the four time periods currently specified in Item 303(a)(5). While this approach could be more beneficial to investors by reducing their search costs compared to the proposed approach, it would result in redundant disclosure and higher compliance costs to registrants.

As an alternative to proposed Item 303(b)(4), we considered issuing additional guidance on critical accounting estimates that enhances the guidance issued in the 2003 MD&A Release. While this alternative could save compliance costs for registrants because it would not create a new requirement, the savings might not necessarily be significant, given the existing Commission guidance on this topic. Further, we believe that by codifying existing guidance, proposed Item 303(b)(4) would provide investors with more enhanced disclosure and protection by ensuring that companies consistently provide such disclosure. Therefore, we decided not to propose this alternative.

Proposed Item 303(b) would allow flexibility for registrants to compare their most recently completed quarter to either the corresponding quarter of the prior year (as is currently required) or to the immediately preceding quarter. As an alternative, we considered an approach under which registrants would be required to compare the most recent quarter to both the corresponding quarter of the prior year and the immediately preceding quarter. While this alternative approach would provide investors with more disclosure, it might not be clear to investors which time period is more representative of the registrant's business, and registrants would incur more compliance costs. Also, this alternative is less consistent with the principles-based nature of MD&A. Therefore, we decided not to propose this alternative.

The proposed amendments do not require registrants to structure financial disclosures in a machine-readable format. An alternative suggested by some commenters [388] was to require registrants to structure MD&A in the Inline XBRL format. Requiring registrants to structure MD&A disclosures could create benefits for investors (either through direct use of the data or through reliance on the data as extracted and analyzed by intermediaries) as well as other market participants by enabling more efficient retrieval, aggregation, and analysis of disclosed information and facilitating comparisons across issuers and time periods.[389] However, as other commenters observed, filers would incur increased costs under this alternative, with a block text and detail tagging requirement imposing greater costs than a block text tagging-only requirement.[390] This increased cost effect may be mitigated by the fact that registrants are or will be required to structure financial statement and cover page disclosures in the Inline XBRL format,[391] and would therefore incur only the incremental cost associated with tagging the additional disclosures. Also, concerns as to filer cost might be partially alleviated by the overall decline in the costs of XBRL tagging over time, including for SRCs. [392] However, our proposed amendments emphasize MD&A's principles-based framework, which encourages registrants to provide meaningful disclosure that is tailored to their specific facts and circumstances. This may make MD&A less comparable across issuers, thereby reducing the benefits of this alternative. As a result, we did not propose this alternative, but solicit comment on the specific benefits and costs of such a tagging requirement.

Request for Comment

We request comment on all aspects of our economic analysis, including the potential costs and benefits of the proposed amendments and alternatives thereto, and whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation or have an impact on investor protection. In addition, we also seek comment on alternative approaches to the proposed amendments and the associated costs and benefits of these approaches. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, in particular, on costs and benefits estimates.

Specifically, we seek comment with respect to the following questions: Are there any costs and benefits to any entity that are not identified or misidentified in the above analysis? Are there any effects on efficiency, competition, and capital formation that are not identified or misidentified in the above analysis? Should we consider any of the alternative approaches outlined above instead of the proposed amendments? Which approach and why? Are there any other alternative approaches to improving MD&A disclosure that we should consider? If so, what are they and what would be the associated costs or benefits of these alternative approaches?

V. Paperwork Reduction Act

A. Summary of the Collections of Information

Certain provisions of our rules, schedules, and forms that would be affected by the proposed amendments contain ''collection of information'' requirements within the meaning of the PRA.[393] The Commission is submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[394] The hours and costs associated with preparing, filing, and sending the schedules and forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the

[388] *See, e.g.,* letters from CalPERS, California State Teachers' Retirement System (July 21, 2016), CFA Institute, Deloitte, RGA, Data Coalition (July 21, 2016) (''Data Coalition''), Merrill Corporation (July 19, 2016) (''Merrill''), and XBRL US (July 21, 2016) (''XBRL US''). In addition, the Commission received several comments supporting an Inline XBRL structuring requirement for MD&A disclosure in connection with the Inline XBRL proposing release. *See, e.g.,* letters from CFA Institute (July 1, 2017) and XBRL US (July 1, 2017 and Feb. 1, 2018).

[389] *See* Inline XBRL Adopting Release, at 40851, footnote 71 and accompanying text, and 40862. *See also, e.g.,* Mohini Singh, ''Data and Technology: How Information is Consumed in the New Age,'' *CFA Institute* (July 3, 2018) (describing examples of analytical, benchmarking, and regulatory XBRL usage); Chunhui Liu, Tawei Wang, and Lee J. Yao (2014), ''XBRL's Impact on Analyst Forecast Behavior: An Empirical Study,'' *Journal of Accounting and Public Policy,* 33(1) (finding that XBRL adoption has significantly increased information quantity and quality, as measured by analyst following and forecast accuracy).

[390] *See, e.g.,* letters from Institute of Management Accountants (July 29, 2016); FEI I and II; Maryland Bar Securities Committee, Northrop Grumman, and CCMC.

[391] *See* Inline XBRL Adopting Release; FAST Act Adopting Release.

[392] Preliminary statistics from a pricing survey being conducted by the AICPA and XBRL US indicate that the cost of XBRL formatting has declined 41% since 2014 and that the average cost of XBRL preparation for SRCs in 2017 averaged $5,850 per year. *See* AICPA, ''Research shows XBRL filing costs are lower than expected,'' available at *https://www.aicpa.org/InterestAreas/FRC/AccountingFinancialReporting/XBRL/DownloadableDocuments/XBRL%20Costs%20for%20Small%20Companies.pdf. See also* Mohini Singh, ''The Cost of Structured Data: Myth vs. Reality,'' CFA Institute (August 2017), available at *https://www.cfainstitute.org/-/media/documents/survey/the-cost-of-structured-data-myth-vs-reality-august-2017.ashx.*

[393] 44 U.S.C. 3501 *et seq.*

[394] 44 U.S.C. 3507(d); 5 CFR 1320.11.

information disclosed. The titles for the collections of information are:

''Form 1–A'' (OMB Control No. 3235–0286);

''Form 10'' (OMB Control No. 3235–0064);

''Form 10–Q'' (OMB Control No. 3235–0070);

''Form 10–K'' (OMB Control No. 3235–0063);

''Schedule 14A'' (OMB Control No. 3235–0059);

''Form 20–F'' (OMB Control No. 3235–0288);

''Form 40–F'' (OMB Control No. 3235–0381);

''Form F–1'' (OMB Control No. 3235–0258);

''Form F–4'' (OMB Control No. 3235–0325);

''Form N–2'' (OMB Control No. 3235–0026);

''Form S–1'' (OMB Control No. 3235–0065);

''Form S–4'' (OMB Control No. 3235–0324);

''Form S–11'' (OMB Control No. 3235–0067);

We adopted all of the existing regulations, schedules, and forms pursuant to the Securities Act, the Exchange Act, and/or the Investment Company Act. The regulations, schedules, and forms set forth the disclosure requirements for registration statements, periodic reports, and proxy and information statements filed by registrants to help investors make informed investment and voting decisions.

A description of the proposed amendments, including the need for the information and its proposed use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the economic effects of the proposed amendments can be found in Section IV above.

B. Summary of the Proposed Amendments' Effects on the Collections of Information

The following Table 1 summarizes the estimated effects of the proposed amendments on the paperwork burdens associated with the affected forms listed in Section V.A.

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN EFFECTS OF THE PROPOSED AMENDMENTS

Proposed amendments and effects	Affected forms	Estimated net effect *
Item 301: Selected Financial Data		
• Elimination of Item 301 requirement to furnish selected financial data for each of the registrant's last five fiscal years because Item 303 already calls for disclosure of material trend information, which would decrease the paperwork burden by reducing repetitive information about a registrant's historical performance. • Replacing the reference to Item 301 with a reference to Rule 1–02(bb) of Regulation S–X in Items 1112, 1114, and 1115 of Regulation AB would generally result in similar disclosure being presented under these Items, and therefore not affect the burden estimate.	• Forms 10, 10–K, S–1, S–4, and S–11. • Schedule 14A ** ..... • Form N–2 ± ..... • Forms SF–1 and SF–3 ...	• 2 hour net decrease in compliance burden per form. • 0.2 hour net decrease in compliance burden per schedule. • 0.3 hour net decrease in compliance burden per form. • No change in compliance burden per form.
Item 302(a): Supplementary Financial Information		
• Elimination of Item 302(a) requirement to disclose selected quarterly financial data of selected operating results because Item 302(a) information is largely available in Forms 10–Q, which would decrease the paperwork burden by reducing repetitive information about a registrant's quarterly performance.	• Forms 10, 10–K, S–1, S–4, and S–11. • Schedule 14A ** ..... • Form N–2 ±	• 3 hour net decrease in compliance burden per form. • 0.3 hour net decrease in compliance burden per schedule. • 0.5 hour net decrease in compliance burden per form.
Item 302(b): Information About Oil and Gas Producing Activities		
• Elimination of Item 302(b) disclosures required for registrants engaged in oil and gas producing activities would decrease the paperwork burden by reducing repetitive disclosure that, subject to the adoption of the FASB's Accounting Standards Update, will be duplicative of U.S. GAAP.	• Forms 10, 10–K, S–1, S–4, and S–11. • Schedule 14A **	• 0.1 hour net decrease in compliance burden per form. • 0.1 hour net decrease in compliance burden per schedule.
Item 303(a): Full Fiscal Years		
Restructuring and Streamlining:		
• Establishing a new paragraph to emphasize the purpose of the MD&A section at the outset to clarify and focus registrants is expected to have a minimal impact on the paperwork burden, as the change would codify existing guidance. *Estimated burden increase: 0.1 hour per form and per schedule.* • Amendments to streamline the text of new Item 303 would have no effect on the paperwork burden because these amendments are clarifications of existing requirements.	• Forms 10, 10–K, 10–Q, S–1, S–4, and S–11. • Form 1–A ^ ..... • Schedule 14A** ..... • Form N–2 ±	• 2.6 hour net increase in compliance burden per form. • 0.3 hour net increase in compliance burden per form. • 0.3 hour net increase in compliance buren per schedule. • 0.4 hour net increase in compliance burden per form.
Capital Resources:		
• Expanding Item 303(a)(2) to also require a discussion of material cash requirements, in addition to commitments for capital expenditures, would increase the paperwork burden. *Estimated burden increase: 1 hour per form and 0.1 hour increase per schedule.*		
Results of Operations—Known Trends or Uncertainties:		

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN EFFECTS OF THE PROPOSED AMENDMENTS—Continued

Proposed amendments and effects	Affected forms	Estimated net effect *
• Amending Item 303(a)(3)(ii) to clarify that a registrant should disclose *reasonably likely* changes in the relationship between costs and revenues would increase the paperwork burden, although this effect is expected to be minimal because the amendment is consistent with existing guidance. *Estimated burden increase: 1.0 hour per form and 0.1 hour increase per schedule*.		
Results of Operations—Net Sales, Revenues, and Line Item Changes:		
• Amending Item 303(a), Item 303(a)(3)(iii) and Instruction 4 to Item 303(a) to clarify that a registrant should include in its MD&A a discussion of the reasons underlying material *changes* from period-to-period in one or more line items could marginally increase the paperwork burden by requiring a more nuanced discussion consistent with the overall objective of MD&A. *Estimated burden increase: 1.0 hour per form and 0.1 hour increase per schedule*.		
Results of Operations—Inflation and Price Changes:		
• Eliminating the specific reference to inflation within Item 303(a)(3)(iv) for issuers should marginally reduce the paperwork burden, although such decrease is expected to be minimal. *Estimated burden decrease: 0.5 hours per form and 0.1 hour decrease per schedule*.		
Off-Balance Sheet Arrangements:		
• Replacing Item 303(a)(4) with an instruction emphasizing a more principles-based approach with respect to off-balance sheet arrangement disclosures, would reduce duplicative disclosures and decrease the paperwork burden. *Estimated burden decrease: 1.0 hour per form and 0.1 hour decrease per schedule*.		
• Amending Items 2.03 and 2.04 of Form 8–K to retain the definition of ''off-balance sheet arrangements'' that is currently in Item 303(a)(4) would not result in any changes in reporting obligations under Item 2.03 and Item 2.04 of Form 8–K, and would therefore result in no change in paperwork burden for this form.		
Contractual Obligations Table:		
• Eliminating Item 303(a)(5), the requirement that registrants provide a tabular disclosure of contractual obligations, would reduce duplicative disclosures and decrease the paperwork burden. *Estimated burden decrease: 1.0 hour per form and 0.1 hour decrease per schedule*.		
Critical Accounting Estimates:		
• Amending Item 303 to explicitly require disclosure of critical accounting estimates would provide more clarity on the uncertainties involved in creating an accounting policy and how significant accounting policies of registrants may differ. This would increase the paperwork burden. *Estimated burden increase: 2.0 hours per form and 0.2 hour increase per schedule*.		
Item 303(b): Interim Periods		
• Amending Item 303(b) to allow for more flexibility in interim periods compared and eliminating certain instructions and providing cross-references to similar instructions in Item 303(a) would decrease the paperwork burden.	• Forms 10, 10–K, 10–Q, S–1, S–4, and S–11.	• 4.0 hour net decrease in compliance burden per form.
	• Form 1–A ^	• 0.4 hour net decrease in compliance burden per form.
	• Schedule 14A **	• 0.4 hour net decrease in compliance burden per schedule.
	• Form N–2 ±	• 0.7 hour net decrease in compliance burden per form.
Item 303(c): Safe Harbor for Forward-Looking Information		
• Eliminating Item 303(c) as a conforming change would have no effect on the paperwork burden.		
Item 303(d): Accommodations for SRCs		
• Eliminating Item 303(d) as a conforming change would have no effect on the paperwork burden.		
Effect on FPIs		
• Eliminating Item 3.A and generally conforming Item 5 of Form 20–F to the proposed amendments to Item 303 would reduce the paperwork burden.	• Form 20–F	• 2.0 hour net decrease in compliance burden per form.
• Eliminating the contractual obligations disclosure requirement and replacing the off-balance sheet disclosure requirements in Forms 20–F and 40–F with a principles-based instruction would reduce the paperwork burden.	• Form 40–F	• 2.0 hour net decrease in compliance burden per form.
• Amending current Instruction 11 to Item 303 to conform to the hyperinflation disclosure requirements of Form 20–F would not affect the paperwork burden.	• Forms F–1 and F–4	• 3.5 hour net decrease per form.
Total	• Form 1–A	• 0.1 hour net decrease per form.
	• Form 10–Q	• 1.4 hour net decrease per form.
	• Forms 10, 10–K, S–1, S–4, and S–11.	• 6.5 hour net decrease per form.

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN EFFECTS OF THE PROPOSED AMENDMENTS—Continued

Proposed amendments and effects	Affected forms	Estimated net effect *
	• Schedule 14A	• 0.7 hour net decrease per form.
	• Forms F–1 and F–4	• 3.5 hour net decrease per form.
	• Form 20–F	• 2.0 hour net decrease per form.
	• Form 40–F	• 2.0 hour net decrease per form.
	• Form N–2	• 1.1 hour net decrease per form.

* Estimated effect expressed as increase or decrease of burden hours *on average* and derived from Commission staff review of samples of relevant sections of the affected forms.

** The lower estimated average incremental burden for Schedule 14A reflects the Commission staff estimates that no more than 10% of the Schedule 14As filed annually include Item 301–303 disclosures.

± Form N–2 states that disclosure under Items 301–303 of Regulation S–K is only required if "the Registrant is regulated as a business development company under the 1940 Act." The estimated average incremental burden for Form N–2 reflects the fact that approximately 17% of registrants are BDCs. The estimated burden has been reduced to adjust for this percentage.

≠ The reduced estimated average incremental burden for the proposed elimination of Item 302(b) reflects the fact that approximately 3.5% of registrants engage in oil and gas producing activities. For purposes of this PRA analysis, BDCs have been deemed not to be engaged in oil and gas producing activities.

^ In the preparation of Part II of Form 1–A, Regulation A issuers have the option of disclosing either the information required by (i) the Offering Circular format or (ii) Part I of Forms S–1 or S–11 (except for the financial statements, selected financial data, and supplementary information called for by those forms). The burden associated with Form 1–A is affected only to the extent that an issuer chooses to use Part I of these forms. The Commission staff estimates that 10.6% of Form 1–A filings reflect this election.

C. Incremental and Aggregate Burden and Cost Estimates for the Proposed Amendments

Below we estimate the incremental and aggregate reductions in paperwork burden as a result of the proposed amendments. These estimates represent the average burden for all registrants, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the nature of their business. We do not believe that the proposed amendments would change the frequency of responses to the existing collections of information; rather, we estimate that the proposed amendments would change only the burden per response.

The burden reduction estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a registrant to prepare and review disclosure required under the proposed amendments. For purposes of the PRA, the burden is to be allocated between internal burden hours and outside professional costs. Table 2 below sets forth the percentage estimates we typically use for the burden allocation for each form. We also estimate that the average cost of retaining outside professionals is $400 per hour.[395]

PRA TABLE 2—STANDARD ESTIMATED BURDEN ALLOCATION FOR SPECIFIED FORMS AND SCHEDULES

Form/schedule type	Internal (percent)	Outside professionals (percent)
Forms 1–A, 10–K, 10–Q, 8–K, Schedule 14A	75	25
Forms S–1, S–4, S–11, F–1, F–4, SF–1, SF–3, and 10	25	75
Forms 20–F and 40–F	25	75
Form N–2	25	75

Table 3 below illustrates the incremental change to the total annual compliance burden of affected forms, in hours and in costs, as a result of the proposed amendments.

[395] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour. This estimate is based on consultations with several registrants, law firms, and other persons who regularly assist registrants in preparing and filing reports with the Commission.

[396] The number of estimated affected responses is based on the number of responses in the Commission's current OMB PRA filing inventory. The OMB PRA filing inventory represents a three-year average. We do not expect that the proposed amendments would materially change the number of responses in the current OMB PRA filing inventory.

[397] The estimated reductions in Columns (C), (D), and (E) are rounded to the nearest whole number.

PRA TABLE 3—CALCULATION OF THE INCREMENTAL CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES RESULTING FROM THE PROPOSED AMENDMENTS

Form	Number of estimated affected responses (A) [396]	Burden hour reduction per current affected response (B)	Reduction in burden hours for current affected responses (C) = (A) × (B) [397]	Reduction in company hours for current affected responses (D) = (C) × 0.25 or 0.75	Reduction in professional hours for current affected responses (E) = (C) − (D)	Reduction in professional costs for current affected responses (F) = (E) × $400
S–1	901	6.5	5,857	1,464	4,393	$1,757,200
S–4	551	6.5	3,582	896	2,687	1,074,800
S–11	64	6.5	416	104	312	124,800
F–1	63	4.5	284	71	213	85,200
F–4	39	4.5	176	44	132	52,800
N–2	166	1.1	183	46	137	54,800
1–A	179	0.1	18	14	5	2,000
10	216	6.5	1,404	351	1,053	421,200
10–K	8,137	6.5	52,891	39,668	13,223	5,289,200
10–Q	22,907	1.4	32,070	24,053	8,018	3,207,200
20–F	725	2.0	1,450	363	1,088	435,200
40–F	132	2.0	264	66	198	79,200
Sch. 14A	5,586	0.7	3,910	2,933	978	391,200
Total	39,666			70,073		12,974,800

The following Table 4 summarizes the requested paperwork burden, including the estimated total reporting burdens and costs, under the proposed amendments.

PRA TABLE 4—REQUESTED PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS

Form	Current burden current annual responses (A)	Program change current burden hours (B)	Requested change in burden current cost burden (C)	Number of affected responses (D)	Reduction in company hours (E) [398]	Reduction in professional costs (F) [399]	Annual responses (G) = (A)	Burden hours (H) = (B) − (E)	Cost burden (I) = (C) − (F)
S–1	901	148,556	$182,048,700	901	1,464	$1,757,200	901	147,092	$180,291,500
S–4	551	563,216	678,291,204	551	896	1,074,800	551	562,320	677,216,404
S–11	64	12,290	15,016,968	64	104	124,800	64	12,186	14,892,168
F–1	63	26,815	32,445,300	63	71	85,200	63	26,744	32,360,100
F–4	39	14,076	17,106,000	39	44	52,800	39	14,032	17,053,200
N–2	166	73,250	4,668,396	166	46	54,800	166	73,204	4,613,596
1–A	179	98,396	13,111,912	179	14	2,000	179	98,382	13,109,912
10	216	12,072	14,356,888	216	351	421,200	216	11,721	13,935,688
10–K	8,137	14,220,652	1,896,891,869	8,137	39,058	5,207,600	8,137	14,181,594	1,891,684,269
10–Q	22,907	3,253,411	432,290,354	22,907	24,053	3,207,200	22,907	3,229,358	429,083,154
20–F	725	479,304	576,875,025	725	363	435,200	725	478,941	576,439,825
40–F	132	14,237	17,084,560	132	66	79,200	132	14,171	17,005,360
Sch. 14A	5,586	3,253,411	432,290,354	5,586	2,933	391,200	5,586	3,250,478	431,899,154
Total	39,666	22,169,686	4,312,477,530	39,666	70,073	12,974,800	39,666	22,099,613	4,299,502,730

Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy and assumptions and estimates of the burden of the proposed collection of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to, Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–01–20. Requests for materials submitted to OMB by the Commission with regard to the collection of information should be

[398] From Column (D) in PRA Table 3.

[399] From Column (F) in PRA Table 3.

in writing, refer to File No. S7–01–20 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this proposed rule. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

VI. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[400] the Commission must advise OMB as to whether the proposed amendments constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a ''major rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act. In particular, we request comment on the potential effect on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Regulatory Flexibility Act Certification

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (''RFA'') [401] requires the agency to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (''IRFA'') that will describe the impact of the proposed rule on small entities.[402] Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.[403]

The proposed amendments would have an impact on a substantial number of small entities.[404] However, the Commission expects that the impact on entities affected by the proposed rule would not be significant.[405] The primary effects of the proposed amendments would be to (1) modernize, simplify, and enhance the disclosure requirements for MD&A in Item 303, such as by codifying prior Commission interpretive guidance and eliminating duplicative disclosures; (2) simplify duplicative disclosure requirements by eliminating Item 301, Selected Financial Data, and Item 302, Supplementary Financial Information; and (3) generally make conforming changes that would apply to FPIs filing on Forms 20–F or 40–F. As a result, we expect that the impact of the proposed amendments would be a reduction in the paperwork burden of affected entities, including small entities, and that the overall impact of the paperwork burden reduction would be modest.[406] Accordingly, the Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Items 301, 302, and 303 of Regulation S–K and Forms 20–F and 40–F and the related conforming changes, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

Request for Comment

We request comment on this certification. In particular, we solicit comment on the following: Do commenters agree with the certification? If not, please describe the nature of any impact of the proposed amendments on small entities and provide empirical data to illustrate the extent of the impact. Such comments will be considered in the preparation of the final rules (and in a Final Regulatory Flexibility Analysis if one is needed) and will be placed in the same public file as comments on the proposed rules themselves.

VIII. Statutory Authority and Text of Proposed Rule and Form Amendments

The amendments contained in this release are being proposed under the authority set forth in Sections 7, 10, 19(a), and 28 of the Securities Act of 1933, as amended, Sections 3(b), 12, 13, 14, 23(a), and 36 of the Securities Exchange Act of 1934, as amended, and Sections 8, 24, 30, and 38 of the Investment Company Act of 1940, as amended.

List of Subjects

17 CFR Part 210

Accountants, Accounting, Banks, Banking, Employee benefit plans, Holding companies, Insurance companies, Investment companies, Oil and gas exploration, Reporting and recordkeeping requirements, Securities, Utilities.

17 CFR Parts 229, 239, 240, and 249

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78*l,* 78m, 78n, 78*o*(d), 78q, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012), unless otherwise noted.

■ 2. Amend § 210.1–02 by revising paragraph (bb)(1) introductory text and (bb)(2) to read as follows:

§ 210.1–02 Definitions of terms used in Regulation S–X (17 CFR part 210).

* * * * *

(bb) * * * (1) Except as provided in paragraph (bb)(2) of this section, summarized financial information referred to in this regulation shall mean the presentation of summarized information as to the assets, liabilities and results of operations of the entity for which the information is required. Summarized financial information shall include the following disclosures, which may be subject to appropriate variation to conform to the nature of the entity's business:

* * * * *

[400] 5 U.S.C. 801 *et seq.*

[401] 5 U.S.C. 601 *et seq.*

[402] 5 U.S.C. 603(a).

[403] 5 U.S.C. 605(b).

[404] We estimate that there are 1,171 issuers that file with the Commission, other than investment companies, that may be considered small entities and are potentially subject to the proposed amendments. This estimate is based on staff analysis of issuers, excluding co-registrants, with EDGAR filings of Form 10–K, 20–F, and 40–F, or amendments, filed during the calendar year of January 1, 2018, to December 31, 2018. Analysis is based on data from XBRL filings, Compustat, and Ives Group Audit Analytics.

[405] *See* Section IV.B above.

[406] We estimate that the proposed amendments are likely to result in a net decrease of between 0.1 and 6.5 burden hours per form for purposes of the PRA. *See* Section V.B above.

(2) Summarized financial information for unconsolidated subsidiaries and 50 percent or less owned persons referred to in and required by § 210.10–01(b) for interim periods shall include the information required by paragraph (bb)(1)(ii) of this section.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 3. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll,* 78 mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

§ 229.301 [Removed and Reserved]

■ 4. Remove and reserve § 229.301.

§ 229.302 [Removed and Reserved]

■ 5. Remove and reserve § 229.302.

■ 6. Revise § 229.303 to read as follows:

§ 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.

(a) *Objective.* The objective of the discussion and analysis is to provide material information relevant to an assessment of the financial condition and results of operations of the registrant including an evaluation of the amounts and certainty of cash flows from operations and from outside sources. This discussion and analysis must provide a narrative explanation of the registrant's financial statements that allows investors to view the registrant from management's perspective. The discussion and analysis must focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This includes descriptions and amounts of matters that are reasonably expected to have a material impact on future operations and have not had a material impact on past operations, and matters that have had a material impact on reported operations and are not reasonably expected to have a material impact upon future operations. The discussion and analysis must be of the financial statements and other statistical data that the registrant believes will enhance a reader's understanding of the registrant's financial condition, changes in financial condition and results of operations.

(b) *Full fiscal years.* The discussion of financial condition, changes in financial condition and results of operations must provide information as specified in paragraphs (b)(1) through (4) of this section and such other information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Where the financial statements reflect material changes from period-to-period in one or more line items, including where material changes within a line item offset one another, describe the underlying reasons for these material changes in quantitative and qualitative terms. The reasons for material changes must be described to the extent necessary to an understanding of the registrant's businesses as a whole. Where in the registrant's judgment a discussion of segment information and/or of other subdivisions (*e.g.,* geographic areas, product lines) of the registrant's business would be necessary to an understanding of such business, the discussion must focus on each relevant segment and/or other subdivision of the business and on the registrant as a whole.

(1) *Liquidity.* Identify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action that the registrant has taken or proposes to take to remedy the deficiency. Also identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets.

(2) *Capital resources.* (i) Describe the registrant's material cash requirements, including commitments for capital expenditures, as of the end of the latest fiscal period, the anticipated source of funds needed to satisfy such cash requirements and the general purpose of such requirements.

(ii) Describe any known material trends, favorable or unfavorable, in the registrant's capital resources. Indicate any expected material changes in the mix and relative cost of such resources. The discussion must consider changes between equity, debt and any off-balance sheet financing arrangements.

(3) *Results of operations.* (i) Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expenses that, in the registrant's judgment, would be material to an understanding of the registrant's results of operations.

(ii) Describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the registrant knows of events that are reasonably likely to cause a material change in the relationship between costs and revenues (such as known or reasonably likely future increases in costs of labor or materials or price increases or inventory adjustments), the reasonably likely change in the relationship must be disclosed.

(iii) If the statement of comprehensive income presents material changes from period to period in net sales or revenue, if applicable, describe the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of goods or services being sold or to the introduction of new products or services.

(4) *Critical accounting estimates.* Critical accounting estimates are those estimates made in accordance with generally accepted accounting principles that involve a significant level of estimation uncertainty and have had or are reasonably likely to have a material impact on financial condition or results of operations. Discuss, to the extent material, why each critical accounting estimate is subject to uncertainty, how much each estimate has changed during the reporting period, and the sensitivity of the reported amount to the methods, assumptions and estimates underlying its calculation. The discussion should provide quantitative as well as qualitative information when quantitative information is reasonably available and will provide material information to investors.

Instructions to paragraph 303(b):

1. Generally, the discussion must cover the periods covered by the financial statements included in the filing and the registrant may use any presentation that in the registrant's judgment enhances a reader's understanding. A smaller reporting company's discussion must cover the two-year period required in Article 8 of Regulation S–X and may use any presentation that in the registrant's

judgment enhances a reader's understanding. For registrants providing financial statements covering three years in a filing, discussion about the earliest of the three years may be omitted if such discussion was already included in the registrant's prior filings on EDGAR that required disclosure in compliance with Item 303 of Regulation S–K, provided that registrants electing not to include a discussion of the earliest year must include a statement that identifies the location in the prior filing where the omitted discussion may be found. An emerging growth company, as defined in Rule 405 of the Securities Act (§ 230.405 of this chapter) or Rule 12b–2 of the Exchange Act (§ 240.12b–2 of this chapter), may provide the discussion required in paragraph (b) of this section for its two most recent fiscal years if, pursuant to Section 7(a) of the Securities Act of 1933 (15 U.S.C. 77g(a)), it provides audited financial statements for two years in a Securities Act registration statement for the initial public offering of the emerging growth company's common equity securities.

2. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated.

3. If the reasons underlying a material change in one line item in the financial statements also relate to other line items, no repetition of such reasons in the discussion is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Registrants need not recite the amounts of changes from period to period which are readily computable from the financial statements. The discussion must not merely repeat numerical data contained in the financial statements.

4. The term ''liquidity'' as used in this Item refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs. Except where it is otherwise clear from the discussion, the registrant must indicate those balance sheet conditions or income or cash flow items which the registrant believes may be indicators of its liquidity condition. Liquidity generally must be discussed on both a long-term and short-term basis. The issue of liquidity must be discussed in the context of the registrant's own business or businesses. For example, a discussion of working capital may be appropriate for certain manufacturing, industrial, or related operations but might be inappropriate for a bank or public utility.

5. Where financial statements presented or incorporated by reference in the registration statement are required by § 210.4–08(e)(3) of Regulation S–X [17 CFR part 210] to include disclosure of restrictions on the ability of both consolidated and unconsolidated subsidiaries to transfer funds to the registrant in the form of cash dividends, loans or advances, the discussion of liquidity must include a discussion of the nature and extent of such restrictions and the impact such restrictions have had or are expected to have on the ability of the parent company to meet its cash obligations.

6. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See Rule 175 under the Securities Act [17 CFR 230.175], Rule 3b–6 under the Exchange Act [17 CFR 240.3b–6], and Securities Act Release No. 6084 (June 25, 1979) (44 FR 33810).

7. All references to the registrant in the discussion and in this Item mean the registrant and its subsidiaries consolidated.

8. Discussion of commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have or are reasonably likely to have a material current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements or capital resources must be provided even when the arrangement results in no obligations being reported in the registrant's consolidated balance sheets. Such off-balance sheet arrangements may include: Guarantees; retained or contingent interests in assets transferred; contractual arrangements that support the credit, liquidity or market risk for transferred assets; obligations that arise or could arise from variable interests held in an unconsolidated entity; or obligations related to derivative instruments that are both indexed to and classified in a registrant's own equity under U. S. GAAP.

9. If the registrant is a foreign private issuer, briefly discuss any pertinent governmental economic, fiscal, monetary, or political policies or factors that have materially affected or could materially affect, directly or indirectly, their operations or investments by United States nationals. The discussion must also consider the impact of hyperinflation if hyperinflation has occurred in any of the periods for which audited financial statements or unaudited interim financial statements are filed. See Rule 3–20(c) of Regulation S–X for a discussion of cumulative inflation rates that may trigger this requirement.

10. If the registrant is a foreign private issuer, the discussion must focus on the primary financial statements presented in the registration statement or report. The foreign private issuer must refer to the reconciliation to United States generally accepted accounting principles and discuss any aspects of the difference between foreign and United States generally accepted accounting principles, not discussed in the reconciliation, that the registrant believes is necessary for an understanding of the financial statements as a whole, if applicable.

11. The term statement of comprehensive income means a statement of comprehensive income as defined in § 210.1–02 of Regulation S–X.

Instruction to paragraph 303(b)(4): The disclosure of critical accounting estimates should supplement, but not duplicate, the description of accounting policies or other disclosures in the notes to the financial statements.

(c) *Interim periods.* If interim period financial statements are included or are required to be included by Article 3 of Regulation S–X [17 CFR 210.3], a management's discussion and analysis of the financial condition and results of operations must be provided so as to enable the reader to assess material changes in financial condition and results of operations between the periods specified in paragraphs (c)(1) and (2) of this section. The discussion and analysis must include a discussion of material changes in those items specifically listed in paragraph (b) of this section.

(1) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material changes in financial condition from that date to the date of the most recent interim balance sheet provided also must be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the registrant.

(2) *Material changes in results of operations.* (i) Discuss any material changes in the registrant's results of operations with respect to the most recent fiscal year-to-date period for which a statement of comprehensive income is provided and the corresponding year-to-date period of the preceding fiscal year.

(ii) Discuss any material changes in the registrant's results of operations with respect to either the most recent quarter for which a statement of comprehensive income is provided and the corresponding quarter for the preceding fiscal year or, in the alternative, the most recent quarter for which a statement of comprehensive income is provided and the immediately preceding sequential quarter. If the latter immediately preceding sequential quarter is discussed, then provide in summary form the financial information for that immediately preceding sequential quarter that is subject of the discussion or identify the registrant's prior filings on EDGAR that present such information. If there is a change in the form of presentation from period to period that forms the basis of comparison from previous periods provided pursuant to this paragraph, the registrant must discuss the reasons for changing the basis of comparison and provide both comparisons in the first filing in which the change is made.

Instructions to paragraph 303(c):

1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information must be prepared pursuant to this paragraph (c) and the discussion of the full fiscal year's information must be prepared pursuant to paragraph (b) of this section. Such discussions may be combined. Instructions 3, 6, 8 and 11 to paragraph (b) of this section apply to this paragraph (c).

2. The registrant's discussion of material changes in results of operations must identify any significant elements of the registrant's income or loss from continuing operations which do not arise from or are not necessarily representative of the registrant's ongoing business.

■ 7. Amend § 229.914 by revising paragraph (a) to read as follows:

§ 229.914 (Item 914) Pro forma financial statements: Selected financial data.

(a) For each partnership proposed to be included in a roll-up transaction provide: Ratio of earnings to fixed charges, cash and cash equivalents, total assets at book value, total assets at the value assigned for purposes of the roll-up transaction (if applicable), total liabilities, general and limited partners' equity, net increase (decrease) in cash and cash equivalents, net cash provided by operating activities, distributions; and per unit data for net income (loss), book value, value assigned for purposes of the roll-up transaction (if applicable), and distributions (separately identifying distributions that represent a return of capital). This information must be provided for the previous two fiscal years. Additional or other information must be provided if material to an understanding of each partnership proposed to be included in a roll-up transaction.

* * * * *

■ 8. Amend § 229.1112 by revising paragraph (b)(1) and Instruction 3.a. to paragraph (b) to read as follows:

§ 229.1112 (Item 1112) Significant obligors of pool assets.

* * * * *

(b) *Financial information.* (1) If the pool assets relating to a significant obligor represent 10% or more, but less than 20%, of the asset pool, provide summarized financial information, as defined by Rule 1–02(bb) of Regulation S–X (§ 210.1–02(bb) of this chapter), for the significant obligor for each of the last three fiscal years (or the life of the significant obligor and its predecessors, if less), provided, however, that for a significant obligor under § 229.1101(k)(2) of this chapter (Item 1101(k)(2) of Regulation AB), only net operating income for the most recent fiscal year and interim period is required.

* * * * *

Instructions to Item 1112(b):

* * * * *

3. * * *

a. If the summarized financial information required by paragraph (b)(1) of this section is presented on a basis of accounting other than U.S. GAAP or IFRS as issued by the IASB, then present a reconciliation to U.S. GAAP and Regulation S–X, pursuant to Item 17 of Form 20–F. If a reconciliation is unavailable or not obtainable without unreasonable cost or expense, at a minimum provide a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements used as a basis for the summarized financial information from those accepted in the U.S.

* * * * *

■ 9. Amend § 229.1114 by revising paragraph (b)(2)(i) and Instruction 4.a. to paragraph (b) to read as follows:

§ 229.1114 (Item 1114) Credit enhancement and other support, except for certain derivatives instruments.

* * * * *

(b) * * *

(2) *Financial information.* (i) If any entity or group of affiliated entities providing enhancement or other support described in paragraph (a) of this section is liable or contingently liable to provide payments representing 10% or more, but less than 20%, of the cash flow supporting any offered class of the asset-backed securities, provide summarized financial information, as defined by Rule 1–02(bb) of Regulation S–X (§ 210.1–02(bb) of this chapter), for each such entity or group of affiliated entities for each of the last three fiscal years (or the life of the entity or group of affiliated entities and any predecessors, if less).

* * * * *

Instruction 4 to Item 1114(b). * * *

a. If the summarized financial information required by paragraph (b)(1) of this section is presented on a basis of accounting other than U.S. GAAP or IFRS as issued by the IASB, then present a reconciliation to U.S. GAAP and Regulation S–X, pursuant to Item 17 of Form 20–F. If a reconciliation is unavailable or not obtainable without unreasonable cost or expense, at a minimum provide a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements used as a basis for the summarized financial information from those accepted in the U.S.

* * * * *

■ 10. Amend § 229.1115 by revising paragraph (b)(1) to read as follows:

§ 229.1115 (Item 1115) Certain derivatives instruments.

* * * * *

(b) *Financial information.* (1) If the aggregate significance percentage related to any entity or group of affiliated entities providing derivative instruments contemplated by this section is 10% or more, but less than 20%, provide summarized financial information, as defined by Rule 1–02(bb) of Regulation S–X (§ 210.1–02(bb) of this chapter), for such entity or group of affiliated entities for each of the last three fiscal years (or the life of the entity or group of affiliated entities and any predecessors, if less).

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 11. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78*o*(d), 78*o*–7 note, 78u–5, 78w(a), 78*ll*, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107, Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

* * * * *

■ 12. Amend Form S–1 (referenced in § 239.11) by:
■ a. Revising paragraphs (f) and (g) of Instruction 1 under ''Instructions as to Summary Prospectus''; and
■ b. Adding paragraph (h) of Instruction 1 under ''Instructions as to Summary Prospectus'' to read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S–1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

INSTRUCTIONS AS TO SUMMARY PROSPECTUSES

1. * * *

(f) As to Item 11, a brief statement of the general character of the business done and intended to be done and a brief statement of the nature and present status of any material pending legal proceedings;

(g) A tabular presentation of notes payable, long term debt, deferred credits, minority interests, if material, and the equity section of the latest balance sheet filed, as may be appropriate; and

(h) Subject to appropriate variation to conform to the nature of the registrant's business, provide summarized financial information defined by Rule 1–02(bb)(1)(i) and (ii) of Regulation S–X (§ 210.1–02(bb) of this chapter) in comparative columnar form for the periods for which financial statements are required by Regulation S–X (17 CFR part 210).

* * * * *

■ 13. Amend Form S–20 (referenced in § 239.20) by revising Item 7 and paragraph (1) to Item 8 to read as follows:

Note: The text of Form S–20 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S–20

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART II INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 7. Financial Statements

Include financial statements meeting the requirements of Regulation S–X [17 CFR 210].

Item 8. Undertakings

Furnish the following undertakings:

1. The undersigned registrant hereby undertakes to file a post-effective amendment, not later than 120 days after the end of each fiscal year subsequent to that covered by the financial statements presented herein, containing financial statements meeting the requirements of Regulation S–X [17 CFR 210].

* * * * *

■ 14. Amend Form S–4 (referenced in § 239.25) by:
■ a. Removing and reserving Item 3(d), (e), and (f) and removing the Instruction to Item 3(e) and (f) under Part I, Section A (''Information About the Transaction''); and
■ b. Removing and reserving Item 17(b)(3) and (4) under Part I, Section C (''Information with Respect to Companies Other Than S–3 Companies'').
■ 15. Amend Form F–1 (referenced in § 239.31) by:
■ a. Revising the paragraph 1(c)(v) under ''Instructions as to Summary Prospectuses''; and
■ b. Adding paragraph 1(c)(vi) to read as follows:

Note: The text of Form F–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM F–1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

INSTRUCTIONS AS TO SUMMARY PROSPECTUSES

1. * * *

(c) * * *

(v) As to Item 4, a brief statement of the general character of the business done and intended to be done and a brief statement of the nature and present status of any material pending legal proceedings;

(vi) Subject to appropriate variation to conform to the nature of the registrant's business, provide summarized financial information defined by Rule 1–02(bb)(1)(i) and (ii) of Regulation S–X (§ 210.1–02(bb) of this chapter) in comparative columnar form for the periods for which financial statements are required by Item 8.A. of Form 20–F. If interim period financial statements are included, the summarized financial information should be updated for that interim period, which may be unaudited, provided that fact is stated. If summarized financial data for interim periods is provided, comparative data from the same period in the prior financial year shall also be provided, except that the requirement for comparative balance sheet data is satisfied by presenting the year end balance sheet information.

* * * * *

■ 16. Amend Form F–4 (referenced in § 239.34) by:
■ a. Removing and reserving Item 3(d), (e), and (f) and removing the Instruction to Item 3(e) and (f) under Part I, Section A (''Information About the Transaction''); and
■ b. Removing and reserving Item 17(b)(3) under Part I, Section C (''Information with Respect to Foreign Companies Other Than F–3 Companies'').

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 17. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; 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.

* * * * *

§ 240.14a–101 [Amended]

■ 18. Amend § 240.14a–101 by removing and reserving (b)(8), (9), and (10) under Item 14 (''Mergers, consolidations, acquisitions and similar matters''):

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 19. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

■ 20. Amend Form 20–F (referenced in § 249.220f) by:

■ a. Removing and reserving General Instruction G(c);
■ b. Removing and reserving Item 3.A;
■ c. Removing Instructions to Item 3.A;
■ d. Amending Item 5; and
■ e. Revising Instruction 3 of Instructions to Item 8.A.2 to remove the final sentence, to read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 20–F

* * * * *

Item 5. Operating and Financial Review and Prospects

The purpose of this standard is to provide management's explanation of factors that have materially affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are anticipated to have a material effect on the company's financial condition and results of operations in future periods. This discussion and analysis must provide a narrative explanation of the registrant's financial statements that allows investors to view the registrant from management's perspective.

Discuss the company's financial condition, changes in financial condition and results of operations for each year and interim period for which financial statements are required. The discussion must include a quantitative and qualitative description of the reasons underlying material changes, including where material changes within a line item offset one another, to the extent necessary for an understanding of the company's business as a whole. Information provided also must relate to all separate segments and/or other subdivisions (*e.g.,* geographic areas, product lines) of the company. The discussion must include other statistical data that the company believes will enhance a reader's understanding of the company's financial condition, changes in financial condition, and results of operations. The discussion and analysis must also focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. Provide the information specified below as well as such other information that is necessary for an investor's understanding of the company's financial condition, changes in financial condition and results of operations.

A. Operating results. Provide information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the company's income from operations, indicating the extent to which income was so affected. Describe any other significant component of revenue or expenses necessary to understand the company's results of operations.

1. If the statement of comprehensive income presents material changes from period to period in net sales or revenue, if applicable, describe the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or services.

2. If the currency in which financial statements are presented is of a country that has experienced hyperinflation, the existence of such inflation, a five year history of the annual rate of inflation and a discussion of the impact of hyperinflation on the company's business must be disclosed.

3. Provide information regarding the impact of foreign currency fluctuations on the company, if material, and the extent to which foreign currency net investments are hedged by currency borrowings and other hedging instruments.

4. Provide information regarding any governmental economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the company's operations or investments by host country shareholders.

B. Liquidity and capital resources. The following information must be provided:

1. Information regarding the company's liquidity (both short and long term), including:

(a) A description of the internal and external sources of liquidity and a brief discussion of any material unused sources of liquidity. Include a statement by the company that, in its opinion, the working capital is sufficient for the company's present requirements, or, if not, how it proposes to provide the additional working capital needed.

(b) an evaluation of the sources and amounts of the company's cash flows, including the nature and extent of any legal or economic restrictions on the ability of subsidiaries to transfer funds to the company in the form of cash dividends, loans or advances and the impact such restrictions have had or are expected to have on the ability of the company to meet its cash obligations.

2. Information regarding the type of financial instruments used, the maturity profile of debt, currency and interest rate structure. The discussion also must include funding and treasury policies and objectives in terms of the manner in which treasury activities are controlled, the currencies in which cash and cash equivalents are held, the extent to which borrowings are at fixed rates, and the use of financial instruments for hedging purposes.

3. Information regarding the company's material cash requirements, including commitments for capital expenditures, as of the end of the latest financial year and any subsequent interim period and an indication of the general purpose of such requirements and the anticipated sources of funds needed to satisfy such requirements.

C. Research and development, patents and licenses, etc. Provide a description of the company's research and development policies for the last three years.

D. Trend information. The company must identify material recent trends in production, sales and inventory, the state of the order book and costs and selling prices since the latest financial year. The company also must discuss, for at least the current financial year, any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the company's net sales or revenues, income from continuing operations, profitability, liquidity or capital resources, or that would cause reported financial information not necessarily to be indicative of future operating results or financial condition.

E. Critical Accounting Estimates.

A registrant that does not apply in its primary financial statements IFRS as issued by the IASB must discuss information about its critical accounting estimates. This disclosure should supplement, not duplicate, the description of accounting policies in the notes to the financial statements.

Critical accounting estimates. Critical accounting estimates are those estimates made in accordance with generally accepted accounting principles that involve a significant level of estimation uncertainty and have had or are reasonably likely to have a material impact on financial condition or results of operations. Discuss, to the extent material, why each critical accounting estimate is subject to uncertainty, how much each estimate has changed during the reporting period, and the sensitivity of the reported amounts to the material

methods, assumptions and estimates underlying its calculation. The discussion should provide quantitative as well as qualitative information when quantitative information is reasonably available and will provide material information to investors.

Instructions to Item 5:

1. Refer to the Commission's interpretive releases (No. 33–6835) dated May 18, 1989, (No. 33–8056) dated January 22, 2002, (No. 33–8350) dated Dec. 19, 2003, (No. 33–9144) dated September 17, 2010, and (No. 33–10751) dated January 30, 2020 for guidance in preparing this discussion and analysis by management of the company's financial condition and results of operations.

2. The discussion must focus on the primary financial statements presented in the document. You should refer to the reconciliation to U.S. GAAP, if any, and discuss any aspects of the differences between foreign and U.S. GAAP, not otherwise discussed in the reconciliation, that you believe are necessary for an understanding of the financial statements as a whole.

3. We encourage you to supply forward-looking information, but that type of information is not required. Forward-looking information is covered expressly by the safe harbor provisions of Section 27A of the Securities Act and Section 21E of the Exchange Act. Forward-looking information is different than presently known data which will have an impact on future operating results, such as known future increases in costs of labor or materials. You are required to disclose this latter type of data if it is material.

4. To the extent the primary financial statements reflect the use of exceptions permitted or required by IFRS 1, the issuer must:

a. Provide detailed information as to the exceptions used, including:

i. An indication of the items or class of items to which the exception was applied; and

ii. A description of what accounting principle was used and how it was applied;

b. Include, where material, qualitative disclosure of the impact on financial condition, changes in financial condition and results of operations that the treatment specified by IFRS would have had absent the election to rely on the exception.

5. An issuer filing financial statements that comply with IFRS as issued by the IASB must, in providing information in response to paragraphs of this Item 5 that refer to pronouncements of the FASB, provide disclosure that satisfies the objective of the Item 5 disclosure requirements. In responding to this Item 5, an issuer need not repeat information contained in financial statements that comply with IFRS as issued by the IASB.

6. Generally, the discussion must cover the periods covered by the financial statements and the registrant may use any format that in the registrant's judgment enhances a reader's understanding. For registrants providing financial statements covering three years in a filing, a discussion of the earliest of the three years may be omitted if such discussion was already included in any other of the registrant's prior filings on EDGAR that required disclosure in compliance with Item 5 of Form 20–F, provided that registrants electing not to include a discussion of the earliest year must include a statement that identifies the location in the prior filing where the omitted discussion may be found.

7. Discussion of commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have or are reasonably likely to have a material current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements or capital resources must be provided even when the arrangement results in no obligations being reported in the registrant's consolidated balance sheets. Such off-balance sheet arrangements may include: Guarantees; retained or contingent interests in assets transferred; contractual arrangements that support the credit, liquidity or market risk for transferred assets; obligations that arise or could arise from variable interests held in an unconsolidated entity; or obligations related to derivative instruments that are both indexed to and classified in a registrant's own equity, or not reflected in the statement of financial position.

Instruction to Item 5.A:

1. You must provide the information required by Item 5.A.2 with respect to hyperinflation if hyperinflation has occurred in any of the periods for which you are required to provide audited financial statements or unaudited interim financial statements in the document. See Rule 3–20(c) of Regulation S–X for a discussion of cumulative inflation rates that trigger this requirement.

* * * * *

Item 8. Financial Information

* * * * *

Instructions to Item 8.A.2:

* * * * *

In initial registration statements, if the financial statements presented pursuant to Item 8.A.2 are prepared in accordance with U.S. generally accepted accounting principles, the earliest of the three years may be omitted if that information has not previously been included in a filing made under the Securities Act of 1933 or the Securities Exchange Act of 1934.

* * * * *

■ 21. Amend Form 40–F (referenced in § 249.240f) by:

■ a. Revising General Instruction B.(11) to read as follows;

■ b. Removing and reserving General Instructions B.(12) and (13); and

■ c. Removing the Instructions following General Instruction B.(13).

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 40–F

* * * * *

B. Information To Be Filed on This Form

* * * * *

(11) *Off-balance sheet arrangements.* To the extent not discussed in management's discussion and analysis that is provided pursuant to General Instruction B.(3) of this form, discuss the commitments or obligations, including continent obligations, arising from arrangements with unconsolidated entities or persons that have or are reasonably likely to have a material current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements or capital resources must be provided even when the arrangement results in no obligations being reported in the registrant's consolidated balance sheets. Such off-balance sheet arrangements may include: Guarantees; retained or contingent interests in assets transferred; contractual arrangements that support the credit, liquidity or market risk for transferred assets; obligations that arise or could arise from variable interests held in an unconsolidated entity; or obligations related to derivative instruments that are both indexed to and classified in a registrant's own equity, or not reflected in the statement of financial position.

* * * * *

■ 22. Amend Form 8–K (referenced in § 249.308) by revising Item 2.03(c)(1)

through(3) and 2.03(d) to read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8–K

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

* * * * *

Item 2.03 Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant.

* * * * *

(c) For purposes of this Item 2.03, *direct financial obligation* means any of the following:

(1) A *long-term debt obligation* means a payment obligation under long-term borrowings referenced in FASB ASC paragraph 470–10–50–1 (Debt Topic), as may be modified or supplemented);

(2) a *capital lease obligation* means a payment obligation under a lease classified as a capital lease pursuant to FASB ASC Topic 840, Leases, as may be modified or supplemented;

(3) an *operating lease obligation* means a payment obligation under a lease classified as an operating lease and disclosed pursuant to FASB ASC Topic 840, as may be modified or supplemented; or

(4) a short-term debt obligation that arises other than in the ordinary course of business.

(d) For purposes of this Item 2.03, *off-balance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the registrant is a party, under which the registrant has:

(1) Any obligation under a guarantee contract that has any of the characteristics identified in FASB ASC paragraph 460–10–15–4 (Guarantees Topic), as may be modified or supplemented, and that is not excluded from the initial recognition and measurement provisions of FASB ASC paragraphs 460–10–15–7, 460–10–25–1, and 460–10–30–1.

(2) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to such entity for such assets;

(3) Any obligation, including a contingent obligation, under a contract that would be accounted for as a derivative instrument, except that it is both indexed to the registrant's own stock and classified in stockholders' equity in the registrant's statement of financial position, and therefore excluded from the scope of FASB ASC Topic 815, *Derivatives and Hedging,* pursuant to FASB ASC subparagraph 815–10–15–74(a), as may be modified or supplemented; or

(4) Any obligation, including a contingent obligation, arising out of a variable interest (as defined in the FASB ASC Master Glossary), as may be modified or supplemented in an unconsolidated entity that is held by, and material to, the registrant, where such entity provides financing, liquidity, market risk or credit risk support to, or engages in leasing, hedging or research and development services with, the registrant.

* * * * *

By the Commission.

Dated: January 30, 2020.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2020–02313 Filed 2–27–20; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 85 Friday,

No. 40 February 28, 2020

Part III

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Commodity Futures Trading Commission

Securities and Exchange Commission

12 CFR Parts 44, 248, and 351

17 CFR Parts 75 and 255

Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds; Proposed Rules

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 44

[Docket No. OCC–2020–0002]

RIN 1557–AE67

FEDERAL RESERVE SYSTEM

12 CFR Part 248

[Docket No. R–1694]

RIN 7100–AF70

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 351

RIN 3064–AF17

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 75

RIN 3038–AE93

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 255

[Release No. BHCA–8; File No. S7–02–20]

RIN 3235–AM70

Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Securities and Exchange Commission (SEC); and Commodity Futures Trading Commission (CFTC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, SEC, and CFTC (together, the agencies) are inviting comment on a proposal that would amend the regulations implementing section 13 of the Bank Holding Company Act (BHC Act). Section 13 contains certain restrictions on the ability of a banking entity or nonbank financial company supervised by the Board to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund. The proposed amendments are intended to continue the agencies' efforts to improve and streamline the regulations implementing section 13 of the BHC Act by modifying and clarifying requirements related to the covered fund provisions.

DATES: Comments must be received on or before April 1, 2020.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the agencies. Commenters are encouraged to use the title ''Proposed Revisions to Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds'' to facilitate the organization and distribution of comments among the agencies. Commenters are also encouraged to identify the number of the specific question for comment to which they are responding. Comments should be directed to:

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

Federal eRulemaking Portal—''Regulations.gov Classic or Regulations.gov Beta''*:*

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0002'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov* Site'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0002'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*

- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC 2020–0002'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0002'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0002'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side

of the screen. For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

• *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: You may submit comments, identified by Docket No. R–1694; RIN 7100–AF70, by any of the following methods:

• *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers 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 will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* 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 form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AF17 by any of the following methods:

• *Agency Website: https://www.FDIC.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency website.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivered/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street, NW, building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

• *Email: comments@FDIC.gov.* Include the 3064–AF17 on the subject line of the message.

• *Public Inspection:* All comments received must include the agency name and RIN 3064–AF17 for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 or by telephone at (877) 275–3342 or (703) 562–2200.

CFTC: You may submit comments, identified by RIN 3038–AE93 and ''Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds,'' by any of the following methods:

• *Agency Website: https://comments.cftc.gov.* Follow the instructions on the website for submitting comments.

• *Mail:* Send to Christopher Kirkpatrick, Secretary, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

• *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov* and the information you submit will be publicly available. If, however, you submit information that ordinarily is exempt from disclosure under the Freedom of Information Act, you may submit a petition for confidential treatment of the exempt information according to the procedures set forth in CFTC Regulation 145.9.1. The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

SEC: You may submit comments by the following methods:

Electronic Comments

• Use the SEC's internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or

Send an email to *rule-comments@sec.gov.* Please include File Number S7–02–20 on the subject line.

Paper Comments

• Send paper comments in triplicate to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–02–20. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The SEC will post all comments on the SEC's website (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for website viewing and printing in the SEC's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that the SEC does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the SEC or SEC staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any materials will be made available on the SEC's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT:

OCC: Roman Goldstein, Risk Specialist, Treasury and Market Risk Policy, (202) 649–6360; Tabitha Edgens, Counsel; Mark O'Horo, Senior Attorney, Chief Counsel's Office, (202) 649–5490; for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Flora Ahn, Special Counsel, (202) 452–2317, Gregory Frischmann, Senior Counsel, (202) 452–2803, Kirin Walsh, Attorney, (202) 452–3058, or Sarah Podrygula, Attorney, (202) 912–4658, Legal Division, Elizabeth

MacDonald, Manager, (202) 475–6316, Cecily Boggs, Senior Financial Institution Policy Analyst, (202) 530–6209, Jinai Holmes, Lead Financial Institution Policy Analyst, (202) 452–2834, Division of Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: Bobby R. Bean, Associate Director, *bbean@fdic.gov,* Andrew D. Carayiannis, Senior Policy Analyst, *acarayiannis@fdic.gov,* or Brian Cox, Senior Policy Analyst, *brcox@fdic.gov,* Capital Markets Branch, (202) 898–6888; Michael B. Phillips, Counsel, *mphillips@fdic.gov,* or Benjamin J. Klein, Counsel, *bklein@fdic.gov,* Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

CFTC: Cantrell Dumas, Special Counsel, (202) 418–5043, *cdumas@cftc.gov;* Jeffrey Hasterok, Data and Risk Analyst, (646) 746–9736, *jhasterok@cftc.gov,* Division of Swap Dealer and Intermediary Oversight; Mark Fajfar, Assistant General Counsel, (202) 418–6636, *mfajfar@cftc.gov,* Office of the General Counsel; Stephen Kane, Research Economist, (202) 418–5911, *skane@cftc.gov,* Office of the Chief Economist; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SEC: Matthew Cook, Senior Counsel, Benjamin Tecmire, Senior Counsel, and Jennifer Songer, Branch Chief at (202) 551–6787 or *IArules@sec.gov,* Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

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I. Background

Section 13 of the Bank Holding Company Act of 1956 (BHC Act),[1] also known as the Volcker Rule, generally prohibits any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a hedge fund or private equity fund (covered fund).[2] The statute expressly exempts from these prohibitions various activities, including among other things:

- Underwriting and market making-related activities;
- Risk-mitigating hedging activities;
- Activities on behalf of customers;
- Activities for the general account of insurance companies; and
- Trading and covered fund activities and investments by non-U.S. banking entities solely outside the United States.[3]

In addition, section 13 of the BHC Act contains an exemption that permits banking entities to organize and offer, including sponsor, covered funds, subject to certain restrictions, including that banking entities do not rescue investors in those funds from loss, and are not themselves exposed to significant losses due to investments in or other relationships with these funds.[4]

Authority under section 13 of the BHC Act for developing and adopting regulations to implement the prohibitions, restrictions, and exemptions of section 13 is shared among the Board, the FDIC, the OCC, the SEC, and the CFTC (individually, an agency, and collectively, the agencies).[5] The agencies originally issued a final rule implementing section 13 in December 2013 (the 2013 rule), and those provisions became effective on April 1, 2014.[6]

The agencies published a notice of proposed rulemaking in July 2018 (the 2018 proposed rule or 2018 proposal) that proposed several amendments to the 2013 rule.[7] These proposed revisions sought to provide greater clarity and certainty about what activities are prohibited under the 2013 rule—in particular, under the prohibition on proprietary trading—and to better tailor the compliance requirements based on the risk of a banking entity's activities. The agencies issued a final rule implementing the amendments in November 2019 (the 2019 amendments), and those provisions became effective in January 2020.[8]

As part of the 2018 proposal, the agencies suggested targeted changes to the provisions of the 2013 rule relating to acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a fund and sought comments on other aspects of the covered fund provisions beyond those changes for which specific rule text was proposed.[9] The 2019 amendments finalized those changes to the covered fund provisions for which specific rule text was proposed in the 2018 proposal. The agencies indicated they would continue to consider other aspects of the covered fund provisions and intended to issue a separate proposed rulemaking that specifically addresses those areas.[10]

The staffs of the agencies also have addressed several questions concerning the regulations implementing section 13 through a series of staff Frequently Asked Questions (FAQs).[11] In the 2018

[1] 12 U.S.C. 1851.

[2] *Id.*

[3] 12 U.S.C. 1851(d)(1).

[4] 12 U.S.C. 1851(d)(1)(G). Other restrictions and requirements include: (1) The banking entity provides bona fide trust, fiduciary, or investment advisory services; (2) the fund is organized and offered only to customers in connection with the provision of such services; (3) the banking entity does not have an ownership interest in the fund, except for a de minimis investment; (4) the banking entity complies with certain marketing restrictions related to the fund; (5) no director or employee of the banking entity has an ownership interest in the fund, with certain exceptions; and (6) the banking entity discloses to investors that it does not guarantee the performance of the fund. *Id.*

[5] 12 U.S.C. 1851(b)(2).

[6] Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds; Final Rule, 79 FR 5535 (Jan. 31, 2014).

[7] Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 83 FR 33432 (July 17, 2018).

[8] Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 84 FR 61974 (Nov. 14, 2019). The agencies refer to the regulations implementing section 13 of the BHC Act that are effective as of February 28, 2020 as the ''implementing regulations.''

[9] 83 FR 33471–87.

[10] 84 FR 62016.

[11] *See https://www.occ.treas.gov/topics/capitalmarkets/financial-markets/trading-volckerrule/volcker-rule-implementation-faqs.html* (OCC); *https://www.federalreserve.gov/bankinforeg/volcker-rule/faq.htm* (Board); *https://www.fdic.gov/regulations/reform/volcker/faq.html* (FDIC); *https://www.sec.gov/divisions/marketreg/faq-volcker-rule-section13.htm* (SEC); *https://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_28_*

proposal, the agencies requested comment on the effectiveness of the guidance provided in certain of these FAQs.[12] The agencies discussed comments received in the preamble to the 2019 amendments.[13] The proposed rule would not modify or revoke any previously issued staff FAQs, unless otherwise specified.

High-Level Summary of Comments on 2018 Proposal[14]

The agencies invited comment on all aspects of the 2018 proposal and received over 75 unique comments and approximately 3,700 comments from individuals using a version of a short form letter to express opposition to the 2018 proposed rule.[15] The preamble to the 2019 amendments reviewed comments relating to the proprietary trading provisions of the 2018 proposal and the covered fund provisions that were adopted as part of the 2019 amendments. The agencies generally deferred public consideration of comments received on other aspects of the covered fund provisions to a future proposed rulemaking.

Various industry groups suggested maintaining the 2013 rule's base definition of covered fund, citing costs associated with complying with a new definition, while others supported an alternative definition. A number of industry groups and banks, and several Members of Congress, urged the agencies to amend the definition of covered fund to exclude certain funds, including the following: (1) Family wealth investment vehicles; (2) funds that extend credit to customers; (3) long-term investment funds that do not engage in any short-term proprietary trading; (4) venture capital funds; and (5) customer facilitation funds. Various public interest commenters objected to any additional exclusions, citing insufficient notice in the 2018 proposal and the potential for evasion of the 2013 rule.

Commenters also proposed modifying the 2013 rule's existing exclusions from the definition of covered fund. Numerous industry groups suggested revising the exclusion for foreign public funds to focus on the characteristics of the fund and foreign regulations, rather than imposing specific conduct requirements that are difficult to monitor and verify. Several industry groups made various suggestions for simplifying the loan securitization exemption, including expanding the securities an issuer is permitted to hold and permitting an issuer to hold up to a certain percent of assets in non-loan assets.

Finally, several bank and industry group commenters supported making the exemptions under section 23A of the Federal Reserve Act and the Board's Regulation W available under section 13(f) of the BHC Act. Several such commenters also supported exempting certain payment, clearing, and settlement services from the restrictions. A foreign bank industry group also recommended limiting the application of section 13(f) to the U.S. operations of foreign firms.

II. Overview of Proposal

The agencies are issuing a notice of proposed rulemaking that proposes specific changes to the restrictions on covered fund investments and activities and other issues related to the treatment of investment funds in the implementing regulations (the proposal or the proposed rule). The proposed rule is intended to improve and streamline the covered fund provisions and provide clarity to banking entities so that they can offer financial services and engage in other permissible activities in a manner that is consistent with the requirements of section 13 of the BHC Act.

To better limit the extraterritorial impact of the implementing regulations, the proposal would exempt the activities of certain funds that are organized outside of the United States and offered to foreign investors (qualifying foreign excluded funds) from the restrictions of the implementing regulations. In certain circumstances, some foreign funds that are not ''covered funds'' may be subject to the implementing regulations as ''banking entities,'' if they are controlled by a foreign banking entity, and thus could be subject to more onerous compliance obligations than are imposed on similarly-situated covered funds, even though the foreign funds have limited nexus to the United States. This provision would codify an existing policy statement by the Federal banking agencies that addresses the potential attribution to a foreign banking entity of the activities and investments of qualifying foreign excluded funds.

The proposal also would make modifications to several existing exclusions from the covered fund provisions, to provide clarity and simplify compliance with the requirements of the implementing regulations. First, the proposal would revise certain restrictions in the foreign public funds exclusion to more closely align the provision with the exclusion for similarly-situated U.S. registered investment companies. Second, the proposed rule would permit loan securitizations excluded from the rule to hold a small amount of non-loan assets, consistent with past industry practice, and codify existing staff-level guidance regarding this exclusion. In addition, the proposed rule would revise the exclusion for small business investment companies to account for the life cycle of those companies and would request comment on whether to clarify the scope of the exclusion for public welfare investments, including as it relates to rural business investment companies and qualified opportunity zone funds. Finally, the proposed rule would address concerns about certain components of the preamble to the 2013 rule related to calculating a banking entity's ownership interests in covered funds.

The agencies recognized in the preamble to the 2013 rule that the definition of ''covered fund'' was expansive[16] and, based on their experience implementing the rule, the agencies are now proposing several new exclusions from the covered fund provisions to address the potential over-breadth of the covered fund definition and related requirements. For example, the agencies recognize that the exclusions in the implementing regulations have inhibited banking entities' relationships with credit funds, and the proposed rule would create a new exclusion for such funds. Under the proposal, banking entities would be able to invest in and have certain relationships with credit funds that extend the type of credit that a banking entity may provide directly, subject to certain safeguards. Relatedly, the proposed rule would establish an exclusion from the definition of covered fund for venture capital funds. This provision would help ensure that banking entities can fully engage in this important type of development and investment activity, which may facilitate capital formation and provide important financing for small businesses, particularly in areas where such financing may not be readily available.

The proposal also would include two new exclusions that would allow banking entities to provide certain traditional financial services via a fund structure, subject to certain safeguards.

[12] 83 FR 33444–33446.

[13] 84 FR 61978–61980.

[14] This summary is not meant to be a comprehensive assessment of the comments received on the 2018 proposal and only reviews certain major areas of interest. Comments are discussed in greater detail throughout this **SUPPLEMENTARY INFORMATION**.

[15] 84 FR 61976.

[16] *See* 79 FR 5677.

First, the proposed rule would exclude from the definition of covered fund an entity created and used to facilitate a customer's exposures to a transaction, investment strategy, or other service. Second, the proposal would exclude from the covered fund definition wealth management vehicles that manage the investment portfolio of a family, and certain other persons, allowing a banking entity to provide integrated private wealth management services.

In addition, the proposed rule would permit a banking entity to engage in a limited set of covered transactions with a covered fund the banking entity sponsors or advises or with which the banking entity has certain other relationships. The implementing regulations generally prohibit all covered transactions between a covered fund and its banking entity sponsor or investment adviser. The agencies recognize that the existing restrictions have prevented banking entities from providing certain traditional banking services to covered funds, such as standard payment, clearing, and settlement services to related covered funds.

Lastly, the proposal would clarify certain aspects of the definition of ownership interest. Currently, due to the broad definition of ownership interest, some loans by banking entities to covered funds could be deemed to be ownership interests. The proposal would provide a safe harbor for bona fide senior loans or senior debt instruments to make clear that an ''ownership interest'' in a fund does not include such credit interests in the fund. In addition, the proposal would provide clarity about the types of credit rights that would be considered within the scope of the definition of ownership interest. Finally, the proposed rule would simplify compliance efforts by tailoring the calculation of a banking entity's compliance with the implementing regulations' aggregate fund limit and covered fund deduction, and provide clarity to banking entities regarding their permissible investments made alongside covered funds.[17]

The agencies request comment regarding all aspects of the proposed rule. Specific requests for comment are included in the following sections. Comments on the proposal must be submitted to the agencies on or before April 1, 2020.

[17] Separately, the agencies are proposing various technical edits to the implementing regulations. *See infra* III.G (Technical Amendments).

III. Discussion of the Proposal

A. Qualifying Foreign Excluded Funds

Since the adoption of the 2013 rule, a number of foreign banking entities, foreign government officials, and other market participants have expressed concern regarding instances in which certain funds offered and sold outside of the United States are excluded from the covered fund definition but still could be considered banking entities in certain circumstances (foreign excluded funds).[18] This situation may occur if a foreign banking entity controls the foreign fund. A foreign banking entity could be considered to control the fund based on common corporate governance structures abroad such as where the fund's sponsor selects the majority of the fund's directors or trustees, or otherwise controls the fund for purposes of section 13 of the BHC Act by contract or through a controlled corporate director. As a result, such a fund would be subject to the requirements of section 13 and the implementing regulations, including restrictions on proprietary trading, restrictions on investing in or sponsoring covered funds, and compliance obligations.

The Federal banking agencies released a policy statement on July 21, 2017 (the 2017 policy statement) to address concerns about the possible unintended consequences and extraterritorial impact of section 13 and the 2013 rule for foreign excluded funds.[19] The 2017 policy statement noted that the staffs of the agencies were considering alternative ways in which the 2013 rule could be amended, or other appropriate action could be taken, to address any unintended consequences of section 13 and the 2013 rule for foreign excluded funds.

For purposes of the 2017 policy statement, a ''qualifying foreign excluded fund'' meant, with respect to a foreign banking entity, an entity that:

(1) Is organized or established outside the United States and the ownership interests of which are offered and sold solely outside the United States;

(2) Would be a covered fund were the entity organized or established in the United States, or is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;

(3) Would not otherwise be a banking entity except by virtue of the foreign banking entity's acquisition or retention of an ownership interest in, or sponsorship of, the entity;

(4) Is established and operated as part of a bona fide asset management business; and

(5) Is not operated in a manner that enables the foreign banking entity to evade the requirements of section 13 or implementing regulations.

To provide additional time to consider this issue, the 2017 policy statement provided that the Federal banking agencies would not propose to take action during the one-year period ending July 21, 2018, against a foreign banking entity[20] based on attribution of the activities and investments of a qualifying foreign excluded fund to a foreign banking entity, or against a qualifying foreign excluded fund as a banking entity. To be eligible for this relief, the foreign banking entity's acquisition or retention of any ownership interest in, or sponsorship of, the qualifying foreign excluded fund must have met the requirements for permitted covered fund activities and investments solely outside the United States, as provided in section 13(d)(1)(I) of the BHC Act and § __.13(b) of the 2013 rule, as if the qualifying foreign excluded fund were a covered fund. The agencies extended this relief for an additional period of one year (until July 21, 2019) in the 2018 proposal.[21] On July 17, 2019, the Federal banking agencies released a policy statement (the 2019 policy statement) that further extended this period to July 21, 2021.[22] This additional time facilitates the agencies proposing the specific changes in the proposal to address this issue and will allow the public to submit comments in response to the proposal.[23]

[18] The 2013 rule generally excludes covered funds from the definition of ''banking entity.'' 2013 rule § __.2(c)(2)(i). However, because foreign excluded funds are not covered funds, they can become banking entities through affiliation with other banking entities.

[19] Statement regarding Treatment of Certain Foreign Funds under the Rules Implementing Section 13 of the Bank Holding Company Act (July 21, 2017), *available at https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170721a1.pdf.*

[20] ''Foreign banking entity'' was defined for purposes of the 2017 policy statement to mean a banking entity that is not, and is not controlled directly or indirectly by, a banking entity that is located in or organized under the laws of the United States or any State.

[21] 83 FR 33444.

[22] Statement regarding Treatment of Certain Foreign Funds under the Rules Implementing Section 13 of the Bank Holding Company Act (July 17, 2019), *available at https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20190717a1.pdf.*

[23] The agencies did not propose any specific amendments to the 2013 rule in the 2018 proposal on this issue and instead requested comment on foreign excluded funds, the policy statements, and related issues. *See, e.g.,* 83 FR 33442–46.

In response to questions in the 2018 proposal, several commenters urged the agencies to exclude controlled foreign funds offered solely outside the United States.[24] Many suggested that the agencies accomplish this by excluding these funds from the definition of banking entity.[25] Some commenters provided alternative proposals, including establishing a rebuttable presumption of compliance and making permanent the relief provided in the 2017 policy statement.[26] Several commenters suggested permitting foreign banking entities to opt to be treated as a covered fund, instead of a banking entity, and providing additional relief from the limitations on relationships with a covered fund, under section __.14.[27] One commenter suggested exempting from the definition of ''banking entity'' foreign excluded funds controlled by a non-U.S. banking entity as part of the non-U.S. banking entity's asset management activities or in connection with consumer derivative activities not marketed to U.S. residents.[28] One commenter opposed any type of exclusion for foreign excluded funds and argued that the 2013 rule as it stands is adequate in relation to the nexus between U.S. and foreign activities.[29]

To provide greater clarity and certainty to banking entities and qualifying foreign excluded funds, the agencies are proposing, pursuant to their authority under section 13(d)(1)(J) of the BHC Act, to exempt the activities of qualifying foreign excluded funds. Specifically, the agencies are proposing to exempt from the proprietary trading prohibition and covered fund restrictions the purchase or sale of a financial instrument by a qualifying foreign excluded fund and the acquisition or retention of any ownership interest in, or the sponsorship of, a covered fund by a qualifying foreign excluded fund, if any acquisition or retention of an ownership interest in, or sponsorship of, the qualifying foreign excluded fund by the foreign banking entity meets the requirements for permitted covered fund activities and investments solely outside the United States, as provided in section __.13(b) of the rule. Under the proposal, a qualifying foreign excluded fund has the same meaning as in the 2017 and 2019 policy statements as described above.

Section 13(d)(1)(H) and (I) of the BHC Act permit foreign banking entities to conduct certain trading and investing activities outside the United States, notwithstanding the restrictions under section 13(a) of the BHC Act. As indicated in the preamble to the 2013 rule, the purpose of these statutory provisions is to limit the extraterritorial application of section 13 as it applies to foreign banking entities.[30]

In addition, section 13(d)(1)(J) of the BHC Act gives the agencies rulemaking authority to exempt activities from the prohibitions of section 13, provided the agencies determine that the activity in question would promote and protect the safety and soundness of the banking entity and the financial stability of the United States.[31] The agencies believe that the proposal described above would be consistent with the purposes of section 13(d)(1)(H) and (I) of the BHC Act and could promote and protect the safety and soundness of banking entities and U.S. financial stability.

Exempting the activities of qualifying foreign excluded funds in the circumstances described above would provide clarity and certainty to, and likely promote and protect the safety and soundness of, such banking entities. This relief would be limited to the asset management activities of these foreign funds, which are organized outside of the United States and operate pursuant to the local laws of foreign jurisdictions. Thus, if the activities of these foreign funds were subjected to the restrictions applicable to banking entities, generally, their asset management activities may be significantly disrupted, and the foreign banking entities may be at a competitive disadvantage to other foreign bank and non-bank market participants conducting asset management business outside of the United States. Exempting the activities of these foreign funds would also allow their foreign banking entity sponsors to continue to conduct their asset management business outside the United States as long as the foreign banking entity's acquisition of an ownership interest in or sponsorship of the fund meets the requirements in section __.13(b). Thus, the proposed exemption may have the effect of promoting the safety and soundness of these foreign funds and their sponsors, while at the same time limiting the extraterritorial impact of the implementing regulations, consistent with the purposes of section 13(d)(1)(H) and (I) of the BHC Act.

The proposed exemption would also promote and protect U.S. financial stability. While qualifying foreign excluded funds have very limited nexus to the U.S. financial system, they are permitted to invest in U.S. companies. Therefore, to the extent that these funds have any direct impact on U.S. financial stability, it would be to promote U.S. financial stability by providing additional capital and liquidity to U.S. capital markets. Because the proposed exemption would require that the foreign banking entity's acquisition of an ownership interest in or sponsorship of the fund meets the requirements in section __.13(b), the exemption would ensure that the risks of the investments made by these foreign funds would be booked to foreign entities in foreign jurisdictions, thus promoting and protecting U.S. financial stability. Additionally, subjecting such funds to the requirements of section 13 of the BHC Act imposed on banking entities could precipitate disruptions in foreign capital markets, which could generate spillover effects in the U.S. financial system.

Question 1. Should the agencies make any other amendments to §§ __.6 and __.13 or include any additional parameters on the proposed exemption? Why or why not?

Question 2. Would the proposed amendments to §§ __.6 and __.13 address the concerns raised regarding unintended consequences and extraterritorial impact? Why or why not? If the amendments would not address these concerns, what other amendments should be made?

Question 3. Is the proposed approach to addressing foreign excluded funds effective? Why or why not? If not, what alternative approach would better address these types of entities?

Question 4. Would the use of the term ''covered fund'' in § __.13(b)(1) or in proposed § __.13(d)(2), together with the definition of ''covered fund'' in § __.10(b)(1), create any unintended consequences for foreign banking entities seeking to rely on the exemption for activities permitted by section 13(d)(1)(I) of the BHC Act? Why or why not? If so, what other alternatives should be considered to make the

[24] *See, e.g.,* Institute of International Bankers (IIB); American Investment Council (AIC); American Bankers Association (ABA); Financial Services Agency/Bank of Japan (FSA/BOJ); Canadian Bankers Association (CBA); Federated Investors (FI); BVI; European Banking Federation (EBF); Japanese Bankers Association (JBA); and Credit Suisse (CS).

[25] *Id.*

[26] *See, e.g.,* EBF and IIB.

[27] *See, e.g.,* EBF; CS; IIB; and CBA.

[28] BVI.

[29] Data Boiler.

[30] 79 FR 5655 n. 1518 (identifying statement of Sen. Merkley regarding how section 13(d)(1)(H) ''recognize[s] rules of international comity by permitting foreign banks, regulated and backed by foreign taxpayers, in the course of operating outside of the United States to engage in activities permitted under relevant foreign law''). The agencies believe that the same rationale applies to section 13(d)(1)(I).

[31] 12 U.S.C. 1851(d)(1)(J).

exemption for activities permitted by section 13(d)(1)(I) of the BHC Act clear or more workable?

Question 5. What impacts would the proposed amendments to §§ __.6 and __.13 have on the safety and soundness of banking entities, and on the financial stability of the United States? Would the activities permitted under the proposed amendments to §§ __.6 and __.13 of the regulations promote and protect safety and soundness and U.S. financial stability? Please explain.

B. Modifications to Existing Covered Fund Exclusions

1. Foreign Public Funds

In addition to the foreign excluded fund issues discussed above with respect to the banking entity definition, there are other foreign fund issues that arise under the covered fund definition. In order to provide consistent treatment between U.S. registered investment companies and their foreign equivalents, the implementing regulations exclude foreign public funds from the definition of covered fund. A foreign public fund is generally defined under the implementing regulations as any issuer that is organized or established outside of the United States and the ownership interests of which are (1) authorized to be offered and sold to retail investors in the issuer's home jurisdiction and (2) sold predominantly through one or more public offerings outside of the United States.[32] The agencies stated in the preamble to the 2013 rule that they generally expect that an offering is made predominantly outside of the United States if 85 percent or more of the fund's interests are sold to investors that are not residents of the United States.[33] The 2013 rule defines ''public offering'' for purposes of this exclusion to mean a ''distribution,'' as defined in § __.4(a)(3) of subpart B, of securities in any jurisdiction outside the United States to investors, including retail investors, provided that the distribution complies with all applicable requirements in the jurisdiction in which such distribution is being made; the distribution does not restrict availability to investors having a minimum level of net worth or net investment assets; and the issuer has filed or submitted, with the appropriate regulatory authority in such jurisdiction, offering disclosure documents that are publicly available.[34]

The 2013 rule places an additional condition on a U.S. banking entity's ability to rely on the foreign public fund exclusion with respect to any foreign fund it sponsors.[35] The foreign public fund exclusion is only available to a U.S. banking entity with respect to a foreign fund sponsored by the U.S. banking entity if, in addition to the requirements discussed above, the fund's ownership interests are sold predominantly to persons other than the sponsoring banking entity, the issuer (or affiliates of the sponsoring banking entity or issuer), and employees and directors of such entities.[36] The agencies stated in the preamble to the 2013 rule that, consistent with the agencies' view concerning whether a foreign public fund has been sold predominantly outside of the United States, the agencies generally expect that a foreign public fund would satisfy this additional condition if 85 percent or more of the fund's interests are sold to persons other than the sponsoring U.S. banking entity and the specified persons connected to that banking entity.[37]

In adopting the foreign public fund exclusion, the agencies' view was that it was appropriate to exclude these funds from the ''covered fund'' definition because they are sufficiently similar to U.S. registered investment companies.[38] The agencies also expressed the view that the additional condition applicable to U.S. banking entities with respect to foreign funds that they sponsor was designed to treat foreign public funds consistently with similar U.S. funds and to limit the extraterritorial application of section 13 of the BHC Act, including by permitting U.S. banking entities and their foreign affiliates to carry on traditional asset management businesses outside of the United States, while also seeking to limit the possibility for evasion through foreign public funds.[39]

Based on experience implementing the 2013 rule, as well as discussions with and comments received from regulated entities, it appears that some of the conditions of the foreign public fund exclusion may not be necessary to ensure consistent treatment of foreign public funds and registered investment companies. Moreover, some conditions may make it difficult for a non-U.S. fund to qualify for the exclusion or for a banking entity to validate whether a non-U.S. fund qualifies for the exclusion, resulting in certain non-U.S. funds that are similar to U.S. registered investment companies being treated as covered funds. For example, the requirement that the fund be authorized to be offered and sold to retail investors in the fund's home jurisdiction (the home jurisdiction requirement) disqualifies certain funds that are organized in one jurisdiction but only authorized to be sold to retail investors in another jurisdiction.[40] It appears that, for a variety of reasons, it is not uncommon for foreign retail funds to be organized in one jurisdiction and sold in another jurisdiction.[41]

Additionally, the requirement that a fund be sold ''predominantly'' through one or more public offerings may cause certain compliance and monitoring difficulties.[42] This is because banking entities may have limited visibility into the distribution history of a third-party sponsored fund, or, in the case of a fund sponsored by the banking entity, the fund's interests may be sold through third-party distributors, and the precise pattern of distribution may be affected by market forces and changes in investor demand.[43] Also, the limitation on ownership of interests in a U.S. banking entity-sponsored foreign public fund by certain employees (including their immediate family members) of the sponsoring banking entity or fund may be difficult for banking entities to monitor for similar reasons, and imposes a requirement on foreign public funds that may not apply to similarly situated U.S. registered investment companies.[44] Finally, commenters have expressed concerns with the expectation stated in the preamble to the 2013 rule that for a U.S. banking entity-sponsored

[32] *See* 2013 rule § __.10(c)(1); *see also* 79 FR 5678 (''For purposes of this exclusion, the [a]gencies note that the reference to retail investors, while not defined, should be construed to refer to members of the general public who do not possess the level of sophistication and investment experience typically found among institutional investors, professional investors or high net worth investors who may be permitted to invest in complex investments or private placements in various jurisdictions. Retail investors would therefore be expected to be entitled to the full protection of securities laws in the home jurisdiction of the fund, and the [a]gencies would expect a fund authorized to sell ownership interests to such retail investors to be of a type that is more similar to a U.S. registered investment company rather than to a U.S. covered fund.'').

[33] 79 FR 5678.

[34] 2013 rule § __.10(c)(1)(iii).

[35] Although the discussion of this condition generally refers to U.S. banking entities for ease of reading, the condition also applies to foreign subsidiaries of a U.S. banking entity. *See* 2013 rule § __.10(c)(1)(ii) (applying this limitation ''[w]ith respect to a banking entity that is, or is controlled directly or indirectly by a banking entity that is, located in or organized under the laws of the United States or of any State and any issuer for which such banking entity acts as sponsor'').

[36] *See* 2013 rule § __.10(c)(1)(ii).

[37] 79 FR 5678.

[38] *Id.*

[39] *Id.*

[40] *See, e.g.,* IIB; Bank Policy Institute (BPI); EBF; and JBA.

[41] For example, commenters have noted that retail funds are sometimes organized in the Cayman Islands for tax considerations but only offered for sale in Japan. *See, e.g.,* BPI.

[42] *See, e.g.,* BPI.

[43] *Id.*

[44] *See, e.g.,* IIB.

foreign fund to satisfy the condition that it be ''predominantly'' sold to persons other than the sponsoring U.S. banking entity and certain persons connected to that banking entity, 85 percent of the ownership interests in the fund should be sold to such persons.[45]

To address the concerns noted above related to the home jurisdiction requirement and the requirement that ownership interests be sold predominantly through public offerings, the agencies are proposing to replace those two requirements with a requirement that the fund is authorized to offer and sell ownership interests, and such interests are offered and sold, through one or more public offerings. The agencies are also proposing to modify the definition of ''public offering'' from the implementing regulations to add a new requirement that the distribution is subject to substantive disclosure and retail investor protection laws or regulations, to help ensure that funds qualifying for this exclusion are sufficiently similar to U.S. registered investment companies. Additionally, the proposal would only apply the condition that the distribution comply with all applicable requirements in the jurisdiction where it is made to instances in which the banking entity acts as the investment manager, investment adviser, commodity trading advisor, commodity pool operator, or sponsor. This change is intended to address the potential difficulty that a banking entity investing in a third-party sponsored fund may have in determining whether the distribution of such fund complied with all the requirements in the jurisdiction where it was made.

The changes discussed above would seek to ensure that the exclusion remains limited to funds that are authorized to be sold to retail investors, but it would no longer require the fund to be authorized to be sold to retail investors in the jurisdiction where it is organized. Additionally, while the fund would still be required to be offered and sold through one or more public offerings (which would require, among other things, that the distribution be made in a jurisdiction outside the United States that subjects the foreign public fund to substantive disclosure and retail investor protection laws or regulations), the proposal would eliminate the requirement that it be sold ''predominantly'' through one or more public offerings. This change would eliminate the difficulty that banking entities have described in tracking the specific distribution patterns of ownership interests in such funds, and it would more closely align the treatment of foreign public funds with that of U.S. registered investment companies, which have no such requirement. The agencies believe the revised requirement would help ensure that the foreign public fund is sufficiently similar to a U.S. registered investment company.

To simplify the requirements of the exclusion and address concerns described by banking entities with the difficulty in tracking the sale of ownership interests to employees and their immediate family members, the proposal would eliminate the limitation on selling ownership interests of the issuer to employees (other than senior executive officers) of the sponsoring banking entity or the issuer (or affiliates of the banking entity or issuer). This change would also help to align the treatment of foreign public funds with that of U.S. registered investment companies, as the exclusion for U.S. registered investment companies has no such limitation. The proposal would continue to limit the sale of ownership interests to directors or senior executive officers of the sponsoring banking entity or the fund (or their affiliates), as the agencies believe that such a requirement would be simpler for a banking entity to track. As discussed in the preamble to the 2013 rule, this requirement is intended to prevent evasion of section 13 of the BHC Act.[46]

As reflected in the detailed questions that follow, the agencies request comment on all aspects of the proposed modifications to the foreign public fund exclusion, including whether the exclusion is effective in identifying foreign funds that may be sufficiently similar to U.S. registered investment companies and permitting U.S. banking entities and their foreign affiliates to carry on traditional asset management businesses outside of the United States, without creating opportunities for evasion of the requirements of section 13 of the BHC Act.

Question 6. Are foreign funds that satisfy the proposed conditions in the foreign public fund exclusion sufficiently similar to U.S. registered investment companies such that it is appropriate to exclude these funds from the covered fund definition? Why or why not? If these foreign funds are not sufficiently similar to U.S. registered investment companies, how should the agencies modify the exclusion's conditions to permit only funds that are sufficiently similar to U.S. registered investment companies to rely on it? Are there foreign funds that cannot satisfy the exclusion's proposed conditions but that are nonetheless sufficiently similar to U.S. registered investment companies such that it would be appropriate to exclude those foreign funds from the covered fund definition? If so, how should the agencies modify the exclusion's conditions to permit those funds to rely on it?

Question 7. How effectively does the proposed replacement of the home jurisdiction requirement and the requirement that ownership interests be sold predominantly through public offerings with a requirement that the fund is authorized to offer and sell ownership interests, and such interests are offered and sold, through one or more public offerings address the concerns discussed above related to the compliance with these requirements? If such concerns are not addressed, how should the agencies further modify these requirements?

Question 8. Is the additional condition added to the ''public offering'' definition requiring the distribution be subject to substantive disclosure and retail investor protection laws or regulations sufficiently clear and effective? If not, how should the agencies modify or clarify this requirement? Should the agencies further specify features of ''substantive disclosure and retail investor protection laws or regulations?'' Would it be clearer if the agencies identified particular types of laws or regulations that would meet this condition (*e.g.,* requirements for periodic filings with, and periodic examinations by, the appropriate regulatory authority; requirements for periodic reports to be distributed to retail investors; or a prohibition against fraud)?

Question 9. In what ways, if any, is it difficult for a banking entity to determine whether a fund satisfies the implementing regulations' condition of the ''public offering'' definition requiring that the distribution comply with all applicable requirements in the jurisdiction in which the distribution is made? Should the agencies eliminate this requirement with respect to funds for which the banking entity does not serve as the investment manager, investment adviser, commodity trading advisor, commodity pool operator, or sponsor, as proposed, or should this requirement be otherwise modified? Would eliminating or modifying this requirement create an opportunity for evasion of the requirements of section 13? If so, how should the agencies address this concern?

Question 10. As discussed above, the agencies propose to modify the

[45] *See, e.g.,* Investment Company Institute.

[46] 79 FR 5678–79.

additional conditions on U.S. banking entity-sponsored foreign funds, which are intended in part to limit the possibility for evasion of section 13. In what ways, if any, would the proposed modifications, including the elimination of the limitations on certain employees owning interests in the fund, create an opportunity for evasion? How should the agencies modify these additional requirements to limit the possibility for evasion? Is the limitation on directors and senior executive officers owning interests in the fund necessary or appropriate to prevent evasion of section 13? Why or why not? Should the agencies eliminate or modify this limitation? How difficult is it for banking entities to monitor and track this limitation? Commenters should address whether banking entities already track this information.

Question 11. Is the proposed requirement that the fund's ownership interests are sold predominantly to persons other than the sponsoring banking entity or the issuer (or affiliates of the sponsoring banking entity or issuer), and directors and senior executive officers of such entities, necessary to prevent evasion of the requirements of section 13? If the requirement is not necessary to prevent evasion, how should the agencies eliminate or further modify this requirement? Should the agencies consider this condition satisfied if 75 percent (or some other percentage) of the ownership interests are sold to persons other than the sponsoring banking entity, the issuer (or affiliates of the sponsoring banking entity or issuer), and directors and senior executive officers of such entities? Why or why not?

Question 12. Do the proposed changes to the foreign public fund exclusion, in the aggregate, increase opportunities for evasion of the requirements of section 13? If so, how should the agencies address these concerns? Should the agencies include a specific reservation of authority to prevent evasion through the foreign public fund exclusion, or are the anti-evasion provisions in § __.21 of the implementing regulations sufficient to address these concerns? [47]

2. Loan Securitizations

Section 13 of the BHC Act provides that ''[n]othing in this section shall be construed to limit or restrict the ability of a banking entity . . . to sell or securitize loans in a manner otherwise permitted by law.'' [48] To effectuate this statutory requirement, the 2013 rule excludes from the definition of covered fund loan securitizations that issue asset-backed securities and hold only loans, certain rights and assets, and a small set of other financial instruments (permissible assets).[49] The staffs of the agencies in June 2014 issued an FAQ explaining that assets other than permitted securities can be servicing assets for purposes of the loan securitization exclusion.[50]

Since the adoption of the 2013 rule, several banking entities and other participants in the loan securitization industry have commented that the limited set of permissible assets has inappropriately restricted their ability to use the loan securitization exclusion. The agencies asked several questions regarding the efficacy and scope of the exclusion and the Loan Securitization Servicing FAQ in the 2018 proposal.[51] Comments were focused on permitting small amounts of non-loan assets and clarifying the treatment of leases and related assets. The agencies are proposing to codify the Loan Securitization Servicing FAQ and permit loan securitizations to hold a small amount of non-loan assets. The agencies also request comment on whether other revisions are necessary or appropriate to effectuate section 13 of the BHC Act, as described in greater detail below.

Leases and Servicing Assets

The 2013 rule defines ''loan'' to include leases and permits loan securitizations to hold rights or other assets (servicing assets) that arise from the structure of the loan securitization or from the loans supporting a loan securitization.[52] Rights or other servicing assets are assets designed to facilitate the servicing of the assets underlying a loan securitization or the distribution of proceeds from those assets to holders of the asset-backed securities.[53] In response to confusion regarding the scope of these two provisions, the staffs of the agencies released the Loan Securitization Servicing FAQ. Under this FAQ, a servicing asset may or may not be a security, but if the servicing asset is a security, it must be a permitted security under the rule.

Several commenters on the 2018 proposal supported codifying this FAQ, with one commenter encouraging the agencies to include specific examples of servicing assets.[54] However, one commenter suggested that the Loan Securitization Servicing FAQ was sufficient and that the regulation need not be modified.[55] Another commenter suggested that the exclusion be expanded to cover leases and related assets, including operating or capital leases.[56]

The agencies propose codifying the Loan Securitization Servicing FAQ to clarify the scope of the servicing asset provision.[57] However, the agencies are not proposing to separately list leases within the loan securitization exclusion because leases are included in the definition of loan and thus are permitted assets for loan securitizations under the current exclusion.[58]

Question 13. Does the proposed modification of the loan securitization exclusion sufficiently permit securitization of leases, servicing assets, and related assets, including leases that are security interests? Why or why not?

Limited Holdings of Non-Loan Assets

In the preamble to the 2013 rule, the agencies declined to permit loan securitizations to hold a certain amount of non-loan assets.[59] The agencies supported a narrow scope of permissible assets by noting that ''the purpose underlying section 13 is not to expand the scope of assets in an excluded loan securitization beyond loans as defined in the final rule and the other assets that the agencies are specifically permitting in a loan securitization.'' [60]

Several commenters on the 2018 proposal disagreed with the agencies'

[47] Section __.21 of the implementing regulations provides in part that whenever an agency finds reasonable cause to believe any banking entity has engaged in an activity or made an investment in violation of section 13 of the BHC Act or the implementing regulations, or engaged in any activity or made any investment that functions as an evasion of the requirements of section 13 of the BHC Act or the implementing regulations, the agency may take any action permitted by law to enforce compliance with section 13 of the BHC Act and the 2013 rule, including directing the banking entity to restrict, limit, or terminate any or all activities under the 2013 rule and dispose of any investment.

[48] 12 U.S.C. 1851(g)(2).

[49] *See* 2013 rule § _____.10(c)(8). Loan is further defined as any loan, lease, extension of credit, or secured or unsecured receivable that is not a security or derivative. Implementing regulations § ____.2(t).

[50] Loan Securitization Servicing FAQ. *See supra* n. 11 and accompanying text. *See also, infra,* Leases and Servicing Assets for a discussion of the FAQ.

[51] 83 FR 33480–81.

[52] 2013 rule §§ _____.2(s); _____ .10(c)(8)(i)(D), (v).

[53] *See, e.g.,* FASB Statement No. 156: Accounting for Servicing of Financial Assets, ¶ 61 (FAS 156).

[54] Structured Finance Industry Group (SFIG) and JBA.

[55] Data Boiler.

[56] SFIG.

[57] The proposal also clarifies that special units of beneficial interest and collateral certificates meeting the requirements of paragraph (c)(8)(v) of the exclusion that are securities need not meet the requirements of paragraph (c)(8)(iii) of the exclusion.

[58] *See* implementing regulations § __.2(t).

[59] 79 FR 5687–88.

[60] 79 FR 5687.

views and supported expanding the range of permissible assets in an excluded loan securitization.[61] Many commenters recommended allowing loan securitizations to hold up to five or ten percent of non-loan assets. Commenters suggested that a limited bucket of non-loan assets would be consistent with exclusions under the Investment Company Act, such as section 3(c)(5)(C) and rule 3a–7.[62] Commenters argued that banking entities would use such authority to incorporate into securitizations corporate bonds, interests in letters of credit, cash and short-term highly liquid investments, derivatives, and senior secured bonds that do not significantly change the nature and risk profile of the securitization.[63] One commenter suggested permitting additional non-loan assets so long as the securitization is ''primarily backed by qualifying assets that are not impermissible securities or derivatives.'' [64]

One commenter suggested that permitting loan securitizations to hold a small number of non-loan assets, typically fixed income securities, would decrease compliance burdens associated with analyzing fund assets and increase fund managers' flexibility in responding to market conditions and customer preferences.[65] One commenter also claimed that permitting non-loan holdings below a certain threshold would conform the rule with industry practice without requiring a wholesale redefinition of covered funds.[66] In addition, some commenters maintained that such an approach was consistent with the rule of construction because inclusion of small amounts of non-permissible assets was standard practice, particularly for international securitizations, and permitted by law.[67] In contrast, another commenter objected to allowing a limited amount of non-loan investments and suggested that permitting such investments would be contrary to the general purpose of section 13 of the BHC Act, which the commenter claimed was to divest banking entities of risky assets.[68]

After considering the comments received on the 2018 proposal, the agencies are proposing to allow a loan securitization vehicle to hold up to five percent of assets in non-loan assets. Authorizing loan securitizations to hold small amounts of non-loan assets could, consistent with section 13 of the BHC Act, permit loan securitizations to respond to market demand and reduce compliance costs associated with the securitization process without significantly increasing risk to banking entities and the financial system. The proposed limit on the amount of non-loan assets also would assuage potential concerns that allowing certain non-loan assets will lead to evasion, indirect proprietary trading, and other impermissible activities or excessive risk to the banking entity. Moreover, loan securitizations provide an important avenue for banking entities to fund lending programs, and allowing loan securitizations to hold a small amount of non-loan assets in response to customer and market demand may increase a banking entity's capacity to provide financing and lending.

Question 14. Should the loan securitization exclusion permit loan securitization issuers to hold a certain percentage of non-loan assets? Why or why not? If so, should the maximum percentage of permissible non-loan assets be five or ten percent, or some other amount? Regardless of the non-loan asset limit, what should be the method of calculating compliance with the limit (*e.g.,* market value, par value, principal balance, or some other measure)? Would permitting loan securitization issuers to hold a certain percentage of non-loan assets further the statutory rule of construction in section 13(g)(2) of the BHC Act? If so, explain how.

Question 15. In what ways, if any, should the agencies limit the type of permissible non-loan assets to certain asset classes or structures (*e.g.,* only debt securities or any permissible asset, such as a derivative)? Would the inclusion of certain financial instruments—such as derivatives and collateralized debt obligations—raise safety and soundness concerns? If so, should qualifying loan securitizations be permitted to hold such instruments and, if so, what restrictions should be placed on the holding of such instruments? What, if any, other restrictions should the agencies impose on non-loan assets to reduce the potential for evasion of the rule?

Cash Equivalents

The loan securitization exclusion permits issuers to hold certain types of contractual rights or assets directly arising from the loans supporting the asset-backed securities that a loan securitization relying on the exclusion may hold, including cash equivalents. In response to questions about the scope of the cash equivalent provision, the Loan Securitization Servicing FAQ stated that ''cash equivalents'' means high quality, highly liquid investments whose maturity corresponds to the securitization's expected or potential need for funds and whose currency corresponds to either the underlying loans or the asset-backed securities.[69] To promote transparency and clarity, the proposal would codify this additional language in the Loan Securitization Servicing FAQ regarding the meaning of ''cash equivalents.'' [70] The agencies are not requiring ''cash equivalents'' to be ''short term,'' because the agencies recognize that a loan securitization may need greater flexibility to match the maturity of high quality, highly liquid investments to its expected or potential need for funds.

Question 16. Should the agencies codify the cash equivalents language in the Loan Securitization Servicing FAQ? Why or why not?

3. Public Welfare and Small Business Funds

i. Public Welfare Funds

Section 13(d)(1)(E) of the BHC Act permits, among other things, a banking entity to make and retain investments that are designed primarily to promote the public welfare of the type permitted under 12 U.S.C. 24(Eleventh).[71] Consistent with the statute, the 2013 rule excludes from the definition of ''covered fund'' issuers that make investments that are designed primarily to promote the public welfare, of the type permitted under paragraph 11 of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).[72] The agencies noted in the preamble to the 2013 rule that excluding issuers in the business of making public welfare investments would give effect to the statutory exemption for these investments. The agencies further stated their belief that permitting a banking entity to sponsor and invest in entities that are in the business of making public welfare investments would result in banking entities being able to provide

[61] *E.g.,* Investment Adviser Association (IAA); Loan Syndications and Trading Association (LSTA); ABA; SFIG; Goldman Sachs (GS); BPI; JBA; and Securities Industry and Financial Markets Association (SIFMA).

[62] BPI.

[63] LSTA and JBA.

[64] SFIG.

[65] SFIG.

[66] LSTA.

[67] LSTA and SIFMA. Some of these commenters subsequently indicated that the loan securitization industry has evolved since the issuance of the 2013 rule and loan securitization issuers no longer include non-loan assets and might not include non-loan assets in a securitization even if the scope of non-loan assets permitted to be held was expanded.

[68] Data Boiler.

[69] *See supra,* n. 11.

[70] Proposed rule § __.10(c)(8)(iii)(A).

[71] *See* 12 U.S.C. 1851(d)(1)(E).

[72] 2013 rule § __.10(c)(11)(ii).

valuable expertise and services to these entities and to provide funding and assistance to small businesses and low- and moderate-income communities. The agencies also stated their belief that excluding issuers that are in the business of making public welfare investments would allow banking entities to continue to provide capital to community-improving projects and, in some instances, promote capital formation.[73]

In response to the 2018 proposal, the agencies received one comment stating that the 2013 rule's exclusion for funds that are designed primarily to promote the public welfare does not account for community development investments that are made through investment vehicles. The commenter recommended expressly excluding all investments that qualify for Community Reinvestment Act (CRA) credit, including direct and indirect investments in a community development fund, small business investment company (SBIC), or similar fund.[74]

The OCC's regulations implementing 12 U.S.C. 24(Eleventh) provide that investments that receive consideration as qualified investments under the regulations implementing the CRA (CRA-qualified investments) would also meet the public welfare investment requirements.[75] The 2013 rule did not expressly incorporate these implementing regulations into the exclusion for public welfare investments. The agencies are requesting comment on whether any change should be made to clarify that all permissible public welfare investments, under any agency's regulation, are excluded from the covered fund restrictions.[76] For example, the agencies understand that there may be uncertainty regarding how the exclusion for public welfare investments applies to community development investments that are made through fund structures—for example, an investment fund that invests exclusively in SBICs, that is designed to receive consideration as a CRA-qualified investment, and that would be considered a public welfare investment under applicable regulations.

In particular, the agencies request comment on the following:

Question 17. Is the scope of the current public welfare investment fund exclusion properly calibrated? Why or why not? Under what circumstances, if any, have banking entities experienced compliance challenges under the covered fund provisions in Subpart C regarding investments in community development, public welfare, or similar funds that are designed to receive consideration as CRA-qualified investments?

Question 18. Have banking entities avoided making investments that are designed to receive consideration as CRA-qualified investments because they believed that the investment may not satisfy the public welfare investment fund exclusion? If so, what factors have caused uncertainty as to whether an issuer qualifies for the exclusion for public welfare investment funds?

Question 19. In what ways would it promote transparency, clarity, and consistency with other Federal banking regulations if the agencies explicitly exclude from the definition of covered fund any issuer that invests exclusively or substantially in investments that are designed to receive consideration as CRA-qualified investments? What policy considerations weigh for or against such an exclusion? What conditions should apply to such an exclusion?

Question 20. Should the agencies establish a separate exclusion for CRA-qualified investments or incorporate such an exclusion into the exclusion for public welfare investments?

Question 21. Rural Business Investment Companies (RBICs)—as defined under 203(l) and 203(m) of the Investment Advisers Act of 1940 (''Advisers Act'')—are companies licensed under the Rural Business Investment Program (RBIP), a program created as a joint initiative between the U.S. Department of Agriculture and the Small Business Administration. The RBIP was designed to promote economic development and job creation in rural communities by investing in companies involved in the production, processing and supply of food and agriculture-related products. Under the implementing regulations, are many RBICs excluded from the definition of covered fund because of the public welfare exclusion or because of another provision?[77] Should the agencies provide an express exclusion from the definition of covered fund for RBICs, similar to the exclusion for SBICs? Are RBICs substantially similar to SBICs and public welfare companies that banking entities are permitted to make and retain investments in under section 13(d)(1)(E) of the BHC Act? Would excluding RBICs in the same manner that SBICs and public welfare companies are excluded from the definition of covered fund provide certainty regarding the covered fund status of RBICs or serve similar interests, as identified by commenters in response to the 2018 proposal?

Question 22. The Tax Cuts and Jobs Act established the ''opportunity zone'' program to provide tax incentives for long-term investing in designated economically distressed communities. The program allows taxpayers to defer and reduce taxes on capital gains by reinvesting gains in ''qualified opportunity funds'' (QOFs) that are required to have at least 90 percent of their assets in designated low-income zones. Do commenters believe that many or all QOFs are excluded from the definition of covered fund under the implementing regulations under the public welfare exclusion or another exclusion or exemption? Should the agencies provide an express exclusion from the definition of covered fund for QOFs? Are QOFs substantially similar to SBICs and public welfare companies that banking entities are permitted to make and retain investments in under section 13(d)(1)(E) of the BHC Act? Would excluding QOFs in the same manner that SBICs and public welfare companies are excluded from the definition of covered fund provide certainty regarding the covered fund status of QOFs or serve similar interests, as identified by commenters in response to the 2018 proposal?

ii. Small Business Investment Companies

Consistent with section 13 of the BHC Act,[78] the 2013 rule excludes from the definition of covered fund SBICs and issuers that have received notice from the Small Business Administration to

[73] *See* 79 FR 5698.

[74] *See* ABA.

[75] *See* 12 CFR 24.3 (stating that, for national banks, an investment that would receive consideration under 12 CFR 25.23 as a ''qualified investment'' is a public welfare investment); 12 CFR 25.23 (describing the investment test under the regulations implementing the CRA for national banks).

[76] A banking entity must have independent authority to make a public welfare investment. For example, a banking entity that is a state member bank may make a public welfare investment to the extent permissible under 12 U.S.C. 338a and 12 CFR 208.22.

[77] Following enactment of the RBIC Advisers Relief Act of 2018, Pub. L. 115–417 (2019), advisers to solely RBICs and advisers to solely SBICs are exempt from investment adviser registration pursuant to Advisers Act, section 203(b)(8) and 203(b)(7), respectively. The venture capital fund adviser exemption deems RBICs and SBICs to be venture capital funds for purposes of the registration exemption. 15 U.S.C. 80b–3(l). Accordingly, the agencies' proposed exclusion for certain venture capital funds discussed below, *see infra* section III.C.2, which would require that a fund be a ''venture capital fund'' as defined in the SEC regulations implementing the registration exemption, could apply to RBICs and SBICs to the extent that they satisfy the other elements of the proposed exclusion.

[78] *See* 12 U.S.C. 1851(d)(1)(E) (permitting investments in SBICs).

proceed to qualify for a license as a SBIC, which notice or license has not been revoked.[79] The agencies explained in the preamble to the 2013 rule that excluding SBICs from the definition of ''covered fund'' would give appropriate effect to the statutory exemption for investments in SBICs in a way that facilitates national community and economic development objectives.[80]

In response to the 2018 proposal,[81] the agencies received three comments recommending revising the 2013 rule's exclusion for SBICs to clarify that SBICs that surrender their SBIC licenses when winding down may continue to qualify for the exclusion for SBICs.[82] Two of these commenters stated that SBICs often surrender their licenses during wind-down, which is when the fund focuses on returning capital to partners.[83] One commenter asserted that, during the wind-down phase of an SBIC's lifecycle, an SBIC license is neither necessary nor a prudent use of partnership funds.[84] One commenter noted that banking entities that are investors in SBICs generally do not control whether an SBIC surrenders its license. This could raise questions as to whether an issuer that a banking entity invested in when the issuer was an SBIC could become a covered fund for reasons outside the banking entity's control.[85] In contrast, another commenter suggested concerns about the SBIC exclusion generally.[86]

The agencies propose to revise the exclusion for SBICs to clarify how the exclusion would apply to SBICs that surrender their licenses during wind-down phases. The proposed rule would specify that the exclusion for SBICs applies to an issuer that was an SBIC that has voluntarily surrendered its license to operate as a small business investment company in accordance with 13 CFR 107.1900 and does not make new investments (other than investments in cash equivalents) after such voluntary surrender.[87]

The agencies believe that continuing to apply the SBIC exclusion to an issuer that has surrendered its SBIC license is appropriate because, absent these revisions, banking entities may become discouraged from investing in SBICs due to concern that an SBIC may become a covered fund during its wind-down phase. As indicated by the statutory exemption for investments in SBICs, section 13 of the BHC Act was not intended to discourage investments in SBICs.[88]

The proposed rule includes conditions designed to ensure that the revised exclusion is not abused. In particular, the requirement that an issuer that has voluntarily surrendered its license does not make new investments (other than investments in cash equivalents) after surrendering its license is intended to ensure that the exclusion would only apply to funds that are actually winding down and not funds that are making new investments (whether wholly new or as follow-on investments to existing investments) or that are engaged in speculative activities. In addition, the exclusion would only apply to an issuer that surrenders its SBIC license in accordance with 13 CFR 107.1900. The agencies note that surrendering a license under 13 CFR 107.1900 requires the prior written approval of the Small Business Administration. Furthermore, because the exclusion would only apply to an issuer that voluntarily surrenders its SBIC license, the exclusion would not extend to an issuer if its SBIC license has been revoked.

The agencies request comment on the proposed revisions to the exclusion for SBICs. Specifically, the agencies request comment on the following.

Question 23. Should the agencies revise the SBIC exclusion as proposed? Why or why not? Would the proposed revisions to the SBIC exclusion appropriately address issuers that surrender their SBIC licenses? If not, what changes should be made to the proposal?

Question 24. Should the proposed exclusion for issuers that surrender their SBIC licenses include a requirement that the issuer operate pursuant to a written plan to dissolve within a set period of time, such as five years? Why or why not? If so, what is the appropriate time period?

Question 25. What additional restrictions, if any, should apply to the proposed exclusion for issuers that surrender their SBIC licenses?

Question 26. What specific activities or investments, if any, should an issuer that surrenders its SBIC license be expressly permitted to engage in during wind-down phases, such as follow-on investments in existing portfolio companies and why? What conditions should apply to such activities or investments?

C. Proposed Additional Covered Fund Exclusions

1. Credit Funds

The agencies are proposing to create a new exclusion from the definition of ''covered fund'' under § __.10(b) for credit funds that make loans, invest in debt, or otherwise extend the type of credit that banking entities may provide directly under applicable banking law. In the preamble to the 2013 rule, the agencies declined to establish an exclusion from the definition of covered fund for credit funds.[89] The agencies cited concerns about whether such funds could be distinguished from private equity funds and hedge funds and the possible evasion of the requirements of section 13 of the BHC Act through the availability of such an exclusion. In addition, the agencies suggested that some credit funds would be able to operate using other exclusions from the definition of covered fund in the 2013 rule, such as the exclusion for joint ventures or the exclusion for loan securitizations.[90]

In the 2018 proposal, the agencies issued a broad request for comment on whether to provide new exclusions from the definition of covered fund to more effectively tailor the 2013 rule.[91] Several commenters urged the agencies to establish an exclusion for funds that extend credit to customers in a manner similar to what banking entities are otherwise authorized to provide directly because the credit funds were not able to take advantage of the alternative exclusions noted by the agencies in the 2013 rule's preamble.[92] Commenters also offered specific suggestions relating to the scope, requirements of, and restrictions on such an exclusion.

The agencies understand that many credit funds have not been able to utilize the joint venture and loan securitization exclusions[93] and are

[79] *See* 2013 rule § __.10(c)(11).

[80] *See* 79 FR 5698.

[81] 89 FR 33432.

[82] *See* Small Business Investors Alliance (SBIA); Capital One et al.; and BB&T Corporation (BB&T).

[83] *See* SBIA and BB&T.

[84] *See* BB&T.

[85] *See* SBIA.

[86] Data Boiler.

[87] For purposes of this exclusion, ''cash equivalents'' would mean high quality, highly liquid investments whose maturity corresponds to the issuer's expected or potential need for funds and whose currency corresponds to the issuer's assets.

[88] *See* 12 U.S.C. 1851(d)(1)(E).

[89] 79 FR 5705. The agencies did not request comments specifically on credit funds in the associated 2011 proposed rule. *See* 76 FR 68896–900.

[90] *Id.*

[91] 83 FR 33471–72. The agencies did not request comments specifically on credit funds in the 2018 proposal.

[92] *E.g.,* SIFMA; GS; ABA; Financial Services Forum (FSF); and CS.

[93] For example, one industry group commenter claimed that ''no credit funds have been able to qualify for the exclusion for joint ventures, and very few have been able to qualify for the exclusion for loan securitization vehicles, because these exclusions simply were not tailored for credit funds. In particular, credit funds are generally

Continued

proposing an exclusion for credit funds. A credit fund, for the purposes of the proposed exclusion, is an issuer whose assets consist solely of:

- Loans;
- Debt instruments;
- Related rights and other assets that are related or incidental to acquiring, holding, servicing, or selling loans, or debt instruments; and
- Certain interest rate or foreign exchange derivatives.[94]

To ease compliance burdens, several provisions of the proposed exclusion are similar to and modeled on conditions in the loan securitization exclusion. For example, any related rights or other assets held that are securities must be cash equivalents, securities received in lieu of debts previously contracted with respect to loans held or, unique to the proposed credit funds exclusion, certain equity securities (or rights to acquire equity securities) received on customary terms in connection with the credit fund's loans or debt instruments.[95] Relatedly, any derivatives held by the credit fund must relate to loans, permissible debt instruments, or other rights or assets held and reduce the interest rate and/or foreign exchange risks related to these holdings.[96] The proposed exclusion also would be broader than the loan securitization exclusion, by providing that a credit fund would be able to transact in certain debt instruments.[97]

As noted above, the proposed exclusion would permit the credit fund to receive and hold a limited amount of equity securities (or rights to acquire equity securities) that are received on customary terms in connection with the credit fund's loans or debt instruments.[98] The agencies understand that some banking entities are permitted to take as consideration for a loan to a borrower a warrant or option issued by the borrower—which allows the creditor to share in the profits, income, or earnings of the borrower—as an alternative or replacement to interest on an extension of credit.[99] To ensure that an extension of credit may be subject to similar conditions, regardless of form, the agencies believe that excluded credit funds should be able to hold certain equity instruments, subject to appropriate conditions. The agencies are inviting comment on the nature and scope of such conditions. Although the agencies are not proposing a specific quantitative limit on equity securities (or rights to acquire equity securities) in the proposed rule, the agencies expect that such a limit may be appropriate, and are considering imposing such a limit in a final rule. The agencies are thus soliciting comment, below, about the terms of any quantitative limit on equity securities (or rights to acquire equity securities), and the method for calculating such a limit.

The exclusion also would be subject to certain additional restrictions to ensure that the issuer is actually engaged in providing credit and credit intermediation and is not operated for the purpose of evading the provisions of section 13 of the BHC Act.[100] Under the proposal, a credit fund would not be a covered fund, provided that:

- The fund does not engage in activities that would constitute proprietary trading, as defined in § __ .3(b)(1)(i) of the rule, as if the fund were a banking entity;[101] and
- The fund does not issue asset-backed securities.[102]

In addition, a banking entity would not be able to rely on the credit fund exclusion unless certain conditions were met. If a banking entity sponsors or serves as an investment adviser or commodity trading advisor to a credit fund, the banking entity would be required to provide disclosures specified in section _ __.11(a)(8), and ensure that the activities of the credit fund are consistent with safety and soundness standards that are substantially similar to those that would apply if the banking entity engaged in the activities directly.[103] Likewise, a banking entity would not be permitted to rely on the credit fund exclusion if it guarantees the performance of the fund,[104] or if the fund holds any debt securities, equity, or rights to receive equity that the banking entity would not be permitted to acquire and hold directly.[105] Furthermore, a banking entity's investment in and relationship with a credit fund would be required to comply with the limitations in section __.14 (except the banking entity would be permitted to acquire and retain any ownership interest in the credit fund), and the limitations in section ____.15 regarding material conflicts of interest, high-risk investments, and safety and soundness and financial stability, in each case as though the credit fund were a covered fund.[106] A banking entity's investment in and relationship with a credit fund also would be required to comply with applicable safety and soundness standards.[107] Finally, a banking entity that invests in or has a relationship with a credit fund would continue to be subject to capital charges and other requirements under applicable banking law.[108]

The agencies believe that the proposed credit fund exclusion would (1) address the application of the covered fund provisions to credit-related activities in which banking entities are permitted to engage directly and (2) be consistent with and effectuate Congress's intent that section 13 of the BHC Act not limit or restrict banking entities' ability to sell loans.[109] The agencies also believe the proposed credit fund exclusion may effectively address concerns the agencies expressed in the preamble to the 2013 rule about the administrability and evasion of section 13 of the BHC Act. Banking entities already have experience using and complying with the loan securitization exclusion. Establishing an exclusion for credit funds based on the framework provided by the loan securitization exclusion would allow banking entities to provide traditional extensions of credit regardless of the specific form, whether directly via a loan made by a banking entity, or indirectly through an investment in or relationship with a credit fund that transacts primarily in loans and certain debt instruments.

The proposed credit fund exclusion limits the universe of potential funds that could rely on the exclusion by clearly specifying the types of activities those funds may engage in. Excluded credit funds could transact in or hold only loans, permissible debt instruments, and certain related rights or assets. These financial products, and the regulations delimiting the use thereof, are well-known and should not raise administrability and evasion concerns. Similarly, the requirement

unable to satisfy the conditions of the loan securitization exclusion because credit funds do not typically issue asset-backed securities, credit funds are managed and to meet the needs of clients, credit funds typically invest in debt securities and warrants.'' SIFMA.

[94] Proposed rule § __.10(c)(15)(i).

[95] Proposed rule § __.10(c)(15)(i)(C).

[96] Proposed rule § __.10(c)(15)(i)(D).

[97] Proposed rule § __.10(c)(15)(i)(B).

[98] Proposed rule § __.10(c)(15)(i)(C)(*1*)(*iii*).

[99] See 12 CFR 7.1006. *See also* SIFMA.

[100] Proposed rule § __.10(c)(15)(iv)–(vi).

[101] Proposed rule § __.10(c)(15)(ii)(A). For the avoidance of doubt, a credit fund would not be able to elect a different definition of proprietary trading or trading account.

[102] Proposed rule § __.10(c)(15)(ii)(B).

[103] Proposed rule § __.10(c)(15)(iii).

[104] Proposed rule § __.10(c)(15)(iv).

[105] *Id.*

[106] Proposed rule § __.10(c)(15)(v)(A).

[107] Proposed rule § __.10(c)(15)(v)(B).

[108] For example, a banking entity's investment in or relationship with a credit fund could be subject to the regulatory capital adjustments and deductions relating to investments in financial subsidiaries or in the capital of unconsolidated financial institutions, if applicable. *See* 12 CFR 217.22.

[109] 12 U.S.C. 1851(g)(2).

that the credit fund not engage in activities that would constitute proprietary trading under section 13 of the BHC Act and implementing regulations should help to ensure that credit extensions that are bought and sold are held for the purpose of facilitating the extension of credit and not for the purpose of evading the requirements of section 13. Finally, the restrictions on guarantees and other limitations should eliminate the ability and incentive for either the banking entity sponsoring a credit fund or any affiliate to provide additional support beyond the ownership interest retained by the sponsor. Thus, the agencies expect that, together, the proposed criteria for the credit fund exclusion would prevent a banking entity having any incentive to bail out such funds in periods of financial stress or otherwise expose the banking entity to the types of risks that the covered fund provisions of section 13 were intended to address.

The agencies request comment on all aspects of the proposed credit fund exclusion.

Question 27. Is the proposed rule's approach to a credit fund exclusion appropriate and effective? Why or why not? Do the conditions imposed on the proposed exclusion effectively address the concerns about administrability and evasion that the agencies expressed in the preamble to the 2013 rule?

Question 28. What types of loans and permissible debt instruments or some subset of those assets, if any, should a credit fund be able to hold? Are the definitions used in the proposed exclusion appropriate and clear?

Question 29. The agencies believe it could be appropriate to permit credit funds to hold a small amount of non-loan and non-debt assets, such as warrants or other equity-like interests directly related to the other permitted assets, subject to appropriate conditions. Should credit funds be able to hold small amounts of equity securities (or rights to acquire equity securities) received on customary terms in connection with the credit fund's loans or debt instruments? If so, what should be the quantitative limit on permissible non-loan and non-debt assets? Should the limit be five or ten percent of assets, or some other amount? How should such quantitative limit be calculated? Does the holding of a certain amount of equity securities (or rights to acquire equity securities) raise concerns that banking entities may use credit funds to evade the limitations and prohibitions in section 13 of the BHC Act? Why or why not? For example, under the proposal, could the holdings of an excluded fund be predominantly equity securities (or rights to acquire equity securities) received on customary terms in connection with the credit fund's loans or debt instruments? If so, how?

Question 30. The proposed credit fund exclusion would permit excluded credit funds to hold related rights and other assets that are related or incidental to acquiring, holding, servicing, or selling loans or debt instruments, provided that each right or asset that is a security meets certain requirements. Should credit funds be allowed to hold such related rights and other assets? Are these assets necessary for the proper functioning of a credit fund? Are the requirements regarding rights or assets that are securities applicable to the holdings of credit funds or otherwise appropriate?

Question 31. Is the list of permitted securities appropriately scoped, overbroad, or under-inclusive? Why or why not? Should the list of permitted securities be modified? If so, how and why?

Question 32. The proposal provides that any interest rate or foreign exchange derivatives held by the credit fund adhere to certain requirements. Should credit funds be allowed to hold these, or any other type of derivatives? Are the requirements that the written terms of the derivatives directly relate to assets held and that the derivatives reduce the interest rate and/or foreign exchange risks related to the assets held applicable to the holdings of credit funds generally? Are such requirements otherwise appropriate? Why or why not?

Question 33. Which safety and soundness standards, if any, should be referenced in the credit fund exclusion? Should the agencies reference the safety and soundness standards codified in the banking agencies' regulations, *e.g.,* 12 CFR part 30, 12 CFR part 364, or other safety and soundness standards? Safety and soundness standards can vary depending on the type of banking entity. Is there a universally applicable standard that would be more appropriate, such as standards applicable to insured depository institutions?

Question 34. Is the application of sections __.14 and __.15 to the proposed credit fund exclusion appropriate? Why or why not? Should a banking entity that sponsors or serves as an investment adviser to a credit fund be required to comply with the limitations imposed by both sections __.14(a) and (b)? Why or why not?

Question 35. Is it appropriate to require a banking entity that sponsors or serves as an investment adviser or commodity trading advisor to a credit fund, to comply with the disclosure requirements of § __.11(a)(8), as if the credit fund were a covered fund? Why or why not?

Question 36. Is the definition of proprietary trading in the credit fund exclusion appropriately scoped, overbroad, or under-inclusive? Why or why not? If the definition is not appropriately scoped, is there an alternative definition of proprietary trading? Should credit funds sponsored by, or that have as an investment adviser, a banking entity be able or be required to use the associated banking entity's definition of proprietary trading, for the purposes of this exclusion? Why or why not? Would such an approach impose undue compliance burdens? If so, what are such burdens?

Question 37. Should the agencies establish additional provisions to prevent evasion of section 13 of the BHC Act? Why or why not? If so, what requirements would be appropriate and properly balance providing firms with flexibility to facilitate extensions of credit and ensuring compliance with section 13 of the BHC Act? For example, should the agencies impose quantitative limitations, additional capital charges, control restrictions, or other requirements on use of the credit fund exclusion?

Question 38. The proposed exclusion for credit funds is similar to the current exclusion for loan securitizations. Should the agencies combine the proposed credit fund exclusion with the current loan securitization exclusion? If so, how? What would be the benefits and drawbacks of combining the exclusions or maintaining separate exclusions for each type of activity? If the two exclusions remain separate, should the proposed credit fund exclusion contain a requirement that a credit fund not issue asset-backed securities? Why or why not?

2. Venture Capital Funds

Under the implementing regulations, venture capital funds that invest in small businesses and start-up businesses that would be investment companies but for the exclusion contained in section 3(c)(1) or 3(c)(7) of the Investment Company Act are covered funds unless they otherwise qualify for an exclusion. The agencies are proposing to add an exclusion from the definition of ''covered fund'' under § __.10(b) of the rule that would allow banking entities to acquire or retain an ownership interest in, or sponsor, certain venture capital funds to the extent the banking entity is permitted to engage in such activities under otherwise applicable law. The exclusion

would be available with respect to ''qualifying venture capital funds,'' which the proposal defines as an issuer that meets the definition in 17 CFR 275.203(*l*)–1 and that meets several additional criteria specified below.

Contemporaneous with the passage of the Dodd-Frank Act, multiple Members of Congress made statements indicating that section 13 of the BHC Act should not restrict the activities of venture capital funds.[110] Several of these Members of Congress noted that properly conducted venture capital funds do not present the same concerns at which section 13 of the BHC Act was directed and can promote the public interest and job creation.[111] In addition, in accordance with section 13(b)(1) of the BHC Act, the Financial Stability Oversight Council (FSOC) released a report providing recommendations concerning implementation of section 13.[112] The FSOC Report noted that several commenters recommended excluding venture capital funds from the definition of ''hedge fund'' and ''private equity fund'' because the nature of venture capital funds is fundamentally different from such other funds and because they promote innovation.[113] The FSOC Report stated that the treatment of venture capital funds was a significant issue and noted that the SEC had recently proposed rules distinguishing the characteristics and activities of venture capital funds from other private funds.[114] The FSOC Report recommended that the agencies carefully evaluate the range of funds and other legal vehicles that rely on the exclusions contained in section 3(c)(1) or 3(c)(7) and consider whether it would be appropriate for the regulations implementing section 13 to adopt a narrower definition in some cases.[115]

In the 2011 proposed rule, the agencies requested comment on whether to exclude venture capital funds from the definition of ''covered fund.'' [116] The agencies received several comments supporting such an exclusion and two comments opposing such an exclusion,[117] but declined to explicitly exclude venture capital funds from the definition of ''covered fund'' in the 2013 rule.[118] The agencies indicated at the time that they did not believe the statutory language of section 13 supported providing an exclusion for venture capital funds.[119] The agencies explained that this view was based on an understanding that Congress treated venture capital funds as a subset of private equity funds in other contexts and that Congress did not adopt an express exclusion for venture capital funds in section 13 of the BHC Act.[120] Specifically, the agencies cited to Congressional reports related to section 402 of the Dodd-Frank Act that characterized venture capital funds as ''a subset of private investment funds specializing in long-term equity investment in small or start-up businesses.'' [121] The agencies further stated that it appeared that the activities and risk profiles for banking entities regarding sponsorship of, and investment in, private equity and venture capital funds were not readily distinguishable.[122]

In 2017, the U.S. Department of the Treasury issued a report stating that the definition of ''covered fund'' is overly broad and that the covered fund provisions are not well-tailored to the objectives of section 13 of the BHC Act.[123] The report stated that changes to the covered fund provisions would ''greatly assist in the formation of venture and other capital that is critical to fund economic growth opportunities.'' [124] In the 2018 proposal, the agencies requested comment on whether to exclude from the definition of ''covered fund'' issuers that do not meet the definition of ''hedge fund'' or ''private equity fund'' in the SEC's Form PF.[125] The agencies noted that a venture capital fund, as defined in rule 203(*l*)–1 under the Advisers Act, is not a ''private equity fund'' or ''hedge fund,'' as those terms are defined in Form PF and requested comment on whether to include venture capital funds within the definition of ''covered fund'' if the agencies adopted a definition of covered fund based on the definitions in Form PF.[126]

In response to the 2018 proposal, the agencies received several comments

[110] *See* 156 Cong. Rec. E1295 (daily ed. July 13, 2010) (statement of Rep. Eshoo) (''the purpose of the Volcker Rule is to eliminate risk-taking activities by banks and their affiliates while at the same time preserving safe, sound investment activities that serve the public interest . . . Venture capital funds do not pose the same risk to the health of the financial system. They promote the public interest by funding growing companies critical to spurring innovation, job creation, and economic competitiveness. I expect the regulators to use the broad authority in the Volcker Rule wisely and clarify that funds . . . such as venture capital funds, are not captured under the Volcker Rule and fall outside the definition of 'private equity.' ''); 156 Cong. Rec. S5904 (daily ed. July 15, 2010) (statement of Sen. Boxer) (recognizing ''the crucial and unique role that venture capital plays in spurring innovation, creating jobs and growing companies'' and that ''the intent of the rule is not to harm venture capital investment.''); 156 Cong. Rec. S5905 (daily ed. July 15, 2010) (statement of Sen. Dodd) (confirming ''the purpose of the Volcker rule is to eliminate excessive risk taking activities by banks and their affiliates while at the same time preserving safe, sound investment activities that serve the public interest'' and stating ''properly conducted venture capital investment will not cause the harms at which the Volcker rule is directed. In the event that properly conducted venture capital investment is excessively restricted by the provisions of section 619, I would expect the appropriate Federal regulators to exempt it using their authority under section 619[d][1](J) . . .''); 156 Cong. Rec. S6242 (daily ed. July 26, 2010) (statement of Sen. Scott Brown) (''One other area of remaining uncertainty that has been left to the regulators is the treatment of bank investments in venture capital funds. Regulators should carefully consider whether banks that focus overwhelmingly on lending to and investing in start-up technology companies should be captured by one-size-fits-all restrictions under the Volcker rule. I believe they should not be. Venture capital investments help entrepreneurs get the financing they need to create new jobs. Unfairly restricting this type of capital formation is the last thing we should be doing in this economy.'').

[111] *See* 156 Cong. Rec. E1295 (daily ed. July 13, 2010) (statement of Rep. Eshoo); 156 Cong. Rec. S5904 (daily ed. July 15, 2010) (statement of Sen. Boxer); 156 Cong. Rec. S5905 (daily ed. July 15, 2010) (statement of Sen. Dodd); 156 Cong. Rec. S6242 (daily ed. July 26, 2010) (statement of Sen. Scott Brown).

[112] *See* Financial Stability Oversight Counsel, Study and Recommendations on Prohibitions on Proprietary Trading and Certain Relationships with Hedge Funds and Private Equity Funds (Jan. 18, 2011), *available at https://www.treasury.gov/initiatives/Documents/Volcker%20sec%20%20619%20study%20final%201%2018%2011%20rg.pdf.* (FSOC Report).

[113] *See id.*

[114] *See id.*

[115] *See id.*

[116] *See* 76 FR 68915.

[117] *See* 79 FR 5703–04.

[118] *See id.*

[119] *See id.*

[120] *See id.*

[121] *Id.* (quoting S. Rep. No. 111–176 (2010)). *See also* H. Rep. No. 111–517 (2010) (indicating that venture capital funds are subsets of ''private funds''). However, the agencies did not address the difference in terminology that Congress used in section 402 of the Dodd-Frank Act (''private funds'') and section 619 (''hedge funds'' and ''private equity funds''). Nor did the agencies address the different statutory definitions of these terms. Section 402 defines ''private fund'' as ''an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act.'' Section 619 defines ''hedge fund or private equity fund'' as ''an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act, *or such similar funds as the [agencies] may, by rule . . . determine.*'' (emphasis added).

[122] *See* 79 FR 5704. The agencies do not believe the fact that Congress expressly distinguished these funds from other types of private funds in other provisions of the Dodd-Frank Act is dispositive. In this context, we do not believe that the differences in how the terms private equity fund and venture capital fund are used in the Dodd-Frank Act prohibit this proposal. The agencies believe it is reasonable under the authority given to the agencies under the statute to exclude these funds from the definition of ''covered fund.''

[123] *See* U.S. Department of the Treasury, *A Financial System That Creates Economic Opportunities: Banks and Credit Unions* at 77 (June 2017).

[124] *See id.*

[125] *See* 83 FR 33478.

[126] *See id.*

supporting excluding venture capital funds from the definition of covered fund.[127] Commenters stated that the legislative record does not indicate that Congress intended to restrict the activities of venture capital funds and that Members of Congress supported excluding venture capital funds from the definition of covered fund.[128] Commenters further stated that venture capital funds engage in long-term investments that promote growth, capital formation, and competitiveness.[129] Some commenters specifically recommended using the definition of ''venture capital fund'' in rule 203(*l*)–1 under the Advisers Act to determine the scope of a venture capital fund exclusion.[130] One commenter argued that venture capital funds should be treated the same as private equity funds.[131] Two commenters opposed excluding venture capital funds from the definition of covered fund.[132] In addition, several commenters opposed redefining ''covered fund'' using the definitions of ''hedge fund'' and ''private equity fund'' in Form PF.[133] Two commenters supported using the definitions in Form PF as a basis for excluding certain issuers from the definition of covered fund.[134] In addition, the agencies received several comments stating the rule should allow banking entities to invest in funds that engage only in long-term activities, including venture capital investments, that would be permissible for the banking entity to engage in directly.[135]

As discussed in detail below, the agencies are proposing to exclude from the definition of ''covered fund'' qualifying venture capital funds. The proposal would define a qualifying venture capital fund as an issuer that:

- Is a venture capital fund as defined in 17 CFR 275.203(*l*)–1; and
- Does not engage in any activity that would constitute proprietary trading, under § __.3(b)(1)(i), as if it were a banking entity.

With respect to any banking entity that acts as a sponsor, investment adviser, or commodity trading advisor to the issuer, the banking entity would be required to:

- Provide in writing to any prospective and actual investor the disclosures required under § __.11(a)(8), as if the issuer were a covered fund; and
- Ensure that the activities of the issuer are consistent with safety and soundness standards that are substantially similar to those that would apply if the banking entity engaged in the activities directly.

In addition, a banking entity that relies on this exclusion would not, directly or indirectly, be permitted to guarantee, assume, or otherwise insure the obligations or performance of the issuer. Finally, the proposed exclusion would require a banking entity's ownership interest in or relationship with a qualifying venture capital fund to:

- Comply with the limitations imposed in § __.14 (except the banking entity may acquire and retain any ownership interest in the issuer) and § __.15 of the implementing regulations, as if the issuer were a covered fund; and
- Be conducted in compliance with, and subject to, applicable banking laws and regulations, including applicable safety and soundness standards.

These requirements are intended to ensure that banking entity investments in qualifying venture capital funds are consistent with the purposes of section 13 of the BHC Act. First, a qualifying venture capital fund must be a venture capital fund as defined in 17 CFR 275.203(*l*)–1. The SEC has defined ''venture capital fund'' as any private fund[136] that:

- Represents to investors and potential investors that it pursues a venture capital strategy;
- Immediately after the acquisition of any asset, other than qualifying investments or short-term holdings, holds no more than 20 percent of the amount of the fund's aggregate capital contributions and uncalled committed capital in assets (other than short-term holdings) that are not qualifying investments, valued at cost or fair value, consistently applied by the fund;
- Does not borrow, issue debt obligations, provide guarantees or otherwise incur leverage, in excess of 15 percent of the private fund's aggregate capital contributions and uncalled committed capital, and any such borrowing, indebtedness, guarantee or leverage is for a non-renewable term of no longer than 120 calendar days, except that any guarantee by the private fund of a qualifying portfolio company's obligations up to the amount of the value of the private fund's investment in the qualifying portfolio company is not subject to the 120 calendar day limit;
- Only issues securities the terms of which do not provide a holder with any right, except in extraordinary circumstances, to withdraw, redeem or require the repurchase of such securities but may entitle holders to receive distributions made to all holders pro rata; and
- Is not registered under section 8 of the Investment Company Act of 1940 . . . , and has not elected to be treated as a business development company pursuant to section 54 of that Act . . . .[137]

''Qualifying investment'' is defined in the SEC's regulation to be: (1) An equity security issued by a qualifying portfolio company that has been acquired directly by the private fund from the qualifying portfolio company; (2) any equity security issued by a qualifying portfolio company in exchange for an equity security issued by the qualifying portfolio company described in (1); or (3) any equity security issued by a company of which a qualifying portfolio company is a majority-owned subsidiary, as defined in section 2(a)(24) of the Investment Company Act, or a predecessor, and is acquired by the private fund in exchange for an equity security described in (1) or (2).[138]

''Qualifying portfolio company,'' in turn, is defined in the SEC's regulation to be a company that: (1) At the time of any investment by the private fund, is not reporting or foreign traded and does not control, is not controlled by or under common control with another company, directly or indirectly, that is reporting or foreign traded; (2) does not borrow or issue debt obligations in connection with the private fund's investment in such company and distribute to the private fund the proceeds of such borrowing or issuance in exchange for the private fund's investment; and (3) is not an investment company, a private fund, an issuer that would be an investment company but for the exemption provided by 17 CFR 270.3a–7, or a commodity pool.[139] The SEC explained that the definitions of ''qualifying investment'' and ''qualifying portfolio company'' reflect the typical characteristics of investments made by venture capital funds and that these

[127] *See* ABA; BPI; IIB; SIFMA; Crapo et al.; Hultgren; Hensarling et al; National Venture Capital Association (NVCA); and Center for American Entrepreneurship (CAE).

[128] *See* ABA; BPI; Representative Hultgren; NVCA; and Center for Capital Markets Competitiveness (CCMC).

[129] *See* ABA; BPI; Representative Hultgren; NVCA; Representatives Hensarling et al.; and CAE.

[130] *See* Representative Hultgren and NVCA.

[131] *See* AIC.

[132] *See* Occupy the SEC and Data Boiler.

[133] *See, e.g.,* Americans for Financial Reform; AIC; and SIFMA.

[134] *See* Association for Corporate Growth and FI.

[135] *See e.g.,* ABA; NVCA; AIC; CCMC; and Committee on Capital Markets Regulation.

[136] For purposes of 17 CFR 275.203(*l*)–1, ''private fund'' is defined as ''an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940, but for section 3(c)(1) or 3(c)(7) of that Act.'' 15 U.S.C. 80b–2(a)(29).

[137] 17 CFR 275.203(*l*)–1(a).

[138] 17 CFR 275.203(*l*)–1(c)(3).

[139] 17 CFR 275.203(*l*)–1(c)(4).

definitions work together to cabin the definition of venture capital fund to only the funds that Congress understood to be venture capital funds during the passage of the Dodd-Frank Act.[140]

In the preamble to the regulations adopting this definition of venture capital fund, the SEC explained that the definition's criteria distinguish venture capital funds from other types of funds, including private equity funds and hedge funds. For example, the SEC explained that it understood the criteria for ''qualifying portfolio companies'' to be characteristic of issuers of portfolio securities held by venture capital funds and, taken together, would operate to exclude most private equity funds and hedge funds from the venture capital fund definition.[141] The SEC also explained that the criteria for ''qualifying investments'' under the SEC's regulation would help to differentiate venture capital funds from other types of private funds, such as leveraged buyout funds.[142] Moreover, the SEC explained that these criteria reflect the Congressional understanding that venture capital funds are less connected with the public markets and therefore may have less potential for systemic risk.[143] The SEC further explained that its regulation's restriction on the amount of borrowing, debt obligations, guarantees or other incurrence of leverage was appropriate to differentiate venture capital funds from other types of private funds that may engage in trading strategies that use financial leverage and may contribute to systemic risk.[144]

The agencies believe the SEC's rationale for adopting this definition of venture capital fund could also support using this definition as the foundation for an exclusion from the definition of ''covered fund.'' First, this definition helps to distinguish the investment activities of venture capital funds from those of hedge funds and private equity funds, which was one of the agencies' primary concerns in declining to adopt an exclusion for venture capital funds in the 2013 rule. Second, this definition includes criteria reflecting the characteristics of venture capital funds that the agencies believe may pose less potential risk to a banking entity sponsoring or investing in venture capital funds and to the financial system—specifically, the smaller role of leverage financing and a lesser degree of interconnectedness with public markets.[145] These characteristics would help to address the concern expressed in the preamble to the 2013 rule that the activities and risk profiles for banking entities regarding sponsorship of, and investment in, venture capital fund activities are not readily distinguishable from those funds that section 13 of the BHC Act was intended to capture.

While the SEC's regulatory definition in 17 CFR 275.203(*l*)–1 would form the base of the proposed exclusion for qualifying venture capital funds, the proposed exclusion includes additional criteria that would help promote the specific purposes of section 13 of the BHC Act. In particular, a qualifying venture capital fund would not be permitted to engage in any activity that would constitute proprietary trading under § __.3(b)(1)(i) as if the fund were a banking entity. This requirement would promote one of the purposes of the covered fund provisions in section 13 of the BHC Act, which was to prevent banking entities from circumventing the proprietary trading prohibition through fund investments.[146] Under this requirement, a qualifying venture capital fund could not engage in any activities that are principally for the purpose of short-term resale, benefitting from actual or expected short-term price movements, realizing short-term arbitrage profits, or hedging one or more of the positions resulting from such purchases or sales.

The agencies are considering an additional restriction for which they are seeking specific comment. Under this additional restriction, and notwithstanding 17 CFR 275.203(*l*)–1(a)(2), the venture capital fund exclusion would be limited to funds that do not invest in companies that, at the time of the investment, have more than a limited dollar amount of total annual revenue, calculated as of the last day of the calendar year. The agencies are considering what specific threshold would be appropriate. For example, the agencies are considering whether a limit of $50 million in annual revenue would be appropriate, or whether a higher or lower limit would help to appropriately differentiate venture capital funds from the types of funds that section 13 of the BHC Act was intended to address.

A banking entity that serves as a sponsor, investment adviser, or commodity trading advisor to a qualifying venture capital fund would be required to provide the disclosures required under § __.11 (a)(8) to prospective and actual investors in the fund. In addition, any banking entity that relies on the exclusion would not be permitted to, directly or indirectly, guarantee, assume or otherwise insure the obligations or performance of the qualifying venture capital fund. These requirements would promote yet another goal of section 13 of the BHC Act, which was to prevent banking entities from bailing out funds that they sponsor or advise.[147]

A banking entity that serves as a sponsor, investment adviser, or commodity trading advisor to a qualifying venture capital fund also must ensure the fund's activities are consistent with safety and soundness standards that are substantially similar to those that would apply if the banking entity engaged in the activities directly. Therefore, a banking entity could not rely on this exclusion to sponsor an investment fund that exposes the banking entity to the type of high-risk trading and investment activities that the covered fund provisions of section 13 of the BHC Act were intended to restrict. Further, a banking entity's investment in or relationship with a qualifying venture capital fund would be subject to § __14 (except the banking entity may acquire and retain any ownership interest in the fund in accordance with the terms of the exclusion) and § __.15 of the implementing regulations, as if the fund were a covered fund. These limitations would help to ensure that the risk a banking entity takes on as a result of its investment in or relationship with a qualifying venture capital fund remains appropriately limited. Like the

[140] *See* Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers, 76 FR 39646, 39657 (Jul. 6, 2011).

[141] 76 FR 39656.

[142] *See, e.g.,* 76 FR 39653 (explaining that a limitation on secondary market purchases of a qualifying portfolio company's shares would recognize ''the critical role this condition played in differentiating venture capital funds from other types of private funds'').

[143] 76 FR 39648 (''[T]he proposed definition of venture capital fund was designed to . . . address concerns expressed by Congress regarding the potential for systemic risk.''); 76 FR 39656 (''Congressional testimony asserted that these funds may be less connected with the public markets and may involve less potential for systemic risk. This appears to be a key consideration by Congress that led to the enactment of the venture capital exemption. As we discussed in the Proposing Release, the rule we proposed sought to incorporate this Congressional understanding of the nature of investments of a venture capital fund, and these principles guided our consideration of the proposed venture capital fund definition.'').

[144] 76 FR 39662. *See also* 76 FR 39657 (''We proposed these elements of the qualifying portfolio company definition because of the focus on leverage in the Dodd-Frank Act as a potential contributor to systemic risk as discussed by the Senate Committee report, and the testimony before Congress that stressed the lack of leverage in venture capital investing.'').

[145] *See supra* notes 106 and 107.

[146] *See, e.g.,* Treasury Report at 77 and FSOC Report at 6.

[147] *See* Treasury Report at 77 and FSOC Report at 6.

restrictions on guarantees described above, applying the requirements in § __.14 would restrict a banking entity that sponsors or advises the fund from providing additional support or bailing out the fund. Applying the requirements in § __.15 would ensure that the fund does not expose the banking entity to high-risk assets or high-risk trading strategies. In particular, to the extent a fund would expose a banking entity to a high-risk asset or high-risk trading strategy (or otherwise engage in proprietary trading), the fund would not be a qualifying venture capital fund. Therefore, prior to making an investment in a qualifying venture capital fund, a banking entity would need to ensure that the fund's investment mandate and strategy would satisfy the requirements of § __.15. In addition, a banking entity would need to monitor the activities of a qualifying venture capital fund to ensure it satisfies these requirements on an ongoing basis.

The agencies believe that qualifying venture capital funds meeting each of these requirements would not raise the type of concerns that were the target of section 13 of the BHC Act. The proposed exclusion, including incorporation of the SEC's regulatory venture capital fund definition in 17 CFR 275.203(*l*)–1, should also address the concerns the agencies expressed in the preamble to the 2013 rule that the activities and risk profiles for banking entities regarding sponsorship of, and investment in, venture capital funds are not readily distinguishable from those of funds that section 13 of the BHC Act was intended to capture. Accordingly, the agencies believe the foregoing requirements could give effect to the language and purpose of section 13 of the BHC Act without allowing banking entities to evade the requirements of section 13. The agencies further believe that permitting banking entities to invest in and have certain relationships with qualifying venture capital funds would be consistent with statements by Members of Congress that were made contemporaneously with passage of the Dodd-Frank Act.[148]

The agencies believe that properly-conducted activities involving these types of venture capital funds could promote and protect the safety and soundness of banking entities and the financial stability of the United States. Qualifying venture capital funds could allow banking entities to diversify their permissible investment activities, and like other exclusions provided in the 2013 rule, allow banking entities to share the costs and risks of their permissible investment activities with third-party investors.[149] Investments in qualifying venture capital funds could allow banking entities to allocate available resources to a more diverse array of long-term investments in a broader range of geographic areas, industries and sectors than the banking entity may be able to access directly.

Banking entity investments in qualifying venture capital funds may benefit the broader financial system by improving the flow of financing to small businesses and start-ups and thus may promote and protect the financial stability of the United States. Permitting these types of investments would be consistent with the Treasury Department's June 2017 report, which said such fund investments ''can greatly assist in the formation of venture and other capital that is critical to fund economic growth opportunities.'' [150] Similarly, the agencies recognized the economic benefits of allowing banking entities to make venture capital-style investments in the preamble to the 2013 rule, despite not adopting an exclusion for such funds.[151] Further, it is possible that permitting banking entities to extend financing to businesses through qualifying venture capital funds would allow banking entities to compete more effectively with non-banking entities that are not subject to the same prudential regulation or supervision as banking entities subject to section 13 of the BHC Act. In this respect, the proposal could allow a larger volume of permissible banking and financial activities to occur in the regulated banking system.

In addition, it is widely noted that the availability of venture and other financing from funds is not uniform throughout the United States. In particular, it is noted that such funding is generally available on a competitive basis for companies with a significant presence in certain geographic regions (*e.g.,* the New York metropolitan area, the Boston metropolitan area and ''Silicon Valley'' and surrounding areas).[152] In this respect, the proposal could allow banking entities with a presence in and knowledge of the areas where venture capital and other types of financing are less readily available to businesses to provide this type of financing in those areas.

For all of these reasons, the agencies believe the proposal could promote the benefits of long-term investment that the agencies and Members of Congress have previously recognized, while also addressing the concerns that were the target of the funds prohibition in section 13 of the BHC Act. The agencies are seeking comment on whether to exclude other types of funds that, like qualifying venture capital funds, provide important capital to businesses through long-term investments and do not engage in proprietary trading and other activities that section 13 of the BHC Act was intended to prohibit.

The agencies are requesting comment on the proposal to exclude qualifying venture capital funds from the covered fund definition, in particular:

Question 39. Is the proposed exclusion for qualifying venture capital funds appropriate? Why or why not?

Question 40. Does the proposed exclusion for qualifying venture capital funds include the appropriate vehicles? Why or why not? If not, how should the agencies expand or narrow the vehicles for which banking entities would be permitted to make use of the exclusion? What modifications to the proposed exclusion would be appropriate and why?

Question 41. Are the proposed conditions on the proposed exclusion for qualifying venture capital funds appropriate? Why or why not? If not appropriate, how should the agencies modify the conditions, and why?

Question 42. Would permitting banking entities to invest in or sponsor a qualifying venture capital fund promote and protect the safety and soundness of banking entities and the financial stability of the United States? What data is available to support an argument that venture capital funds would or would not promote and protect the safety and soundness of banking entities and the financial stability of the United States?

Question 43. Are the requirements for a qualifying venture capital fund sufficient to distinguish these types of funds from covered funds? Are there any additional standards or requirements that should apply to a

[148] *See supra* note 110.

[149] 79 FR 5681.

[150] Treasury Report at 77.

[151] 79 FR 5704 (''While the final rule does not provide a separate exclusion for venture capital funds from the definition of covered fund, the [a]gencies recognize that certain venture capital investments by banking entities provide capital and funding to nascent or early-stage companies and small businesses and also may provide these companies expertise and services. Other provisions of the final rule or the statute may facilitate, or at least not impede, other forms of investing that may provide *the same or similar benefits.*'') (emphasis added).

[152] *See, e.g.,* Richard Florida, Venture Capital Remains Highly Concentrated in Just a Few Cities, CityLab (Oct. 3, 2017), *available at https://www.citylab.com/life/2017/10/venture-capital-concentration/539775/;* PricewaterhouseCoopers & CB Insights, MoneyTree Report (Q3 2019), *available at: https://www.pwc.com/us/en/moneytree-report/assets/moneytree-report-q3-2019.pdf.*

qualifying venture capital fund? If so, what are they and why should they apply?

Question 44. Should the additional proposed revenue requirement be added to the venture capital fund exclusion to help ensure that the investments made by excluded venture capital funds are truly made in small and early-stage companies? Why or why not? If the additional restriction is added, is $50 million an appropriate annual revenue limit? If not, what would be an appropriate revenue limit? Is there a metric other than annual gross revenue, such as amount of time in operation, that would serve as a better indicator of whether an investment in a company should allow a venture capital fund to qualify for the exclusion?

Question 45. Should the proposed venture capital fund exclusion require that 100 percent of the fund's holdings, other than short-term holdings, be in qualifying investments instead of the 80 percent that is required under 17 CFR 275.203(*l*)–1(a)(2)? Why or why not?

Question 46. Are there provisions or conditions of the definition under rule 203(*l*)–1 under the Advisers Act that are inappropriate for purposes of determining an exclusion from the ''covered fund'' definition in § __.10? If so, please explain why the purposes of an exclusion from the ''covered fund'' definition should lead the agencies to exclude a provision or condition, such as paragraph (a)(2), of the definition under rule 203(*l*)–1 under the Advisers Act.

Question 47. How would a banking entity ensure the activities of a qualifying venture capital fund are consistent with the safety and soundness standards that apply to the banking entity? Are the standards and requirements for a banking entity that acts as a sponsor, investment adviser, or commodity trading advisor to a qualifying venture capital fund appropriate to apply to a qualifying venture capital fund? Are there any additional standards or requirements that should apply to a banking entity that acts as a sponsor, investment adviser, or commodity trading advisor to a qualifying venture capital fund? If so, what are they, and why should they apply?

Question 48. A banking entity that sponsors or advises a qualifying venture capital fund would be required to comply with the limitations imposed by §§ __.14 (except the banking entity may acquire and retain any ownership interest in the issuer) and __.15 of the 2013 rule, as if the qualifying venture capital fund were a covered fund. Is the application of these sections to the proposed venture capital fund exclusion appropriate? Why or why not?

Question 49. Is it sufficiently clear what kind of assets or investments would result in a conflict of interest or an exposure to a high-risk asset or high-risk trading strategy in the context of a qualifying venture capital fund? Should the agencies provide additional parameters regarding the types of assets and strategies that could result in such exposure in this context?

Question 50. Should the agencies exclude from the definition of covered fund, or otherwise permit the activities of, certain long-term investment funds that would not be qualifying venture capital funds? For example, should the agencies provide an exclusion for issuers (1) that make long-term investments that a banking entity could make directly, (2) that hold themselves out as entities or arrangements that make investments that they intend to hold for a set minimum time period, such as two years, (3) whose relevant offering and governing documents reflect a long-term investment strategy, and (4) that meet all other requirements of the proposed qualifying venture capital fund exclusion (other than that the issuers would be venture capital funds as defined in 17 CFR 275.203(*l*)–1)? Would the rationale for excluding qualifying venture capital funds also extend to such long-term investment funds? Why or why not? If the agencies were to adopt an exclusion for long-term investment funds, should the agencies impose safeguards on such an exclusion? If so, what safeguards should the agencies impose, and why? Would such an exclusion promote and protect the safety and soundness of the banking entity and the financial stability of the United States? If so, how?

Question 51. Is there evidence that the covered fund provisions have caused banking entities to make more standalone direct balance sheet investments? If so, have these investments increased or decreased risk to banking entities?

Question 52. Is there evidence that the covered fund provisions have negatively impacted the provision of financing? If so, is this impact non-uniform? For example, are effects more acute in certain geographic areas or in certain industries? To the extent negative effects are asymmetric by geography or otherwise, would the proposal effectively address these asymmetries? Is there evidence that the covered fund provisions have caused end-users to seek financing from non-banking entities? If so, would the proposed exclusion for qualifying venture capital funds help to address these impacts?

3. Family Wealth Management Vehicles

The agencies are proposing to exclude from the definition of ''covered fund'' under § __.10(b) of the rule any entity that acts as a ''family wealth management vehicle.'' The proposed family wealth management vehicle exclusion would be available to an entity that: (1) If organized as a trust, the grantor(s) of the entity are all family customers and, (2) if not organized as a trust, a majority of the voting interests in the entity are owned (directly or indirectly) by family customers; and the entity is owned only by family customers and up to 3 closely related persons of the family customers.[153] In response to the 2018 proposal, commenters raised concerns that family wealth management vehicles were not specifically excluded from the covered fund definition following the adoption of the 2013 rule or in the 2018 proposed rule.[154] Commenters stated that family wealth management vehicles are typically designed to facilitate family wealth management, estate planning, and other similar objectives and may take a variety of legal forms, including trusts, limited liability companies, limited partnerships, and other pooled investment vehicles.[155] Commenters further stated that absent an exclusion from the covered fund definition, family wealth management vehicles could be restricted from obtaining various types of ordinary course banking and asset management services from a banking entity simply because they would receive those services through a family wealth management vehicle.[156] Commenters provided examples of these services, including investment advice, brokerage execution, financing, and clearance and settlement services.[157] A commenter also stated that family wealth management vehicles structured as trusts for the benefit of family members also often appoint banking entities, acting in a fiduciary capacity, as trustees for the trusts.[158]

[153] Under § __.10(c)(17)(iii)(A) of the proposed rule, ''closely related person'' would mean ''a natural person (including the estate and estate planning vehicles of such person) who has a longstanding business or personal relationship with any family customer.''

[154] *See e.g.,* ABA; BPI; IAA; and SIFMA. These commenters stated that many family wealth management vehicles rely on the exclusions provided by sections 3(c)(1) or 3(c)(7) of the Investment Company Act and would therefore be covered funds unless they satisfy the conditions for one of the 2013 rule's exclusions from the covered fund definition.

[155] *See e.g.,* IAA and SIFMA.

[156] *See e.g.,* BPI; IAA; and SIFMA.

[157] *See e.g.,* BPI and SIFMA.

[158] *See* SIFMA.

In the 2018 proposal, the agencies requested comment regarding whether the agencies should address the application of Super 23A in the context of family wealth management vehicles. One commenter responded that the agencies should incorporate the exemptions under Section 23A and Regulation W into the definition of ''covered transaction.'' [159] However, commenters also stated that incorporating the exemptions under Section 23A and Regulation W would still not permit banking entities to engage in the full range of transactions and services sought by family wealth management vehicles, including ordinary extensions of credit, and therefore the regulations would continue to unnecessarily impede traditional banking and asset management services.[160] Commenters further stated that incorporation of the exemptions would not eliminate the uncertainty and the associated burden for banking entities resulting from an analysis of the status of a family wealth management vehicle as a covered fund. The proposal is intended to allow banking entities to provide the full range of traditional customer-facing banking and asset management services to family wealth management vehicles and recognizes that a specific exclusion for family wealth management vehicles—rather than merely addressing the application of Super 23A—is necessary to address the issues related family wealth management vehicles more completely and effectively.

Similar to the customer facilitation vehicles discussed below, the agencies believe that the proposed exclusion for family wealth management vehicles would appropriately allow banking entities to structure services or transactions for customers, or to otherwise provide traditional customer-facing banking and asset management services, through a vehicle, even though such a vehicle may rely on section 3(c)(1) or 3(c)(7) of the Investment Company Act or would otherwise be a covered fund under the implementing regulations. The agencies have previously indicated their intent to avoid unintended results that might follow from a definition of ''covered fund'' that is inappropriately imprecise,[161] and believe that these commenters have identified such unintended results. The agencies believe that an exclusion for family wealth management vehicles would effectively tailor the definition of covered fund by permitting banking entities to continue to provide traditional banking and asset management services that do not involve the types of risks section 13 was designed to address. As the agencies noted in the preamble to the 2013 rule, section 13 and the implementing regulations were designed to permit banking entities to continue to provide client-oriented financial services, including asset management services.[162] In addition, the agencies believe that an exclusion for family wealth management vehicles is consistent with section 13(d)(1)(D), which permits banking entities to engage in transactions on behalf of customers, when those transactions would otherwise be prohibited under section 13. The proposed exclusion would similarly allow banking entities to provide traditional services to customers through vehicles used to manage the wealth and other assets of those customers and their families.

Under the proposed exclusion, a family wealth management vehicle would include any entity that is not, and does not hold itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities, provided that: (1) If the entity is a trust, the grantor(s) of the entity are all family customers and, (2) if the entity is not a trust, a majority of the voting interests are owned (directly or indirectly) by family customers and the entity is owned only by family customers and up to 3 closely related persons of the family customers. Under the proposed exclusion, a family customer would mean a family client, as defined in Rule 202(a)(11)(G)–1(d)(4) of the Advisers Act (17 CFR 275.202(a)(11)(G)–1(d)(4)); or any natural person who is a father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of a family client, spouse or spousal equivalent of any of the foregoing.[163]

In addition, a banking entity would rely on the proposed exclusion only if the banking entity (or an affiliate): (1) Provides bona fide trust, fiduciary, investment advisory, or commodity trading advisory services to the entity; (2) does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of such entity; (3) complies with the disclosure obligations under § __.11(a)(8), as if such entity were a covered fund; [164] (4) does not acquire or retain, as principal, an ownership interest in the entity, other than up to 0.5 percent of the entity's outstanding ownership interests that may be held by the banking entity and its affiliates for the purpose of and to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns; (5) complies with the requirements of §§ __.14(b) and __.15, as if such issuer were a covered fund; and (6) complies with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the issuer were an affiliate thereof. The agencies believe that, collectively, the conditions on the proposed exclusion should help to ensure that family wealth management vehicles are used for customer oriented financial services provided on arms-length, market terms, and to prevent evasion of the requirements of section 13 of the BHC Act and the implementing regulations. In addition, these proposed conditions are based on existing conditions in other provisions of the implementing regulations,[165] which the

[159] *See id.*

[160] *See e.g.,* BPI and SIFMA.

[161] *See* 83 FR 33471; 79 FR 5670–71.

[162] *See* 79 FR 5541 (describing the 2013 rule as ''permitting banking entities to continue to provide, and to manage and limit the risks associated with providing, client-oriented financial services that are critical to capital generation for businesses of all sizes, households and individuals, and that facilitate liquid markets. These client-oriented financial services, which include underwriting, market making, and asset management services, are important to the U.S. financial markets and the participants in those markets.'').

[163] All terms defined in Rule 202(a)(11)(G)–1 of the Advisers Act (17 CFR 275.202(a)(11)(G)–1) have the same meaning in the proposed family wealth management exclusion.

[164] The obligations under § __.11(a)(8) of the proposed rule would apply in connection with the exemption for organizing and offering covered funds, which would typically require the preparation and distribution of offering documents. The agencies understand that offering documents may not be necessary in connection with most family wealth management vehicles given the vehicles' purpose and the requirement that interests in such vehicles be limited to family customers and up to 3 closely related persons of the family customers. Accordingly, the agencies believe that for purposes of the proposed exclusion, a banking entity could satisfy these written disclosure obligations in a number of ways, such as including them in the family wealth management vehicle's governing documents, in account opening materials or in supplementary materials. The condition reflects the agencies' interest in providing family customers with the substance of the disclosures, rather than a concern with the document in which they are provided. Similarly, the agencies expect the specific wording of the disclosures in § __.11(a)(8) of the proposed rule may need to be modified to accurately reflect the specific circumstances of the family wealth management vehicle.

[165] *See* implementing regulations § __.11(a)(5) (imposing, as a condition of the exemption for organizing and offering a covered fund, that a banking entity and its affiliates do not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the covered fund or of any covered fund in which such covered fund

Continued

agencies believe should facilitate banking entities' compliance.

The agencies are not proposing to apply Super 23A to family wealth management vehicles because, as discussed above, the agencies understand that the application of Super 23A to family wealth management vehicles would prohibit banking entities from providing the full range of banking and asset management services to customers using these vehicles. However, the agencies are proposing to apply the prohibition on purchases of low-quality assets under the Board's regulations implementing section 23A of the Federal Reserve Act (12 CFR 223.15(a)) to help ensure that the exclusion for family wealth management vehicles does not allow banking entities to ''bail out'' the vehicle.

The agencies believe that the proposed definition of a family wealth management vehicle appropriately distinguishes it from the type of entity that section 13 of the BHC Act intended to capture. The proposed definition would require that a family wealth management vehicle not raise money from investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities. This aspect of the definition would help to differentiate family wealth management vehicles from covered funds, which raise money from investors for this purpose. Defining ''family customer'' by building off of the definition of ''family client'' from rule 202(a)(11)(G)–1(d)(4) of Advisers Act (family office rule) may facilitate compliance by using a definition known in the financial services industry. At the same time, the agencies recognize that the purpose of the family wealth management exclusion differs from the purpose of the family office rule, and should be designed to capture the types of persons and entities to which banking entities have traditionally provided banking and asset management services, as these services do not expose banking entities to the types of risks that section 13 was intended to restrict and would facilitate banking entities' customer-facing financial services. Accordingly, the agencies believe it appropriate to include as ''family customers'' certain in-laws of the family clients as well as a limited number of persons closely related to the family customers.

Question 53. Should the agencies exclude family wealth management vehicles from the definition of ''covered fund'' as proposed? Does the agencies' proposed definition of ''family wealth management vehicle'' include the appropriate vehicles? What, if any, modifications to the scope, definitions or conditions prescribed in the proposed exclusion should be made? Should the agencies provide any additional guidance or requirements regarding the conditions? For example, should the agencies provide additional guidance or requirements regarding the timing of the disclosures required by § __.11(a)(8)?

Question 54. Would an exclusion for family wealth management vehicles create any opportunities for evasion, for example, by allowing a banking entity to structure investment vehicles to evade the restrictions of section 13 on covered fund activities? Why or why not? If so, how could such concerns be addressed? Please explain.

Question 55. Are there alternative approaches the agencies should take to enable banking entities to provide family wealth management vehicles with banking and asset management services?

Question 56. The proposed exclusion would require the banking entity and its affiliates to comply with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the issuer were an affiliate thereof. Should the agencies adopt this proposed requirement? Why or why not? Would this proposed requirement address the agencies' concerns about banking entities or their affiliates bailing out a family wealth management vehicle? Why or why not?

Question 57. The proposed exclusion permits ownership of the family wealth management vehicle by 3 closely related persons of the family customer owners. Should the exclusion permit closely related persons to invest in family wealth management vehicles? What, if any, modifications should the agencies make to the proposed definition of ''closely related person''? Why or why not? For example, should the definition of ''closely related person'' include individuals with longstanding personal relationships with family customers, but exclude individuals with only longstanding business relationships with family customers, or vice versa? Should the number of closely related persons permitted to invest in the family wealth management vehicle be increased, decreased, or remain at 3 such persons? Should, for example, the agencies consider raising the number of closely related persons to 10 to parallel the number of permitted unaffiliated co-venturers permitted under the § __.10(c) exclusion for joint ventures? Why or why not? What if any other or additional qualitative or quantitative limits on the ownership interest of closely related persons in family wealth management vehicles? Would the inclusion of closely related persons that are not family customers in the family wealth management vehicle exclusion raise concerns about these vehicles being used to evade the prohibitions in section 13 of the BHC Act? Why or why not? Commenters should offer specific examples detailing when it would be appropriate for a family wealth management vehicle to include persons that are not family customers.

Question 58. The proposed family wealth management vehicle exclusion would permit a banking entity or its affiliates to hold up to 0.5 percent of the issuer's outstanding ownership interests only to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns. Instead of permitting such an ownership interest to be held by a banking entity or its affiliates, should the agencies permit such an ownership interest to be held by a third party that is unaffiliated with either the banking entity or the family customer? Why or why not?

Question 59. The proposed family wealth management vehicle exclusion would require the banking entity and its affiliates to comply with the requirements of § __.14(b) and § __.15, as if the family wealth management vehicle were a covered fund. Should the exclusion require also that the banking entity and its affiliates comply with the requirements of all of § __.14? Why or why not?

4. Customer Facilitation

The agencies are proposing to exclude from the definition of ''covered fund'' under § __.10(b) of the rule any issuer that acts as a ''customer facilitation vehicle.'' The proposed customer facilitation vehicle exclusion would be available for any issuer that is formed by or at the request of a customer of the banking entity for the purpose of providing such customer (which may include one or more affiliates of such customer) with exposure to a transaction, investment strategy, or other service provided by the banking entity. In response to the 2018 proposal, a number of commenters indicated that

invests); § __.11(a)(8) (imposing, as a condition of the exemption for organizing and offering a covered fund, that the banking entity provide certain disclosures to any prospective and actual investor in the covered fund); § __.10(c)(2)(ii) (allowing, as a condition of the exclusion from the covered fund definition for wholly-owned subsidiaries, for the holding of up to 0.5 percent of outstanding ownership interests by a third party for limited purposes); and § __.14(b) (subjecting certain transactions with covered funds to section 23B of the Federal Reserve Act).

the 2013 rule has restricted their ability to provide banking and asset management services to customers and requested an exclusion for vehicles or structures created to accommodate customer exposure to securities, transactions, or other services that banking entities can provide directly to the customers.[166] Commenters provided examples of services or transactions that customers (or a group of affiliated customers) might prefer to receive from a banking entity through a vehicle formed to facilitate those services or transactions rather than directly. For example, a customer might wish to purchase structured notes issued by a vehicle rather than a banking entity for certain legal, counterparty risk management, or accounting reasons specific to the customer.[167] Similarly, a customer might seek financing or exposure to a particular, customer-specified investment through a special purpose vehicle to structure the transaction for the customer's business needs or objectives.[168] Another commenter stated that many clients, in particular non-U.S. clients, prefer to face an entity structure rather than a banking entity to facilitate their trading and lending transactions for a variety of legal, counterparty risk management and accounting reasons.[169]

The agencies believe that the proposed exclusion for customer facilitation vehicles would appropriately allow banking entities to structure these types of services or transactions for customers, or to otherwise provide traditional customer-facing banking and asset management services, through a vehicle, even though such a vehicle may rely on section 3(c)(1) or 3(c)(7) of the Investment Company Act or would otherwise be a covered fund under the implementing regulations. While neither section 13 nor the implementing regulations would restrict a banking entity from providing these services to a customer directly, commenters have indicated that the broad definition of ''covered fund'' in the 2013 rule has prevented or otherwise impeded banking entities from providing such services to a customer through vehicles owned or formed by that customer. The agencies have previously indicated their intent to avoid unintended results that might follow from a definition of ''covered fund'' that is inappropriately imprecise,[170] and believe that these commenters have identified such unintended results. In particular, the agencies do not believe that section 13 was intended to interfere unnecessarily with the ability of banking entities to provide services to their customers simply because the customer may prefer to receive those services through a vehicle or through a transaction with a vehicle instead of directly with the banking entity. As the agencies noted in the preamble of the 2013 rule, section 13 and the implementing regulations were designed to permit banking entities to continue to provide client-oriented financial services, which the agencies believe would include asset management services provided through customer facilitation vehicles.[171]

The agencies have previously indicated that section 13 permits the agencies to tailor the scope of the definition of covered fund to funds that engage in the investment activities contemplated by section 13 (as opposed, for example, to vehicles that merely serve to facilitate corporate structures).[172] In addition, the agencies believe that an exclusion for customer facilitation vehicles is consistent with section 13(d)(1)(D), which permits banking entities to engage in transactions on behalf of customers, when those transactions would otherwise be prohibited under section 13. The agencies have elsewhere tailored the 2013 rule to allow banking entities to meet their customers' needs.[173] The proposed exclusion would similarly allow banking entities to provide customer-oriented financial services through a vehicle when that vehicle's purpose is to facilitate a customer's exposure to those services.[174] The agencies believe that these vehicles do not expose banking entities to the types of risks that section 13 was intended to restrict and would facilitate banking entities' customer-facing financial services.

The proposed exclusion would require that the vehicle be formed by or at the request of the customer. This requirement is intended to help ensure that customer facilitation vehicles are formed to provide customer-oriented financial services, and to differentiate customer facilitation vehicles from covered funds that are organized and offered by the banking entity. This condition would not preclude a banking entity from marketing its services through the use of customer facilitation vehicles or discussing with its customers prior to formation of the customer facilitation vehicle the potential benefits of structuring such services through a vehicle.

A banking entity would be able to rely on the customer facilitation vehicle exclusion only under certain conditions, including that all of the ownership interests of the issuer are owned by the customer (which may include one or more of the customer's affiliates) for whom the issuer was created, other than a *de minimis* interest that may be held by the banking entity or its affiliates for specified purposes (as described below). The agencies believe that this condition would be appropriate to prevent banking entities from using the proposed exclusion for customer facilitation vehicles to evade the restrictions of section 13. A banking entity and its affiliates would have to maintain documentation outlining how the banking entity intends to facilitate the customer's exposure to such transaction, investment strategy, or service. The agencies believe that this condition would support their ability to examine for, and make assessments regarding, compliance with the proposed exclusion.

Additional conditions for the customer facilitation vehicle exclusion would include that the banking entity and its affiliates: (1) Do not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or

[166] *See* SIFMA; FSF; and ABA.

[167] *See* SIFMA and FSF.

[168] *See* ABA.

[169] *See* BPI.

[170] *See* 83 FR 33471; 79 FR 5670–71.

[171] *See* 79 FR 5541 (describing the 2013 rule as ''permitting banking entities to continue to provide, and to manage and limit the risks associated with providing, client-oriented financial services that are critical to capital generation for businesses of all sizes, households and individuals, and that facilitate liquid markets. These client-oriented financial services, which include underwriting, market making, and asset management services, are important to the U.S. financial markets and the participants in those markets.'').

[172] *See* 83 FR 33471 (citing 79 FR 5666).

[173] For example, the agencies in 2019 amended the exemption for risk-mitigating hedging activities to allow banking entities to acquire or retain an ownership interest in a covered fund as a risk-mitigating hedge when acting as an intermediary on behalf of a customer that is not itself a banking entity to facilitate the exposure by the customer to the profits and losses of the covered fund. *See* 2019 amendments § __.13(a)(1)(ii). *See also* 2019 amendments § __.3(d)(11) (excluding from the definition of ''proprietary trading'' the entering into of customer-driven swaps or customer-driven security-based swaps and matched swaps or security-based swaps under certain conditions).

[174] The proposed exclusion would not require that the customer relationship be pre-existing. That is, the proposed exclusion could be available for an issuer that is formed for the purpose of facilitating the exposure of a customer of the banking entity where the customer relationship begins only in connection with the formation of that issuer. The agencies took a similar approach to this question in describing the exemption for activities related to organizing and offering a covered fund under § __.11(a) of the 2013 rule. *See* 79 FR 5716. The agencies indicated that section 13(d)(1)(G), under which the exemption under § __.11(a) was adopted, did not explicitly require that the customer relationship be pre-existing. Similarly, section 13(d)(1)(D) does not explicitly require a pre-existing customer relationship.

performance of such issuer; (2) comply with the disclosure obligations under § __.11(a)(8), as if such issuer were a covered fund;[175] (3) do not acquire or retain, as principal, an ownership interest in the issuer, other than up to 0.5 percent of the issuer's outstanding ownership interests that may be held by the banking entity and its affiliates for the purpose of and to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns; (4) comply with the requirements of § __.14(b) and § __.15, as if such issuer were a covered fund; and (5) comply with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the issuer were an affiliate thereof.

The agencies believe that, collectively, the conditions on the proposed exclusion should help to ensure that customer facilitation vehicles would be used for customer-oriented financial services provided on arms-length, market terms, and should help to prevent evasion of the requirements of section 13 and the implementing regulations. The agencies also believe that the conditions would be consistent with the purposes of section 13. In addition, these proposed conditions are based on existing conditions in other provisions of the implementing regulations,[176] which the agencies believe should facilitate banking entities' compliance.

The agencies are not proposing to apply Super 23A to customer facilitation vehicles because the agencies understand that the application of Super 23A to customer facilitation vehicles would prohibit banking entities from providing the full range of banking and asset management services to customers using these vehicles. However, the agencies are proposing to apply the prohibition on purchases of low-quality assets under the Board's regulations implementing section 23A of the Federal Reserve Act (12 CFR 223.15(a)) to help ensure that the exclusion for customer facilitation vehicles does not allow banking entities to ''bail out'' the vehicle.

Question 60. Is the proposed exclusion for customer facilitation vehicles appropriate? Why or why not?

Question 61. Does the proposed exclusion for customer facilitation vehicles include the appropriate vehicles? Why or why not? If not, how should the agencies expand or narrow the vehicles for which banking entities would be permitted to make use of the exclusion? What modifications to the proposed exclusion would be appropriate and why?

Question 62. Are the proposed conditions on the proposed exclusion for customer facilitation vehicles appropriate? Why or why not? If not appropriate, how should the agencies modify the conditions, and why?

Question 63. Should the agencies require, as a condition for satisfying the proposed exclusion, that the customer facilitation vehicle be formed at the request of the customer? Why or why not?

Question 64. Should the agencies specify to which types of transaction, investment strategy, or other service such a customer facilitation vehicle could be formed to facilitate exposure? Why or why not?

Question 65. The proposed exclusion would permit a banking entity or its affiliates to hold up to 0.5 percent of the issuer's outstanding ownership interests only to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns. Instead of permitting such an ownership interest to be held by a banking entity or its affiliates, should the agencies permit such an ownership interest to be held by a third party that is unaffiliated with either the banking entity or the customer? Why or why not?

Question 66. The proposed exclusion would require the banking entity and its affiliates to comply with the requirements of § __.14(b) and § __.15, as if the customer facilitation vehicle were a covered fund. Should the exclusion require also that the banking entity and its affiliates comply with the requirements of all of § __.14? Why or why not?

Question 67. The proposed exclusion would require the banking entity and its affiliates to comply with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the issuer were an affiliate thereof. Should the agencies adopt this proposed requirement? Why or why not? Would this proposed requirement address the agencies' concerns about banking entities or their affiliates bailing out a customer facilitation vehicle? Why or why not?

Question 68. Would the proposed exclusion for customer facilitation vehicles create any opportunities for evasion, for example, by allowing a banking entity to structure such vehicles in a manner to evade the restrictions of section 13 on covered fund activities? Why or why not? If so, what conditions could be imposed to address such concerns? For example, should the agencies impose a restriction that a customer facilitation vehicle only be able to serve customers who initiate or request a given transaction, investment strategy, or other service? Do the conditions that would be imposed on the proposed exclusion address those concerns? Please explain.

Question 69. Should the agencies take a different approach to enable banking entities to provide customers with exposure to a transaction, investment strategy, or other service provided by the banking entity? For example, would modifications to § __.14 of the implementing regulations, whether as proposed below or otherwise, allow banking entities to provide customers with this exposure? Please explain.

Question 70. For banking entities with significant trading assets and liabilities that sponsor funds relying on the proposed exclusion for customer facilitation vehicles, would it be appropriate to require additional documentation requirements pursuant to § __.20(e)(2) consistent with other sponsored funds relying on certain exclusions from the definition of covered fund? Why or why not? Similarly, should the documentation requirements of § __.20(e)(2) also be applied to sponsored funds relying on

[175] The obligations under § __.11(a)(8) apply in connection with the exemption for organizing and offering covered funds, which would typically require the preparation and distribution of offering documents. The agencies understand that offering documents may not be necessary in connection with most customer facilitation vehicles given the vehicles' purpose and the requirement that interests in such vehicles will be limited to a banking entity's customer or group of affiliated customers. Accordingly, the agencies believe that for purposes of the proposed exclusion, a banking entity could satisfy these written disclosure obligations in a number of ways, such as including them in the customer facilitation vehicle's governing documents, in account opening materials, or in supplementary materials. The condition reflects the agencies' interest in providing customers with the substance of the disclosures, rather than a concern with the document in which they are provided. Similarly, the agencies expect that the specific wording of the disclosures under § __.11(a)(8) may need to be modified to reflect accurately the specific circumstances of the customer facilitation vehicle.

[176] *See* implementing regulations § __.11(a)(5) (imposing, as a condition of the exemption for organizing and offering a covered fund, that a banking entity and its affiliates do not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the covered fund or of any covered fund in which such covered fund invests); § __.11(a)(8) (imposing, as a condition of the exemption for organizing and offering a covered fund, that the banking entity provide certain disclosures to any prospective and actual investor in the covered fund); § __.10(c)(2)(ii) (allowing, as a condition of the exclusion from the covered fund definition for wholly-owned subsidiaries, for the holding of up to 0.5 percent of outstanding ownership interests by a third party for limited purposes); and § __.14(b) (subjecting certain transactions with covered funds to section 23B of the Federal Reserve Act).

the other new proposed exclusions for credit funds, venture capital funds, and family wealth management vehicles? Why or why not?

D. Limitations on Relationships With a Covered Fund

The agencies are proposing to modify the regulations implementing section 13(f)(1) of the BHC Act to permit banking entities to engage in a limited set of covered transactions with covered funds for which the banking entity directly or indirectly serves as investment manager, investment adviser, or sponsor, or that the banking entity organizes and offers pursuant to section 13(d)(1)(G) of the BHC Act (such funds, related covered funds). Specifically, as described below, the proposal would allow a banking entity to enter into covered transactions with a related covered fund that would be permissible without limit for a state member bank to enter into with an affiliate under section 23A of the Federal Reserve Act. This would include, for example, intraday extensions of credit. The proposal would also allow a banking entity to enter into short-term extensions of credit with, and purchase assets from, a related covered fund in connection with payment, clearing, and settlement activities. These proposed amendments would address certain concerns raised by regulated banking entities and commenters with respect to the impact of section 13(f)(1) on the practical ability of banking entities to organize and offer covered funds as permitted by section 13(d)(1)(G).

Section 13(f)(1) of the BHC Act generally prohibits a banking entity from entering into a transaction with a related covered fund that would be a covered transaction as defined in section 23A of the Federal Reserve Act.[177]

Section 23A of the Federal Reserve Act limits the aggregate amount of covered transactions by a member bank to no more than (1) 10 percent of the capital stock and surplus of the member bank in the case of any one affiliate, and (2) 20 percent of the capital stock and surplus of the member bank in the aggregate with respect to all affiliates.[178] By contrast, section 13(f)(1) of the BHC Act generally prohibits covered transactions between a banking entity and a related covered fund, with no minimum amount of permissible covered transactions.[179] Despite this general prohibition, another part of section 13 authorizes a banking entity to own an interest in a related covered fund, which would be a ''covered transaction'' for purposes of section 23A of the Federal Reserve Act.[180] In addition to this apparent conflict between paragraphs 13(d) and (f) with respect to covered fund ownership, there are other elements of these paragraphs that introduce ambiguity about the interpretation of the term ''covered transaction'' as used in section 13(f) of the BHC Act. The statute prohibits a banking entity that organizes or offers a hedge fund or private equity fund from directly or indirectly guaranteeing, assuming, or otherwise insuring the obligations or performance of the fund (or of any hedge fund or private equity fund in which such hedge fund or private equity fund invests).[181] To the extent that section 13(f) prohibits all covered transactions between a banking entity and a related covered fund, however, the independent prohibition on guarantees in section 13(d)(1)(G)(v) would seem to be unnecessary and redundant.[182]

The agencies addressed the apparent conflict between section 13(f)(1) and particular provisions in section 13(d)(1) of the BHC Act in the 2013 rule by interpreting the statutory language to permit a banking entity ''to acquire or retain an ownership interest in a covered fund in accordance with the requirements of section 13.'' [183] In doing so, the agencies noted that a contrary interpretation would make the specific language that permits covered transactions between a banking entity and a related covered fund ''mere surplusage.'' [184]

In adopting the regulations to reconcile the conflict between paragraphs (d) and (f) of section 13 of the BHC Act, the agencies did not use their rulemaking authority pursuant to section (d)(1)(J).[185] Instead, the agencies used their general rulemaking authority to interpret section 13 of the BHC Act. Although the agencies previously expressed doubt about their ability to permit banking entities to enter into covered transactions with related covered funds pursuant to their authority under section 13(d)(1)(J) of the BHC Act,[186] the activities permitted pursuant to paragraph (d) specifically contemplate allowing a banking entity to enter into certain covered transactions with related funds.[187] The exceptions in section 13(f)(1) are also expressly incorporated into the statutory list of permitted activities, specifically in section 13(d)(1)(G)(iv).[188] By virtue of the conflict between paragraphs (d) and (f) of section 13, and the inclusion of specific covered transactions within the permitted activities in paragraph (d) of section 13, the agencies believe that the authority granted pursuant to paragraph (d)(1)(J) to determine that other activities are not prohibited by the statute authorizes the agencies to exercise rulemaking authority to determine that banking entities may enter into covered transactions with related covered funds that would otherwise be prohibited by section 13(f)(1) of the BHC Act, provided that the rulemaking complies with applicable statutory requirements.[189]

In the 2018 proposal, the agencies invited comment from the public on the agencies' 2013 interpretation of section 13(f)(1) of the BHC Act,[190] and whether

[177] 12 U.S.C. 1851(f)(1); *see* 12 U.S.C. 371c. Section 13(f)(3) of the BHC Act also provides an exemption for prime brokerage transactions between a banking entity and a covered fund in which a covered fund managed, sponsored, or advised by that banking entity has taken an ownership interest. 12 U.S.C. 1851(f)(3). In addition, section 13(f)(2) subjects any transaction permitted under section 13(f) (including a permitted prime brokerage transaction) between a banking entity and covered fund to section 23B of the Federal Reserve Act. 12 U.S.C. 1851(f)(2); *see* 12 U.S.C. 371c–1.

[178] 12 U.S.C. 371c. The term ''covered transaction'' is defined in section 23A of the Federal Reserve Act to mean, with respect to an affiliate of a member bank, (1) a loan or extension of credit to the affiliate, including a purchase of assets subject to an agreement to repurchase; (2) a purchase of or an investment in securities issued by the affiliate; (3) a purchase of assets from the affiliate, except such purchase of real and personal property as may be specifically exempted by the Board by order or regulation; (4) the acceptance of securities or other debt obligations issued by the affiliate as collateral security for a loan or extension of credit to any person or company; (5) the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate; (6) a transaction with an affiliate that involves the borrowing or lending of securities, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate; or (7) a derivative transaction, as defined in paragraph (3) of section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)), with an affiliate, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate. *See* 12 U.S.C. 371c(b)(7), as amended by Public Law 111.203, section 608 (July 21, 2010). Section 13(f) of the BHC Act does not alter the applicability of section 23A of the Federal Reserve Act and the Board's Regulation W to covered transactions between insured depository institutions and their affiliates.

[179] 12 U.S.C. 1851(f)(1).

[180] 12 U.S.C. 1851(d)(1)(G); (d)(4).

[181] 12 U.S.C. 1851(d)(1)(G)(v).

[182] *See* 12 U.S.C. 371c(b)(7)(E); 12 CFR 223.3(h)(4).

[183] 79 FR 5746.

[184] 79 FR 5746.

[185] *Id.*

[186] *See* 76 FR 68912 n.313.

[187] 12 U.S.C. 1851(d)(1)(G); (d)(4).

[188] 12 U.S.C. 1851(d)(1)(G)(iv).

[189] 12 U.S.C. 1851(b)(2), (d)(1)(J), (d)(2).

[190] In the preamble to the 2013 rule, the agencies noted that ''[s]ection 13(f) of the BHC Act does not

Continued

that interpretation should be amended.[191] Among other things, the agencies invited comment on whether to incorporate some or all of the exemptions or quantitative limits in section 23A of the Federal Reserve Act and the Board's Regulation W, and if so, whether these transactions should be subject to any additional limitations.[192] However, the agencies did not propose specific amendments addressing the interpretation of section 13(f)(1) of the BHC Act.[193]

Several commenters addressed the interpretation of section 13(f)(1) of the BHC Act, and the specific questions asked by the agencies. Several commenters recommended that the agencies interpret section 13(f)(1) to include the exemptions provided under section 23A of the Federal Reserve Act.[194] Some commenters also encouraged the agencies to permit banking entities to engage in a quantitatively limited amount of covered transactions with related covered funds.[195] Conversely, one commenter opposed revising the regulations to incorporate the Federal Reserve Act's section 23A exemptions or quantitative limits.[196]

Banking entities that sponsor or serve as the investment adviser to covered funds and groups representing such banking entities have argued that the inability to engage in any covered transactions with such funds, particularly those types of transactions that are expressly exempted under section 23A of the Federal Reserve Act and the Board's Regulation W, has limited the services that they or their affiliates can provide.[197] Some of these commenters have argued that amending the regulations to permit limited covered transactions with related covered funds would not create any new incentives for the banking entity to financially support the related covered fund in times of stress and would not otherwise permit the banking entity to indirectly engage in proprietary trading through the related covered fund.[198] For example, when a banking entity that sponsors or advises a covered fund also serves as a broker-dealer to the covered fund, the prohibition on covered transactions between the banking entity (and its affiliates) and the covered fund may limit the ability of the banking entity and its affiliates to provide other services, such as trade settlement services, to the covered fund. A broker-dealer providing trade settlement services may extend intraday credit to the fund, or purchase assets from the fund, in connection with trading activities in the ordinary course of business. One group representing banking entities also noted that extensions of credit in connection with payment, clearing, and settlement services that were intended to be intraday may become overnight extensions of credit, for example due to time zone differences in local settlement markets.[199] Under the interpretation provided in the preamble to the 2013 rule,[200] both intraday extensions of credit and overnight extensions of credit are ''covered transactions'' for purposes of section 13(f)(1) of the BHC Act, and therefore would be impermissible for a banking entity with respect to a related covered fund.

The agencies believe that, under certain circumstances, it would be appropriate to permit banking entities to enter into certain covered transactions with related covered funds, and therefore are proposing to amend § __.14 of the implementing regulations as described below. The proposed amendments would not modify the definition of ''covered transaction'' but instead would authorize banking entities to engage in limited activities with related covered funds. Any transactions or activities permitted by these revisions would be required to comply with certain conflict of interest, high-risk, and safety and soundness restrictions.

Exempt Transactions Under Section 23A and the Board's Regulation W

The proposal would permit a banking entity to engage in covered transactions with a related covered fund that would be exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition under section 23A of the Federal Reserve Act, including transactions that would be exempt pursuant to section 223.42 of the Board's Regulation W.[201] Section 23A of the Federal Reserve Act is designed to protect against a depository institution suffering losses in transactions with affiliates, and to limit the ability of a depository institution to transfer to its affiliates the ''subsidy'' arising from the depository institution's access to the Federal safety net.[202]

Notwithstanding the statutory objectives of section 23A of the Federal Reserve Act, however, a member bank may enter into certain ''exempt'' covered transactions set forth in section 23A of the Federal Reserve Act and the Board's Regulation W, without regard to the quantitative limits, collateral requirements, and low-quality asset prohibition of section 23A and the Board's Regulation W.[203] These exempt transactions do not raise the same concerns that they could cause the depository institution to suffer losses or transfer the subsidy arising from the depository institution's access to the Federal safety net. The agencies believe that the same rationales that support the exemptions in section 23A of the Federal Reserve Act and the Board's Regulation W also support exempting such transactions from the prohibition on covered transactions between a banking entity and related covered funds under section 13(f)(1) of the BHC Act. In particular, the agencies note that these exemptions generally do not present significant risks of loss, and serve important public policy objectives.[204]

Short-Term Extensions of Credit and Acquisitions of Assets in Connection With Payment, Clearing, and Settlement Services

In addition, the proposal would permit a banking entity to provide short-term extensions of credit to and purchase assets from a related covered fund, subject to appropriate limits. First, each short-term extension of credit or purchase of assets would have to be made in the ordinary course of business

incorporate or reference the exemptions contained in section 23A of the FR Act or the Board's Regulation W.'' 79 FR 5746.

[191] 83 FR 33486–487.

[192] *Id.* at 33487.

[193] On March 29, 2017, the CFTC's Division of Swap Dealer and Intermediary Oversight (DSIO) issued a letter to a futures commission merchant (FCM) stating that the DSIO would not recommend that an enforcement action against the FCM be initiated in connection with § __.14(a) of the 2013 rule. Although no specific amendments were provided in the 2018 proposal, the proposal would permit FCMs that are banking entities to enter into certain covered transactions with covered funds in connection with futures, options and swaps clearing services to covered funds pursuant to § __.14(a).

[194] *See, e.g.,* ABA; BPI; and FSF.

[195] *See, e.g.,* BPI and FSF.

[196] *See* Public Citizen.

[197] *See, e.g.,* BPI; CS; and IAA.

[198] *Id.*

[199] *See, e.g.,* SIFMA.

[200] *See* 79 FR 5746.

[201] *See* 12 U.S.C. 371c(d); 12 CFR 223.42.

[202] For a brief background on section 23A of the Federal Reserve Act, see Transactions Between Member Banks and Their Affiliates, 67 FR 76560–765561 (December 12, 2002).

[203] *See* 12 U.S.C. 371c(d); 12 CFR 223.42.

[204] For example, intraday extensions of credit are exempt covered transactions under section 23A of the Federal Reserve Act. The Board previously has noted that ''[i]ntraday overdrafts and other forms of intraday credit generally are not used as a means of funding or otherwise providing financial support for an affiliate. Rather, these credit extensions typically facilitate the settlement of transactions between an affiliate and its customers when there are mismatches between the timing of funds sent and received during the business day.'' 67 FR 76596.

in connection with payment transactions; securities, derivatives, or futures clearing; or settlement services. Second, each extension of credit would be required to be repaid, sold, or terminated no later than five business days after it was originated. The provision of payment, clearing, and settlement services by a banking entity (or its affiliates) to an affiliated covered fund generally requires the ability to provide such short-term extensions of credit, and therefore is a necessary corollary to the exempt covered transactions that would allow banking entities to provide standard payment, clearing, and settlement services to related covered funds. Additionally, the proposed five business day criterion would be consistent with the Federal banking agencies' capital rule and would generally require banking entities to rely on transactions with normal settlement periods, which have lower risk of delayed settlement or failure, when providing short-term extensions of credit.[205] Each short-term extension of credit must also meet the same requirements applicable to intraday extensions of credit under section 223.42(*l*)(1)(i) and (ii) of the Board's Regulation W (as if the extension of credit was an intraday extension of credit, regardless of the duration of the extension of credit). In addition, each extension of credit or purchase of assets permitted by these revisions would be required to comply with certain conflict of interest, high-risk, and safety and soundness restrictions.

Impact of the Proposed Amendments on Safety and Soundness and U.S. Financial Stability

The agencies expect that the proposed amendments described above would generally promote and protect the safety and soundness of banking entities and U.S. financial stability.

First, allowing banking entities to engage in these limited covered transactions with related covered funds may allow banking entities to reduce operational risk. Currently, the restrictions under section 13(f)(1) of the BHC Act substantially limit the ability of a banking entity to both (1) organize and offer a covered fund, or act as an investment adviser to the covered fund, and (2) provide custody or other services to the fund. As a result, a third party is required to provide other necessary services for the fund's operation, including payment, clearing, and settlement services that are generally provided by the fund's custodian. This increases the potential for problems at the third-party service provider (*e.g.,* an operational failure or a disruption to normal functioning) to affect the banking entity or the fund, which were required to use the third-party service provider as a result of the restrictions under section 13(f)(1). Those problems may then spread among financial institutions or markets and thereby threaten the stability of the U.S. financial system. By amending § __.14(a), therefore, the proposal may allow a banking entity to reduce both operational risk and interconnectedness to other financial institutions by directly providing a broader array of services to a fund it organizes and offers, or advises. The agencies believe that reducing these risks could promote and protect the safety and soundness of banking entities.[206]

Second, the proposed amendments may promote and protect U.S. financial stability by reducing interconnectedness among firms. As described above, the authorized covered transactions would permit banking entities to provide a more comprehensive suite of services to related covered funds, reducing the need to rely on third parties to provide such services.

This proposal would remain subject to additional limitations on transactions with related covered funds. As specified in the statute, such activities would be permissible only ''to the extent permitted by any other provision of Federal or state law, and subject to the limitations under section 13(d)(2) of the BHC Act and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine . . .''[207] Section 13(d)(2) of the BHC Act also imposes additional restrictions on any activities authorized pursuant to section (d)(1), including those activities authorized by rulemaking pursuant to section (d)(1)(J).[208]

Sections __.14(b) and __.14(c) of the regulations implementing section 13 of the BHC Act both generally require that a banking entity may enter into certain transactions specified in section 23B of the Federal Reserve Act (including ''covered transactions'' as defined in section 23A of the Federal Reserve Act) with related covered funds only on terms and under circumstances that are substantially the same (or at least as favorable) to the banking entity as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies, or in the absence of comparable transactions, on terms and under circumstances that the banking entity in good faith would offer to, or would apply to, nonaffiliated companies.[209]

Question 71. What impacts would the proposed amendments to § __.14 have on the safety and soundness of banking entities, and on the financial stability of the United States? Would the activities permitted under the proposed amendments to § __.14(a) of the implementing regulations promote and protect safety and soundness of the banking entity and U.S. financial stability, and if so, how?

Question 72. Are there other services that a banking entity typically provides to sponsored funds or funds for which it acts as an investment adviser that would be prohibited under section 13(f)(1) of the BHC Act and § __.14 of the implementing regulations as proposed to be amended? What would be the impact on the safety and soundness of the banking entity, and the financial stability of the United States, of permitting a banking entity to engage in such transactions with a related covered fund?

Question 73. Should the agencies amend § __.14 of the implementing regulations to permit banking entities to engage in additional covered transactions in connection with payment, clearing, and settlement services? Why or why not? What would be the impacts of permitting banking entities to engage in payment, clearing, and settlement services with related covered funds on the safety and soundness of the banking entity? What would be the impacts of such an approach on U.S. financial stability?

Question 74. Should the agencies impose any additional or different qualitative or quantitative limits on the

[205] *See* 78 FR 62110 (October 11, 2013). While the Federal banking agencies require firms to track and monitor the credit risk exposure for transactions involving securities, foreign exchange instruments, and commodities that have a risk of delayed settlement, this requirement does not apply to other types of transactions which may be used in providing a short-term extension of credit (*e.g.,* repo-style transactions). Additionally, banking entities typically monitor credit extensions by counterparty, and not by transaction type. Thus, the proposal would remain consistent with the approach taken in the Federal banking agencies' capital rule, without imposing an additional compliance burden without a corresponding benefit.

[206] As noted above, the agencies also believe that the same rationales that support the exempt covered transactions in section 23A of the Federal Reserve Act and the Board's Regulation W also support permitting a banking entity to engage in exempt covered transactions with a related covered fund.

[207] 12 U.S.C. 1851(d)(1).

[208] 12 U.S.C. 1851(d)(2); *see also* 2013 rule §§ __.7 and __.15.

[209] 12 U.S.C. 1851(f)(2); *see* 12 U.S.C. 371c–1(a)(1).

covered transactions contemplated by the proposed amendments to § __.14(a) of the implementing regulations? Why or why not? For example, should the agencies impose a quantitative limit of any kind on the covered transactions that would not be subject to the prohibition in section 13(f)(1) of the BHC Act? If the agencies were to impose a quantitative limit on such covered transactions, on what should such limits be based (*e.g.,* based on the banking entity's tier 1 capital, the size of the fund, or some other measurement), and what limits would be appropriate?

Question 75. Is the proposed approach to addressing transactions that are exempt under Section 23A and payment, clearing, and settlement activities effective? Why or why not? Is there a better approach to addressing these types of transactions?

Question 76. The proposal would require that any payment, clearing, or settlement activity be settled within five business days. Is this length of time sufficient to effectuate the proposed permitted activities? Why or why not? Is another length of time, such as three days, more appropriate or consistent with current market practices? Should the agencies adopt a limit that adopts the shorter of five days or industry standard settlement time for a particular financial instrument?

Question 77. Should the agencies, for the purposes of § __.14(a)(2)(iv) of the proposed amendment, impose on the purchase of assets a requirement that the banking entity comply with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the covered fund were an affiliate thereof?

E. Ownership Interest

The agencies are proposing changes to the definition of ''ownership interest'' to clarify that a debt relationship with a covered fund would typically not constitute an ownership interest under the regulations.[210] In addition, the agencies are proposing amendments to the manner in which a banking entity must calculate its ownership interest for purposes of complying with the limits and conditions that apply to investments in covered funds organized and offered by a banking entity. Specifically, the proposed amendments are intended to better align the manner in which ownership limits are calculated for purposes of the quantitative limit on a banking entity's investment in a single fund (the per fund limit), the quantitative limit on a banking entity's investment in all covered funds (the aggregate fund limit), and the calculation of the applicable capital deductions for investments in covered funds (the covered fund deduction).[211]

The implementing regulations define an ''ownership interest'' in a covered fund to mean any equity, partnership, or other similar interest. Some banking entities have expressed concern about the inclusion of the term ''other similar interest'' in the definition of ''ownership interest,'' and have indicated that the definition of this term could lead to the inclusion of debt instruments that have standard covenants in the measurement of an ownership interest. Under the 2013 rule, ''other similar interest'' is defined as an interest that:

- Has the right to participate in the selection or removal of a general partner, managing member, member of the board of directors or trustees, investment manager, investment adviser, or commodity trading advisor of the covered fund (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event);
- Has the right under the terms of the interest to receive a share of the income, gains or profits of the covered fund;
- Has the right to receive the underlying assets of the covered fund after all other interests have been redeemed and/or paid in full (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event);
- Has the right to receive all or a portion of excess spread (the positive difference, if any, between the aggregate interest payments received from the underlying assets of the covered fund and the aggregate interest paid to the holders of other outstanding interests);
- Provides under the terms of the interest that the amounts payable by the covered fund with respect to the interest could be reduced based on losses arising from the underlying assets of the covered fund, such as allocation of losses, write-downs or charge-offs of the outstanding principal balance, or reductions in the amount of interest due and payable on the interest;
- Receives income on a pass-through basis from the covered fund, or has a rate of return that is determined by reference to the performance of the underlying assets of the covered fund; or
- Any synthetic right to have, receive, or be allocated any of the rights above.[212]

This definition focuses on the attributes of the interest and whether it provides a banking entity with economic exposure to the profits and losses of the covered fund, rather than its form. Under the 2013 rule, a debt interest in a covered fund can be an ownership interest if it has the same characteristics as an equity or other ownership interest (*e.g.,* provides the holder with voting rights; the right or ability to share in the covered fund's profits or losses; or the ability, directly or pursuant to a contract or synthetic interest, to earn a return based on the performance of the fund's underlying holdings or investments). The 2013 rule excludes carried interest (restricted profit interest) from the definition of ownership interest, although as discussed below, only for certain purposes.

In the 2018 proposal the agencies requested comment on all aspects of the 2013 rule's application to securitization transactions, including the definition of ownership interest. Specifically, the agencies asked whether there were any modifications that should be made to the 2013 rule's definition of ownership interest.[213] Among other things, the agencies requested comments on whether they should modify § __.6(i)(A) to provide that the ''rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event'' include the right to participate in the removal of an investment manager for cause, or to nominate or vote on a nominated replacement manager upon an investment manager's resignation or removal.[214]

In response to the 2018 proposal, a number of commenters supported the agencies' suggestion to modify § __ .6(i)(A) and to expressly permit creditors to participate in the removal of an investment manager for cause, or to nominate or vote on a nominated replacement manager upon an investment manager's resignation or removal without causing an interest to become an ownership interest.[215] This notwithstanding, a few of these commenters noted that this modification would not address all issues with the condition as banks sometimes have contractual rights to participate in the selection or removal of a general partner, managing member or

[210] *See* 2013 rule § __.10(d)(6) (defining ''ownership interest'' for purposes of subpart C of the rule).

[211] *See* 12 U.S.C. 1851(d)(4)(B)(ii)(I)–(II); 2013 rule §§ __.10(d)(6); __.12(a)(2)(ii)–(iii), (b)–(d).

[212] 2013 rule § __.10(d)(6)(i).

[213] 83 FR 33481.

[214] *Id.*

[215] *See, e.g.,* SFIG; JBA; LSTA; and IAA.

member of the board of directors or trustees of a borrower that are not limited to the exercise of a remedy upon an event of default or other default event.[216] Therefore, these commenters proposed eliminating the ''other similar interest'' clause from the definition altogether or, alternatively, replacing the definition of ownership interest with the definition of ''voting securities'' from the Board's Regulation Y.

A number of commenters argued that debt interests issued by covered funds and loans to third-party covered funds not advised or managed by a banking entity should be excluded from the definition of ownership interest.[217] Other commenters suggested reducing the scope of the definition of ownership interest to apply only to equity and equity-like interests that are commonly understood to indicate a bona fide ownership interest in a covered fund.[218] One other commenter asked the agencies to clarify conditions under the ''other similar interest'' clause.[219] Specifically, the commenter asked the agencies to clarify whether the right to receive all or a portion of the spread extends to using the spread to pay principal or the interest that is otherwise owed or to clarify that any debt repaid from collections on underlying assets of a special purpose entity, but is entitled to receive only principal and interest, is not an ownership interest. At least one commenter asked the agencies not to modify the definition of ownership interest as, the commenter argued, there is nothing under section 13 of the BHC Act that limits or restricts the ability of a banking entity or nonbank financial company to sell or securitize loans in a manner permitted by law.[220]

In response to comments received and in order to provide clarity about the types of interests that would be considered within the scope of the definition of ownership interest, the agencies propose to amend the parenthetical in § __.6(i)(A) to specify that creditors' remedies upon the occurrence of an event of default or an acceleration event include the right to participate in the removal of an investment manager for cause or to nominate or vote on a nominated replacement manager upon an investment manager's resignation or removal. Accordingly, an interest that allows its holder to remove an investment manager for cause upon the occurrence of an event of default, for example, would not be considered an ownership interest for this reason alone.

The proposed rule would also provide a safe harbor from the definition of ownership interest, as suggested by some commenters.[221] The safe harbor should address commenters' concerns that some ordinary debt interests could be construed as an ownership interest. Any senior loan or other senior debt interest that meets all of the following characteristics would not be considered to be an ownership interest under the proposed rule:

(1) The holders of such interest do not receive any profits of the covered fund but may only receive: (i) Interest payments which are not dependent on the performance of the covered fund; and (ii) fixed principal payments on or before a maturity date;

(2) The entitlement to payments on the interest is absolute and may not be reduced because of the losses arising from the covered fund, such as allocation of losses, write-downs or charge-offs of the outstanding principal balance, or reductions in the principal and interest payable; and

(3) The holders of the interest are not entitled to receive the underlying assets of the covered fund after all other interests have been redeemed and/or paid in full (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event).

The agencies believe that the proposed conditions for the safe harbor would provide more clarity and predictability to banking entities and enable them to determine more readily whether an interest would be an ownership interest under the regulations implementing section 13 of the BHC Act. The three conditions under the proposed safe harbor would ensure that debt interests that do not have equity-like characteristics are not considered ownership interests. At the same time, the agencies believe that the conditions are rigorous enough to prevent banking entities from evading the prohibition on acquiring or retaining an ownership interest in a covered fund.

The proposal also would modify the implementing regulations to better align the manner in which a banking entity calculates the aggregate fund limit and covered fund deduction with the manner in which it calculates the per fund limit, as it relates to investments by employees of the banking entity. Specifically, consistent with how investments by employees and directors are treated generally under the existing rule of construction in § __.12(b)(1)(iv), the proposal would modify §§ __.12(c) and __.12(d) to require attribution of amounts paid by an employee or director to acquire a restricted profit interest only when the banking entity has financed the acquisition.

The 2013 rule excludes from the definition of ownership interest certain restricted profit interests.[222] As a threshold matter, the exclusion from the definition of ownership interest is limited to restricted profit interests held by an entity, employee, or former employee in a covered fund for which the entity or employee serves as investment manager, investment adviser, commodity trading advisor, or other service provider.[223] To be excluded from the definition of ownership interest, the restricted profit interest must also meet various other conditions, including that any amounts invested in the covered fund—including amounts paid by the entity, an employee of the entity, or former employee of the entity—are within the applicable limits under § __.12 of the 2013 rule.[224]

Section __.12 of the 2013 rule provides different rules for purposes of calculating compliance with the per fund limit and for purposes of calculating compliance with the aggregate fund limit and covered fund deduction. Under the 2013 rule, for purposes of calculating the per fund limit and the aggregate fund limit, a banking entity is attributed ownership interests in a covered fund that are acquired by an employee or director if the banking entity, directly or indirectly, extends financing for the purpose of enabling the employee or director to acquire the ownership interest in the fund, and the financing is used to acquire such ownership interest.[225] As noted in the preamble to the 2013 rule, the attribution to a banking entity of ownership interests acquired by an employee or director using financing provided by the banking entity ensures that funding provided by the banking entity to acquire ownership interests in the fund, whether provided

[216] *See* SFIG.

[217] *See, e.g.,* Capital One et al. and BPI.

[218] *See, e.g.,* ABA and CAE.

[219] *See* SFIG.

[220] *See* Data Boiler.

[221] *See* SFIG.

[222] 2013 rule § __.10(d)(6)(ii). As noted in the preamble to the 2013 rule, the term ''restricted profit interest'' was used to avoid any confusion from using the term ''carried interest,'' which is used in other contexts. The proposed rule would focus on the treatment of restricted profit interests for purposes of calculating compliance with the aggregate fund limit and covered fund deduction, but would not address in any way the treatment of such profit interests under other laws, including under Federal income tax law. *See* 79 FR 5706, n. 2091.

[223] 2013 rule § __.10(d)(6)(ii).

[224] 2013 rule § __.10(d)(6)(ii)(C).

[225] 2013 rule § __.12(b)(1)(iv).

directly or indirectly, is counted against the per fund limit and aggregate fund limit.[226]

For purposes of calculating the aggregate fund limit and the covered fund deduction, the 2013 rule includes a different calculation with respect to restricted profit interests in a covered fund organized or offered by a banking entity pursuant to paragraph (d)(1)(G).[227] Specifically, for purposes of calculating a banking entity's compliance with the aggregate fund limit and the covered fund deduction, the banking entity must include any amounts paid by the banking entity or an employee in connection with obtaining a restricted profit interest in the covered fund.[228] The agencies continue to believe that it is appropriate for a banking entity to count amounts invested by the banking entity (or its affiliates) to acquire restricted profit interests in a fund organized and offered by the banking entity for purposes of the aggregate fund limit and capital deduction. However, the agencies believe attribution of employee and director ownership of restricted profit interests to a banking entity may not be necessary in the circumstance when a banking entity does not finance, directly or indirectly, the employee or director's acquisition of a restricted profit interest in a covered fund organized or offered by the banking entity. Therefore, the proposal would limit the attribution of an employee or director's restricted profit interest in a covered fund organized or offered by the banking entity to only those circumstances when the banking entity has directly or indirectly financed the acquisition of the restricted profit interest. This proposed revision would not change the treatment of the banking entity's or its affiliates' ownership of a restricted profit interest under the implementing regulations. The agencies expect that the proposed change may simplify a banking entity's compliance with the aggregate fund limit and covered fund deduction provisions of the rule, and more fully recognize that employees and directors may use their own resources, not provided by the banking entity, to invest in ownership interests or restricted profit interests in a covered fund they advise (for example, to align their personal financial interests with those of other investors in the covered fund).

Question 78. Under the proposal, the right to participate in the removal of an investment manager for cause, or to nominate or vote on a nominated replacement manager upon an investment manager's resignation or removal, would be limited to removal or replacement upon the occurrence of an event of default or an acceleration event. Commenters noted in comments on the 2018 proposal that loan securitizations may include additional ''for cause'' termination events (*e.g.,* the insolvency of the investment manager; the breach by the investment manager of certain representations or warranties; or the occurrence of a ''key person'' event or a change in control with respect to the investment manager) that might not constitute an event of default. Should the proposal be expanded to include the right to participate in any removal of an investment manager for cause, or to nominate or vote on a nominated replacement manager upon an investment manager's resignation or removal, whether or not an event of default or an acceleration event has occurred? Why or why not?

Question 79. Under the current rule, an interest that has the right to receive a share of the income, gains or profits of the covered fund is considered an ownership interest. Should the agencies modify this condition to clarify that only an interest which has the right to receive a share of the ''net'' income, gains or profits of the covered fund is an ownership interest? If so, why?

Question 80. Is the proposed safe harbor appropriate? Why or why not? Do the proposed conditions under the safe harbor sufficiently alleviate concerns that a senior debt instrument would not be construed as an ownership interest? If not, what amendments should be made to the proposed conditions under the safe harbor or what additional conditions should be added and why? In particular, should the reference to ''fixed principal payments'' under the safe harbor condition in paragraph (d)(6)(ii)(B)(*1*)(*ii*) be replaced with ''contractually determined principal payments,'' ''*repayment of a fixed principal amount,*'' or any other similar wording that may be more representative of typical principal distributions under various types of debt instruments, including asset-backed securities?

Question 81. Should the safe harbor be limited only to senior debt instruments, as proposed? Why or why not? If so, do the proposed conditions sufficiently distinguish between senior debt instruments and other debt instruments?

Question 82. Should the agencies modify the methodology of calculating a banking entity's compliance with the aggregate fund limit and covered fund deduction in the manner proposed? Why or why not? Would the proposed revisions pose any risk that a banking entity could evade the aggregate fund limit and covered fund deduction, and if so, how? Would additional restrictions on the treatment of restricted profit interests be appropriate?

F. Parallel Investments

The 2013 rule requires that a banking entity hold no more than three percent of the total ownership interests of a covered fund that the banking entity organizes and offers pursuant to § __.11 of the 2013 rule.[229] Section __.12(b)(1)(i) of the 2013 rule requires that, for purposes of this ownership limitation, ''the amount and value of a banking entity's permitted investment in any single covered fund shall include any ownership interest held under § __.12 directly by the banking entity, including any affiliate of the banking entity.''[230] Section __.12(b) also includes several other rules of construction that address circumstances under which an investment in a covered fund would be attributed to a banking entity.

The 2011 notice of proposed rulemaking included a proposed provision that would have required attribution, under certain circumstances, of certain direct investments by a banking entity alongside, or otherwise in parallel with, a covered fund.[231] When adopting the 2013 rule, the agencies declined to adopt the proposed provision governing parallel investments after considering the language of the statute and commenters' views on that provision. Commenters asserted that the provision was inconsistent with the statute, which limits investments in covered funds and not direct investments.[232] In declining

[226] *See* 79 FR 5733.

[227] 2013 rule § __.10(d)(6)(C); § __.12(c)(1), (d). *See also* 12 U.S.C. 1851(d)(1)(G).

[228] *Id.*

[229] 2013 rule § __.12(a).

[230] 2013 rule § __.12(b)(1)(i).

[231] *See* Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 76 FR 68846, 68951–52 (Nov. 7, 2011) (''To the extent that a covered banking entity is contractually obligated to directly invest in, or is found to be acting in concert through knowing participation in a joint activity or parallel action toward a common goal of investing in, one or more investments with a covered fund that is organized and offered by the covered banking entity, whether or not pursuant to an express agreement, such investments shall be included in any calculation required under paragraph (a)(2) of this section.'') (2011 proposed rule).

[232] ABA (arguing that there was no basis in the statute for any of the attribution rules proposed in the 2011 notice of proposed rulemaking, including the proposed provision regarding the treatment of an investment the banking entity is contractually obligated to invest in alongside a sponsored covered fund).

to adopt this parallel investment provision, the agencies noted that banking entities rely on a number of investment authorities and structures to make investments and meet the needs of their clients.[233]

The 2013 rule restricts a banking entity's investment in a covered fund organized and offered pursuant to § __ .11 to three percent of the total number or value of the outstanding ownership interests of the fund.[234] That regulatory requirement is consistent with section 13(d)(4) of the BHC Act, which limits the size of investments by a banking entity in a hedge fund or private equity fund.[235] Neither section 13(d)(4) of the BHC Act nor the text of the 2013 rule require that a banking entity treat an otherwise permissible investment the banking entity makes alongside a covered fund as an investment in the covered fund. The text of the 2013 rule does not impose any quantitative limits on any investments by banking entities made alongside, or otherwise in parallel with, covered funds.[236]

However, in the preamble to the 2013 rule, the agencies went on to discuss the potential for evasion of the per fund limit and aggregate fund limit in the 2013 rule, and stated that ''if a banking entity makes investments side by side in substantially the same positions as the covered fund, then the value of such investments shall be included for purposes of determining the value of the banking entity's investment in the covered fund.'' [237] The agencies also stated that ''a banking entity that sponsors the covered fund should not itself make any additional side by side co-investment with the covered fund in a privately negotiated investment unless the value of such co-investment is less than 3% of the value of the total amount co-invested by other investors in such investment.'' [238]

The agencies did not discuss the application of the per fund limit and aggregate fund limit in the context of a banking entity's investments alongside a covered fund in the 2018 proposal. Nonetheless, in response to the 2018 proposal, three commenters recommended that the rule should not impose a limit on parallel investments and noted that this restriction is not reflected in the 2013 rule text.[239] These commenters argued that a restriction on parallel investments interferes with banking entities' ability to make otherwise permissible investments directly on their balance sheets. These commenters also contended that it is not necessary to restrict direct investments by a banking entity in this manner because these investments are subject to all the capital and safety and soundness requirements that apply to the banking entity.[240] Further, two commenters asserted that such direct investments are also subject to the proprietary trading provisions of the 2013 rule.[241]

In light of the comments received, the agencies are proposing to add a new rule of construction to § __.12(b) that would address investments made by banking entities alongside covered funds.[242] As discussed in more detail below, these provisions would clarify in the rule text that banking entities are not required to treat these types of direct investments alongside a covered fund as an investment in the covered fund as long as certain conditions are met.

Specifically, proposed § __.12(b)(5) would provide that:

- A banking entity shall not be required to include in the calculation of the investment limits under § __.12(a)(2) any investment the banking entity makes alongside a covered fund as long as the investment is made in compliance with applicable laws and regulations, including applicable safety and soundness standards.
- A banking entity shall not be restricted under § __.12 in the amount of any investment the banking entity makes alongside a covered fund as long as the investment is made in compliance with applicable laws and regulations, including applicable safety and soundness standards.

As discussed in the preamble to the 2013 rule, the agencies recognize that banking entities rely on a number of investment authorities and structures to make investments and meet the needs of their clients and shareholders.[243] The proposed rule of construction would provide clarity to banking entities that they may make such investments for the benefit of their clients and shareholders, provided that those investments comply with applicable laws and regulations. Accordingly, banking entities would not be permitted to engage in prohibited proprietary trading alongside a covered fund. Moreover, banking entities would need to have authority to make any investment alongside a covered fund under applicable banking and other laws and regulations, and would need to ensure that the investment complies with applicable safety and soundness standards. For example, national banks are restricted in their ability to make direct equity investments under 12 U.S.C. 24(Seventh) and 12 CFR part 1. Banking entities that rely on the proposed rule of construction to invest alongside a covered fund that is organized and offered by the banking entity pursuant to § __.11 would still be required to comply with all of the conditions under § __.11 with respect to the covered fund, which would, among other things, prohibit the banking entity from guaranteeing, assuming, or otherwise insuring the obligations or performance of the covered fund. As a result, the banking entity would not be permitted to make a direct investment alongside a covered fund that the banking entity organizes and offers for the purpose of artificially maintaining or increasing the value of the fund's positions. The banking entity would also need to ensure that any such direct investment alongside an organized and offered covered fund does not cause the sponsoring banking entity's permitted organizing and offering activities to violate the prudential backstops under § __.15.[244] In particular, to the extent the investment would result in a material conflict of interest between the banking entity and its clients, for example because the banking entity may exit the position at a different time or on different terms than the covered fund, the banking entity would be required to provide timely and effective disclosure in accordance with § __.15(b) prior to making the investment.

The 2013 rule imposes certain attribution rules and eligibility requirements for investments by directors and employees of a banking entity in covered funds organized and offered by the banking entity. Specifically, § __.12(b)(1)(iv) of the 2013 rule requires attribution of an investment by a director or employee of a banking entity who acquires an ownership interest in his or her personal capacity in a covered fund sponsored by the banking entity if the

[233] 79 FR 5734.

[234] 2013 rule § __.12(a).

[235] 12 U.S.C. 1851(d)(4).

[236] Any investment by the banking entity would need to comply with the proprietary trading restrictions in Subpart B of the implementing regulations.

[237] 79 FR 5734 (emphasis added).

[238] *See id.* at 5734 *Id.*

[239] FSF; Goldman; and SIFMA.

[240] FSF; Goldman; and SIFMA.

[241] FSF and SIFMA.

[242] Proposed rule § __.12(b)(5). These kinds of investments could be, for example, parallel investments or co-investments. For these purposes, ''parallel investments'' generally refers to a series of investments that are made side-by-side with a covered fund, and ''co-investments'' generally refers to a specific investment opportunity that is made available to third-parties when the general partner or investment manager for the covered fund determines that the covered fund does not have sufficient capital available to make the entire investment in the target portfolio company or determines that it would not be suitable for the covered fund to take the entire available investment.

[243] 79 FR 5734.

[244] The agencies note that the banking entity's direct investment would not itself be subject to § __.15.

banking entity, directly or indirectly, extends financing for the purpose of enabling the director or employee to acquire the ownership interest in the fund and the financing is used to acquire such ownership interest in the covered fund. Section __.11(a)(7) prohibits investments by any director or employee of the banking entity (or an affiliate thereof) in the covered fund, other than any director or employee who is directly engaged in providing investment advisory, commodity trading advisory, or other services to the covered fund at the time the director or employee makes the investment.

The agencies recognize that directors and employees of banking entities may participate in investments alongside a covered fund, for example on an ad hoc basis or as part of a compensation arrangement. Consistent with the agencies' proposed rule of construction regarding direct investments by banking entities alongside a covered fund, the agencies would expect that any direct investments (whether a series of parallel investments or a co-investment) by a director or employee of a banking entity (or an affiliate thereof) made alongside a covered fund in compliance with applicable laws and regulations would not be treated as an investment by the director or employee in the covered fund. Accordingly, such a direct investment would not be attributed to the banking entity as an investment in the covered fund, regardless of whether the banking entity arranged the transaction on behalf of the director or employee or provided financing for the investment.[245] Similarly, the requirements under § __.11(a)(7) limiting the directors and employees that are eligible to invest in a covered fund organized and offered by the banking entity to those that are directly engaged in providing specified services to the covered fund would not apply to any such direct investment.

The proposed rule of construction would not prohibit a banking entity from having investment policies, arrangements or agreements to invest alongside a covered fund in all or substantially all of the investments made by the covered fund or to fund all or any portion of the investment opportunities made available by the covered fund to other investors. Accordingly, a banking entity could market a covered fund it organizes and offers pursuant to § __.11 on the basis of the banking entity's expectation that it would invest in parallel with the covered fund in some or all of the same investments, or the expectation that the banking entity would fund one or more co-investment opportunities made available by the covered fund. The agencies would expect that any such investment policies, arrangements or agreements would ensure that the banking entity has the ability to evaluate each investment on a case-by-case basis to confirm that the banking entity does not make any investment unless the investment complies with applicable laws and regulations, including any applicable safety and soundness standards. The agencies believe that this would further ensure that the banking entity is not exposed to the types of risks that section 13 of the BHC Act was intended to address.

The agencies recognize that the 2011 proposed rule would have required a banking entity to apply the per fund limit and aggregate fund limit to a direct investment alongside a covered fund when, among other things, a banking entity is contractually obligated to make such investment alongside a covered fund. The agencies do not believe such a prohibition is necessary given the agencies' expectation that a banking entity would retain the ability to evaluate each investment on a case-by-case basis to confirm that the banking entity does not make any investment unless the investment complies with applicable laws and regulations, including any applicable safety and soundness standards.

Question 83. Should the agencies adopt the proposed rule of construction in § __.12(b)(5) that would address direct investments made by banking entities alongside covered funds by clarifying in the rule text that banking entities are not required to treat such direct investments alongside a covered fund as an investment in the covered fund as long as the investment is made in compliance with applicable laws and regulations? Why or why not? What, if any, modifications to the scope of the proposed rule of construction should be made? Is the proposed condition on the proposed rule of construction appropriate? If not, how should the agencies modify the condition, and why? Should the agencies provide any additional guidance or requirements regarding the condition?

Question 84. Do commenters believe that the proposed rule of construction will provide banking entities with clarity about how a banking entity should treat its otherwise permissible investments alongside a covered fund under the implementing regulations? Why or why not? If not, what additional modifications should be made?

Question 85. Would the proposed rule of construction create any opportunities for evasion, for example, by allowing a banking entity to structure parallel investments and co-investments to evade the restrictions of section 13? Why or why not? If so, how could such concerns be addressed? Please explain.

Question 86. Do commenters agree that investments made by a director or employee alongside a covered fund should not be treated as an investment in the covered fund? Why or why not? Do commenters agree that the requirements under § __.11(a)(7) that limit the directors and employees that are eligible to invest in a covered fund organized and offered by the banking entity to those who are directly engaged in providing investment advisory, commodity trading advisory, or other services to the covered fund should not apply to any such investment? Why or why not? Should the agencies provide additional rule text addressing director and employee investments alongside covered funds? Are there any additional conditions that the agencies should consider placing on director and employee investments made alongside a covered fund? Are there any modifications to the agencies' proposed treatment of director and employee investments or proposed rule of construction that commenters believe is necessary in order to accommodate director and employee investments alongside a covered fund that are made through employee securities companies or other types of employee compensation arrangements? If so, please explain what modifications would be necessary or appropriate and the rationale for such modifications.

Question 87. The proposed rule of construction would not prohibit a banking entity from having investment policies, arrangements or agreements to invest alongside a covered fund in all or substantially all of the investments made by the covered fund or to fund all or any portion of the investment opportunities made available by the covered fund to other investors. Should the agencies impose any additional limitations on a banking entity's investment policies, arrangements or agreements to invest alongside a covered fund? Why or why not? If the agencies were to impose such limitations, should the agencies adopt the approach used to define

[245] *See* proposed rule § __.12(b)(1)(iv) (requiring attribution of an investment by a director or employee *in a covered fund* where the banking entity, directly or indirectly, extends financing for the purpose of enabling the director or employee to acquire the ownership interest in the covered fund and the financing is used to acquire such ownership interest in the covered fund).

''contractual obligation'' in the Conformance Rule?[246] Why or why not?

G. Technical Amendments

The agencies are proposing five sets of clarifying technical edits to the implementing regulations. Specifically, the agencies are proposing to (1) amend § __.12(b)(1)(ii) to add a comma after the words ''SEC-regulated business development companies'' in both places where that phrase is used; (2) amend § __.12(b)(4)(i) to replace the phrase ''ownership interest of the master fund'' with the phrase ''ownership interest in the master fund''; (3) amend § __.12(b)(4)(ii) to replace the phrase ''ownership interest of the fund'' with the phrase ''ownership interest in the fund;'' (4) amend §§ __.10(c)(3)(i) and __.10(c)(10)(i) to replace the word ''comprised'' with the word ''composed;'' and (5) amend § __.10(c)(8)(iv)(A) to replace the word ''of'' in the phrase ''contractual rights of other assets'' with the word ''or.''

IV. Administrative Law Matters

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000.[247] The Federal banking agencies have sought to present the proposal in a simple and straightforward manner, and invite your comments on how to make this proposal easier to understand.

For example:

- *Have the agencies organized the material to suit your needs? If not, how could this material be better organized?*
- *Are the requirements in the proposal clearly stated? If not, how could the proposal be more clearly stated?*
- *Does the proposal contain language or jargon that is not clear? If so, which language requires clarification?*
- *Would a different format (e.g., grouping and order of sections, use of headings, paragraphing) make the proposal easier to understand? If so, what changes to the format would make the proposal easier to understand?*
- *Would more, but shorter, sections be better? If so, which sections should be changed?*
- *What else could the agencies do to make the regulation easier to understand?*

[246] *See* A Conformance Period for Entities Engaged in Prohibited Proprietary Trading or Private Equity Fund or Hedge Fund Activities, 76 FR 8265 (Feb. 14, 2011) (the Conformance Rule).

[247] Public Law 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809.

B. Paperwork Reduction Act Analysis Request for Comment on Proposed Information Collection

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies reviewed the proposed rule and determined that the proposed rule creates new recordkeeping requirements and revises certain disclosure requirements that have been previously cleared under various OMB control numbers. The agencies are proposing to extend for three years, with revision, these information collections. The information collection requirements contained in this joint notice of proposed rulemaking have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB. The Board will submit information collection burden estimates to OMB and the submission will include burden for Federal Reserve-supervised institutions, as well as burden or OCC-, FDIC-, SEC-, and CFTC-supervised institutions under a holding company. The OCC and the FDIC will take burden for banking entities that are not under a holding company.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the estimates of the burden of the information collections, 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 the information collections 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.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer for the agencies by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503, by facsimile to 202–395–5806, or by email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency and Commission Desk Officer.

Abstract

Section 13 of the BHC Act, which generally prohibits any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a covered fund, subject to certain exemptions. The exemptions allow certain types of permissible trading activities such as underwriting, market making, and risk-mitigating hedging, among others. The 2013 rule implementing section 13 became effective on April 1, 2014. Section __.20(d) and Appendix A of the 2013 final rule require certain of the largest banking entities to report to the appropriate agency certain quantitative measurements.

Current Actions

The proposed rule contains requirements subject to the PRA and the proposed changes relative to the current final rule are discussed herein. The new recordkeeping requirements are found in section __.10(c)(18)(ii)(B)(1) and the modified disclosure requirements are found in section __.11(a)(8)(i). The modified information collection requirements would implement section 13 of the BHC Act. The respondents are for-profit financial institutions, including small businesses. A covered entity must retain these records for a period that is no less than 5 years in a form that allows it to promptly produce such records to the relevant Agency on request.

Recordkeeping Requirements

Section __.10(c)(18)(ii)(B)(1) would require a banking entity relying on the proposed exclusion from the covered fund definition for customer facilitation vehicles to maintain documentation outlining how the banking entity intends to facilitate the customer's exposure to a transaction, investment strategy, or service. The agencies estimate that the new recordkeeping requirement would be incurred once a

year with an average hour per response of 10 hours.

Disclosure Requirements

Section __.11(a)(8)(i), which requires banking entities that organize and offer covered funds to make certain disclosures to investors in such funds, would be expanded to also apply to banking entities sponsoring credit funds, venture capital funds, family wealth management vehicles, or customer facilitation vehicles, in reliance on the proposed exclusions for such funds. The agencies estimate that the current average hours per response of 0.1 would increase to 0.5.

Proposed Revision, With Extension, of the Following Information Collections

Estimated average hours per response:

Reporting

Section __.4(c)(3)(i)—0.25 hours for an average of 20 times per year.

Section __.12(e)—20 hours (Initial set-up 50 hours) for an average of 10 times per year.

Section __.20(d)—41 hours (Initial set-up 125 hours) quarterly.

Section __.20(i)—20 hours.

Recordkeeping

Section __.3(d)(3)—1 hour (Initial set-up 3 hours).

Section __.4(b)(3)(i)(A)—2 hours quarterly.

Section __.4(c)(3)(i)—0.25 hours for an average of 40 times per year.

Section __.5(c)—40 hours (Initial setup 80 hours).

Section __.10(c)(18)(ii)(B)(1)—10 hours.

Section __.11(a)(2)—10 hours.

Section __.20(b)—265 hours (Initial set-up 795 hours).

Section __.20(c)—100 hours (Initial set-up 300 hours).

Section __.20(d)– 10 hours.

Section __.20(e)—200 hours.

Section __.20(f)(1)—8 hours.

Section __.20(f)(2)—40 hours (Initial set-up 100 hours).

Disclosure

Section __.11(a)(8)(i)—0.5 hours for an average of 26 times per year.

OCC

Title of Information Collection: Reporting, Recordkeeping, and Disclosure Requirements Associated with Restrictions on Proprietary Trading and Certain Relationships with Hedge Funds and Private Equity Funds.

Frequency: Annual, quarterly, and event driven.

Affected Public: Businesses or other for-profit.

Respondents: National banks, state member banks, state nonmember banks, and state and federal savings associations.

OMB control number: 1557–0309.

Estimated number of respondents: 39.

Proposed revisions estimated annual burden: 302 hours.

Estimated annual burden hours: 20,410 hours (3,681 hour for initial set-up and 16,729 hours for ongoing).

Board

Title of Information Collection: Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation VV.

Frequency: Annual, quarterly, and event driven.

Affected Public: Businesses or other for-profit.

Respondents: State member banks, bank holding companies, savings and loan holding companies, foreign banking organizations, U.S. State branches or agencies of foreign banks, and other holding companies that control an insured depository institution and any subsidiary of the foregoing other than a subsidiary for which the OCC, FDIC, CFTC, or SEC is the primary financial regulatory agency. The Board will take burden for all institutions under a holding company including:

- OCC-supervised institutions,
- FDIC-supervised institutions,
- Banking entities for which the CFTC is the primary financial regulatory agency, as defined in section 2(12)(C) of the Dodd-Frank Act, and
- Banking entities for which the SEC is the primary financial regulatory agency, as defined in section 2(12)(B) of the Dodd-Frank Act.

Legal authorization and confidentiality: This information collection is authorized by section 13 of the BHC Act (12 U.S.C. 1851(b)(2) and 12 U.S.C. 1851(e)(1)). The information collection is required in order for covered entities to obtain the benefit of engaging in certain types of proprietary trading or investing in, sponsoring, or having certain relationships with a hedge fund or private equity fund, under the restrictions set forth in section 13 and the final rule. If a respondent considers the information to be trade secrets and/or privileged such information could be withheld from the public under the authority of the Freedom of Information Act (5 U.S.C. 552(b)(4)). Additionally, to the extent that such information may be contained in an examination report such information could also be withheld from the public (5 U.S.C. 552 (b)(8)).

Agency form number: FR VV.

OMB control number: 7100–0360.

Estimated number of respondents: 255.

Proposed revisions estimated annual burden: 7,880 hours.

Estimated annual burden hours: 36,112 hours (4,381 hour for initial set-up and 31,731 hours for ongoing).

FDIC

Title of Information Collection: Volcker Rule Restrictions on Proprietary Trading and Relationships with Hedge Funds and Private Equity Funds.

Frequency: Annual, quarterly, and event driven.

Affected Public: Businesses or other for-profit.

Respondents: State nonmember banks, state savings associations, and certain subsidiaries of those entities.

OMB control number: 3064–0184.

Estimated number of respondents: 10.

Proposed revisions estimated annual burden: 175 hours.

Estimated annual burden hours: 3,288 hours (1,759 hours for initial set-up and 1,529 hours for ongoing).

C. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'')[248] requires an agency to either provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (''SBA'') establishes size standards that define which entities are small businesses for purposes of the RFA.[249] Except as otherwise specified below, the size standard to be considered a small business for banking entities subject to the proposal is $600 million or less in consolidated assets.[250]

Board

The Board has considered the potential impact of the proposed rule on small entities in accordance with section 603 of the RFA. Based on the Board's analysis, and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial of number of small entities.

The Board welcomes comment on all aspects of its analysis. In particular, the

[248] 5 U.S.C. 601 *et seq.*

[249] U.S. SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at https://www.sba.gov/document/support-table-size-standards.*

[250] *See id.* Pursuant to SBA regulations, the asset size of a concern includes the assets of the concern whose size is at issue and all of its domestic and foreign affiliates. 13 CFR 121.103(6).

Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

As discussed in the **SUPPLEMENTARY INFORMATION**, the agencies are proposing revisions to the regulations implementing section 13 of the BHC Act in order to improve and streamline the regulations by modifying and clarifying requirements related to the covered fund provisions.[251] Certain of the proposed exclusions from the covered fund definition may contain recordkeeping and disclosure requirements that would apply to banking entities relying on the exclusion. For example, the proposed exclusion for customer facilitation vehicles would require a banking entity relying on the exclusion to maintain documentation outlining how the banking entity intends to facilitate the customer's exposure to a transaction, investment strategy, or service. The proposed changes are expected to reduce regulatory burden on banking entities, and the Board does not expect these proposed recordkeeping requirements to result in a significant economic impact.

The Board's rule generally applies to state-chartered banks that are members of the Federal Reserve System, bank holding companies, and foreign banking organizations and nonbank financial companies supervised by the Board (collectively, ''Board-regulated entities''). However, section 203 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA),[252] which was enacted on May 24, 2018, amended section 13 of the BHC Act by narrowing the definition of banking entity to exclude certain community banks.[253] The Board is not aware of any Board-regulated entities that meet the SBA's definition of ''small entity'' that are subject to section 13 of the BHC Act and its implementing regulations following the enactment of EGRRCPA. Furthermore, to the extent that any Board-regulated entities that meet the definition of ''small entity'' are or become subject to section 13 of the BHC Act and its implementing regulations, the Board does not expect the total number of such entities to be substantial. Accordingly, the Board's proposed rule is not expected to have a significant economic impact on a substantial number of small entities.

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed revisions, and the Board is not aware of any significant alternatives to the final rule that would reduce the economic impact on Board-regulated small entities.

OCC

The OCC certifies that this regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

The Regulatory Flexibility Act requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities, or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, the SBA includes as small entities those with $600 million or less in assets for commercial banks and savings institutions, and $41.5 million or less in assets for trust companies.

The OCC currently supervises approximately 782 small entities.[254]

Under the Economic Growth, Regulatory Relief, and Consumer Protection Act, banking entities with total consolidated assets of $10 billion or less generally are not ''banking entities'' within the scope of section 13 of the BHC Act if their trading assets and trading liabilities do not exceed 5 percent of their total consolidated assets. In addition, certain trust-only banks are generally not banking entities within the scope of section 13 of the BHC Act. Because there are no OCC-supervised small entities that are banking entities within the scope of section 13 of the BHC Act, the proposal would not impact any OCC-supervised small entities. Therefore, the OCC certifies that the proposal, if implemented, would not have a significant economic impact on a substantial number of small entities.

FDIC

The RFA generally requires that, in connection with a proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities.[255] However, a regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The SBA—has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[256] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that this rule will not have a significant economic impact on a substantial number of small entities.

As of June 30, 2019, the FDIC supervised 3,424 depository institutions,[257] of which 2,665 were considered small entities for the purposes of RFA. The Economic Growth, Regulatory Relief, and Consumer Protection Act exempted banking entities from the requirements of section 13 of the BHC Act if they have total assets below $10 billion and trading assets and liabilities comprising less than five percent of total

[251] The agencies are explicitly authorized under section 13(b)(2) of the BHC Act to adopt rules implementing section 13. 12 U.S.C. 1851(b)(2).

[252] Public Law 115–174 (May 24, 2018).

[253] Under EGRRCPA, a community bank and its affiliates are generally excluded from the definition of banking entity, and thus section 13 of the BHC Act, if the bank and all companies that control the bank have total consolidated assets equal to $10 billion or less and trading assets and liabilities equal to 5 percent or less of total consolidated assets.

[254] The number of small entities supervised by the OCC is determined using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $600 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. We use December 31, 2018, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[255] 5 U.S.C. 601 *et seq.*

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

[257] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

consolidated assets.[258] Only one small, FDIC-supervised institution is subject to Section 13, because its trading assets and liabilities exceed five percent of total consolidated assets.[259]

Section 13 of the BHC Act generally prohibits any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a covered fund. As previously discussed, the proposed rule would modify existing definitions and exclusions, as well as would introduce new exclusions to the implementing regulations. If adopted, the proposed rule would permit covered entities to engage in additional activities with respect to covered funds, including acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with covered funds, subject to certain restrictions.

This proposed rule would exclude certain types of institutions from the definition of a ''covered fund'' for the purposes of section 13 of the BHC Act. Investments in funds that are affected by this proposed rule could be reported as deductions from capital on Call Report schedule RCR Part 1 Lines 11 or 13 if the investments qualify as ''investments in the capital of an unconsolidated financial institution'' or as additional deductions on Lines 17 or 24 of schedule RC–R otherwise.[260] The one affected small, FDIC-supervised institution did not report any such deductions over the past five years.[261]

Based on this supporting information, the FDIC certifies that this rule will not have a significant economic impact on a substantial number of small entities.

SEC

Pursuant to 5 U.S.C. 605(b), the SEC hereby certifies that the proposed rule would not, if adopted, have a significant economic impact on a substantial number of small entities.

As discussed in the Supplementary Information, the proposed rule is intended to continue the agencies' efforts to improve and streamline the regulations implementing section 13 of the BHC Act by modifying and clarifying requirements related to the covered fund provisions. To minimize the costs associated with the 2013 rule in a manner consistent with section 13 of the BHC Act, the agencies are proposing to simplify and tailor the rule in a manner that would reduce compliance costs for banking entities subject to section 13 of the BHC Act and the implementing regulations.

The proposed revisions would generally apply to banking entities, including certain SEC-registered entities. These entities include bank-affiliated SEC-registered investment advisers, broker-dealers, and security-based swap dealers. Based on information in filings submitted by these entities, the SEC preliminarily believes that there are no banking entity registered investment advisers or broker-dealers that are small entities for purposes of the RFA. For this reason, the SEC believes that the proposed rule would not, if adopted, have a significant economic impact on a substantial number of small entities.

The SEC encourages written comments regarding this certification. Specifically, the SEC solicits comment as to whether the proposed rule could have an impact on small entities that has not been considered. Commenters should describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

CFTC

Pursuant to 5 U.S.C. 605(b), the CFTC hereby certifies that the proposed amendments to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities for which the CFTC is the primary financial regulatory agency.

As discussed in this **SUPPLEMENTARY INFORMATION**, the agencies are proposing specific changes to the restrictions on covered fund investments and activities and other issues related to the treatment of investment funds in the implementing regulations. The proposed rule is intended to improve and streamline the covered fund provisions and facilitate banking entities' permissible activities and offering of financial services in a manner that is consistent with the requirements of section 13 of the BHC Act. The proposal would exempt the activities of certain qualifying foreign excluded funds from the restrictions of the implementing regulations, make modifications to several existing exclusions from the covered funds provisions and adopt several new exclusions, permit a banking entity to engage in a limited set of covered transactions with a related covered fund, and clarify certain aspects of the definition of ownership interest.

The proposed revisions would generally apply to banking entities, including certain CFTC-registered entities. These entities include bank-affiliated CFTC-registered swap dealers, futures commission merchants, commodity trading advisors and commodity pool operators.[262] The CFTC has previously determined that swap dealers, futures commission merchants and commodity pool operators are not small entities for purposes of the RFA and, therefore, the requirements of the RFA do not apply to those entities.[263] As for commodity trading advisors, the CFTC has found it appropriate to consider whether such registrants should be deemed small entities for purposes of the RFA on a case-by-case basis, in the context of the particular regulation at issue.[264]

In the context of the proposed revisions to the implementing regulations, the CFTC believes it is unlikely that a substantial number of the commodity trading advisors that are potentially affected are small entities for purposes of the RFA. In this regard, the CFTC notes that only commodity trading advisors that are registered with the CFTC are covered by the implementing regulations, and generally those that are registered have larger businesses. Similarly, the implementing regulations apply to only those commodity trading advisors that are affiliated with banks, which the CFTC expects are larger businesses. The CFTC requests that commenters address in particular whether any of these commodity trading advisors, or other CFTC registrants covered by the proposed revisions to the implementing regulations, are small entities for purposes of the RFA.

Because the CFTC believes that there are not a substantial number of registered, banking entity-affiliated commodity trading advisors that are small entities for purposes of the RFA,

[258] Public Law 115–174, May 24, 2018. *https://www.congress.gov/bill/115th-congress/senate-bill/2155.*

[259] Call Report data, June 2019.

[260] *See* ''Supervisory Guidance on the Capital Treatment of Certain Investments in Covered Funds.'' FDIC FIL–50–2015: November 6, 2015. *https://www.fdic.gov/news/news/financial/2015/fil15050a.pdf.*

[261] Call Report data, March 2014–June 2019.

[262] The proposed revisions may also apply to other types of CFTC registrants that are banking entities, such as introducing brokers, but the CFTC believes it is unlikely that such other registrants will have significant activities that would implicate the proposed revisions. *See* 79 FR 5808, 5813 (Jan. 31, 2014) (CFTC version of 2013 final rule).

[263] *See* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982) (futures commission merchants and commodity pool operators); Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (swap dealers and major swap participants).

[264] *See* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18620 (Apr. 30, 1982).

and the other CFTC registrants that may be affected by the proposed revisions have been determined not to be small entities, the CFTC believes that the proposed revisions to the implementing regulations would not, if adopted, have a significant economic impact on a substantial number of small entities for which the CFTC is the primary financial regulatory agency.

The CFTC encourages written comments regarding this certification. Specifically, the CFTC solicits comment as to whether the proposed amendments could have a direct impact on small entities that were not considered. Commenters should describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

D. Riegle Community Development and Regulatory Improvement Act

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider, consistent with the principles of safety and soundness and the public interest: (1) Any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and customers of depository institutions, and (2) the benefits of the proposed rule. In addition, section 302(b) of RCDRIA, 12 U.S.C. 4802(b), requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. The Federal banking agencies invite any comment that would inform consideration under RCDRIA.

E. OCC Unfunded Mandates Reform Act

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[265] Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

The proposed rule does not impose new mandates. Therefore, the OCC finds that the proposed rule does not trigger the UMRA cost threshold. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

F. SEC Economic Analysis

1. Broad Economic Considerations

a. Background

Section 13 of the Bank Holding Company (BHC) Act generally prohibits banking entities from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with, a hedge fund or private equity fund (covered funds), subject to certain exemptions. Section 13(h)(1) of the BHC Act defines the term ''banking entity'' to include (i) any insured depository institution (as defined by statute), (ii) any company that controls an insured depository institution, (iii) any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978, and (iv) any affiliate or subsidiary of such an entity.[266] In addition, the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), enacted on May 24, 2018, amended section 13 of the BHC Act to exclude from the definition of ''insured depository institution'' any institution that does not have and is not controlled by a company that has (1) more than $10 billion in total consolidated assets; and (2) total trading assets and trading liabilities, as reported on the most recent applicable regulatory filing filed by the institution, that are more than 5% of total consolidated assets.[267]

Certain SEC-regulated entities, such as broker-dealers, security-based swap dealers (SBSDs), and registered investment advisers (RIAs) affiliated with an insured depository institution, fall under the definition of ''banking entity'' and are subject to the prohibitions of section 13 of the BHC Act.[268] This economic analysis is limited to areas within the scope of the SEC's function as the primary securities markets regulator in the United States. In particular, the SEC's economic analysis focuses primarily on the potential effects of the proposed rule on (1) SEC registrants, in their capacity as such, (2) the functioning and efficiency of the securities markets, (3) investor protection, and (4) capital formation. SEC registrants that may be affected by the proposed rule include SEC-registered broker-dealers, SBSDs, and RIAs. Thus, the below analysis does not consider the direct effects on broker-dealers, SBSDs, and investment advisers that are not banking entities, or banking entities that are not SEC registrants, in either case for purposes of section 13 of the BHC Act. Potential spillover effects on these and other entities are, on a general basis, reflected in the analysis of effects on efficiency, competition, investor protection, and capital formation in securities markets. This economic analysis also discusses the impacts of the proposal on private funds,[269] to the degree that such

[265] 2 U.S.C. 1531 *et seq.*

[266] *See* 12 U.S.C. 1851(h)(1).

[267] These and other aspects of the regulatory baseline against which the SEC is assessing the economic effects of the proposed amendments on SEC-regulated entities are discussed in the economic baseline. On July 22, 2019, the agencies adopted a final rule amending the definition of ''insured depository institution'' in a manner consistent with EGRRCPA. *See* Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, 84 FR 35008 (July 22, 2019) (''EGRRCPA Conforming Amendments Adopting Release''). In November 2019, the agencies adopted final rules tailoring certain proprietary trading and covered fund restrictions of the 2013 rule. *See* Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, 84 FR 61974 (Nov. 14, 2019) (''2019 amendments'').

[268] Throughout this economic analysis, the terms ''banking entity'' and ''entity'' generally refer only to banking entities for which the SEC is the primary financial regulatory agency. While section 13 of the BHC Act and its associated rules apply to a broader set of banking entities, this economic analysis is limited to those banking entities for which the SEC is the primary financial regulatory agency as defined in section 2(12)(B) of the Dodd-Frank Act. *See* 12 U.S.C. 1851(b)(2), and 5301(12)(B).

Compliance with SBSD registration requirements is not yet required and there are currently no registered SBSDs. However, the SEC has previously estimated that as many as 50 entities may potentially register as SBSDs and that as many as 16 of these entities may already be SEC-registered broker-dealers. *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, 84 FR 43872 (Aug. 22, 2019) (''Capital, Margin, and Segregation Adopting Release'').

For the purposes of this economic analysis, the term ''dealer'' generally refers to SEC-registered broker-dealers and SBSDs.

[269] There is significant overlap between the definitions of ''private fund'' and ''covered fund.'' For purposes of this economic analysis, ''private fund'' means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)), but for section 3(c)(1) or section 3(c)(7) of that Act (15 U.S.C. 80a–3(c)(1) or (7)). 15 U.S.C. 80b–2(a)(29). Section 13(h)(2) of the BHC Act defines ''hedge fund'' and ''private equity fund'' to mean an issuer that would be an investment company, but for section 3(c)(1) or 3(c)(7) of the Investment Company Act, or ''such similar funds'' as the agencies determine by rule (*see* 12 U.S.C. 1851(h)(2)). In the

Continued

impacts may flow through to SEC registrants, such as RIAs, SEC-registered broker-dealers and SBSDs, and securities markets and investors.

In this proposal, the SEC is soliciting comment on all aspects of the costs and benefits associated with the proposed amendments for SEC registrants, including spillover effects the proposed amendments may have on efficiency, competition, and capital formation in securities markets.

In implementing section 13 of the BHC Act, the agencies sought to increase the safety and soundness of banking entities, promote financial stability, and reduce conflicts of interest between banking entities and their customers.[270] The regulatory regime created by the 2013 rule may have enhanced regulatory oversight and compliance with the substantive prohibitions of section 13 of the BHC Act, but could also have impacted capital formation and liquidity, as well as the provision by banking entities of a variety of financial services for customers.

Section 13 of the BHC Act also provides a number of statutory exemptions to the general prohibitions on proprietary trading and covered funds activities. For example, the statute exempts certain covered funds activities, such as organizing and offering covered funds.[271] The 2013 rule implemented these exemptions.[272] Banking entities engaged in activities and investments covered by section 13 of the BHC Act and the 2013 rule are required to establish a compliance program reasonably designed to ensure and monitor compliance with the 2013 rule.[273]

b. Broad Economic Effects

Certain aspects of the implementing regulations may have resulted in a complex and costly compliance regime that is unduly restrictive and burdensome on some affected banking entities.[274] Distinguishing between permissible and prohibited activities may be complex and costly, resulting in uncertain determinations for some entities. Moreover, the 2013 rule may have included in its scope some groups of market participants that do not necessarily engage in the activities or pose the risks that section 13 of the BHC Act intended to address. For example, the 2013 rule's definition of the term ''covered fund'' may include entities that do not engage in the activities contemplated by section 13 of the BHC Act or may include entities that do not pose the risks that section 13 is intended to mitigate.

The proposed amendments include amendments that reduce the scope of entities that may be treated as covered funds (*e.g.,* credit funds, venture capital funds, family wealth management vehicles, and customer facilitation vehicles), those that modify existing covered fund exclusions under the 2013 rule (*e.g.,* foreign public funds and small business investment companies),[275] and those that affect the types of permitted activities between certain banking entities and certain covered funds (*e.g.,* restrictions on relationships between banking entities and covered funds, definition of ''ownership interest,'' and treatment of loan securitizations). The proposed amendments would also reduce the burden on affected banking entities by addressing certain interpretations (*e.g.,* the treatment as ''banking entities'' of certain foreign excluded funds and the attribution to a banking entity, in certain circumstances, of investments made by the banking entity alongside a covered fund).

Broadly, to the extent that the proposed amendments directly change the scope of permissible covered fund activities, and indirectly reduce costs to banking entities and covered funds by reducing uncertainty regarding the scope of permissible activities, the proposed amendments may impact the economic effects of the 2013 rule as amended in 2019.[276] The SEC's economic analysis continues to recognize that the overall risk exposure of banking entities may generally arise out of a combination of activities, including proprietary trading, market making, traditional banking, asset management and investment activities, as well as the volume and structure in which banking entities engage in such activities, including the extent to which banking entities engage in hedging and other risk-mitigating activities. As discussed elsewhere,[277] the SEC recognizes the complex baseline effects of section 13 of the BHC Act, as amended by sections 203 and 204 of EGRRCPA, and the implementing regulations, on overall levels and structure of banking entity risk exposures.

The proposed amendments may benefit the functioning of the broader capital markets through, for example, increased ability and willingness of banking entities to facilitate capital formation through sponsorship and participation in certain types of funds and to transact with certain groups of counterparties.[278] For example, exclusions from the ''covered fund'' definition of specific types of entities may benefit banking entities by providing clarity and removing certain constraints around potentially profitable business opportunities and by reducing compliance costs, and may benefit excluded funds and their banking entity sponsors and advisers by increasing the spectrum of available counterparties and improving the quality or cost of financial services available to customers.

The proposed changes, however, may also facilitate risk-taking activities of banking entities. They also may change aspects of the relationships among banking entities and certain other

2013 rule, the agencies combined the definitions of ''hedge fund'' and ''private equity fund'' into a single definition ''covered fund'' (as in the statute) and defined this term to include any issuer that would be an investment company as defined in the Investment Company Act but for section 3(c)(1) or 3(c)(7) of that Act with a number of express exclusions and additions as determined by the agencies (*See* 2013 rule § __.10(c)).

[270] *See, e.g.,* Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 79 FR 5536, 5541, 5574, 5659, 5666 (Jan. 31, 2014) (''2013 rule adopting release''). An extensive body of research has examined moral hazard arising out of federal deposit insurance, implicit bailout guarantees, and systemic risk issues. *See, e.g.,* Andrew G. Atkeson et al., *Government Guarantees and the Valuation of American Banks,* 33 NBER Macroeconomics Ann. 81 (2018). *See also* Javier Bianchi, *Efficient Bailouts?,* 106 Amer. Econ. Rev. 3607 (2016); Bryan Kelly, Hanno Lustig, & Stijn Van Nieuwerburgh, *Too-Systematic-to-Fail: What Option Markets Imply about Sector-Wide Government Guarantees,* 106 Amer. Econ. Rev. 1278 (2016); Deniz Anginer, Asli Demirguc-Kunt, & Min Zhu, *How Does Deposit Insurance Affect Bank Risk? Evidence from the Recent Crisis,* 48 J. Banking & Fin. 312 (2014); Andrea Beltratti & Rene M. Stulz, *The Credit Crisis Around the Globe: Why Did Some Banks Perform Better?,* 105 J. Fin. Econ. 1 (2012); Pietro Veronesi & Luigi Zingales, *Paulson's Gift,* 97 J. Fin. Econ. 339 (2010). For a literature review, *see, e.g.,* Sylvain Benoit et al., *Where the Risks Lie: A Survey on Systemic Risk,* 21 Rev. Fin. 109 (2017).

[271] *See* section 13(d)(1)(G) of the BHC Act.

[272] *See* 2013 rule §§ __.4, __.5, __.6, __.11, __.13.

[273] *See* 2013 rule § __.20. *See also* 2019 amendments at 62021–25 which, among other things, modified these requirements for banking entities with limited trading assets and liabilities. Banking entities with limited trading assets and liabilities are presumed to be in compliance with the proposal and would have had no obligation to demonstrate compliance with subpart B and subpart C of the implementing regulations on an ongoing basis.

[274] This SEC Economic Analysis follows earlier sections by referring to the regulations implementing section 13 of the BHC Act that are effective as of February 28, 2020 as the ''implementing regulations''. *See supra* note 8.

[275] Although no amendment is currently proposed, the agencies are soliciting comment on modifying the covered fund exclusion for certain other types of entities (*e.g.,* public welfare funds). *See infra* section IV.F.3.a.

[276] *See, e.g.,* 2019 amendments at 62037–92.

[277] *See* id.

[278] *See, e.g.,* U.S. Department of the Treasury, A Financial System That Creates Economic Opportunities: Banks and Credit Unions (June 2017) at 77.

groups of market participants, including potentially introducing new conflicts of interest and increasing or reducing the potential effects of existing conflicts of interest. To the degree that some banking entities may react to the proposed amendments by restructuring activities involving covered funds to take advantage of the proposed exclusions, there may be shifts in the structure and levels of activities of banking entities involving risk. However, each of the proposed exclusions includes a number of conditions that are aimed at facilitating banking entity compliance while also allowing for customer oriented financial services provided on arms-length, market terms, and preventing evasion of the requirements of section 13.

Moreover, many of the proposed exclusions, such as for credit funds and venture capital funds, would allow banking entities to engage indirectly through fund structures in the same activities in which they are currently permitted to engage directly (*e.g.,* extensions of credit or direct ownership stakes). Other exclusions would permit banking entities to provide traditional banking and asset management services to customers through a legal entity structure, with conditions (*e.g.,* limitation on ownership by the banking entity and prohibition on ''bail outs'') intended to ensure that the risks that section 13 of the BHC Act was intended to address are mitigated. Finally, nothing in the proposal removes or modifies prudential capital, margin, and liquidity requirements that are applicable to banking entities and that facilitate the safety and soundness of banking entities and the financial stability of the United States.

The proposed amendments may also impact competition, allocative efficiency, and capital formation. To the extent that the implementing regulations are currently constraining banking entities in their covered fund activities, including providing traditional banking and asset management services to customers through a legal entity structure, the proposed exclusions from the definition of ''covered fund'' may increase competition between banking entities and other entities providing services to and otherwise transacting with those types of funds and other entities. Such competition may reduce costs or increase the quality of certain financial services provided to such funds and their counterparties.

Finally, the magnitude of the proposal's costs, benefits, and effects on efficiency, competition, and capital formation is influenced by a variety of factors, including the prevailing macroeconomic conditions, the financial condition of firms seeking to raise capital and of funds seeking to transact with banking entities, competition between bank and non-bank providers of capital, and many others. Moreover, the relative efficiency between fund structures and the direct provision of capital is likely to vary widely among banking entities and funds. The SEC recognizes that the economic effects of the proposed amendments may be dampened or magnified in different phases of the macroeconomic cycle, depend on monetary and fiscal policy developments and other government actions, and vary across different types of banking entities.

The SEC also considered the implications for investors of the proposed amendments. Broadly, the proposed amendments should increase the number of funds and other entities that will be excluded from the covered fund definition. This is likely to result in an increase in offerings of such funds or an increase in banking entities providing services to customers through entities such as client facilitation vehicles and family wealth management vehicles. The ability of investors to access public and private markets through funds and other entities may relax constraints on their portfolio optimization and, thus, enhance the efficiency of their portfolio allocations. The ability of additional investors to access these markets through funds and other entities may also benefit the issuers of the securities held by those funds and other entities by potentially increasing demand for those securities. Increased demand typically results in increased liquidity which can be important to investors as it may enable investors to exit (in a timely manner and at an acceptable price) from their positions in fund instruments, products, and portfolios.

Moreover, investors that seek access to public markets or other markets through foreign public funds may benefit to the extent the proposed amendments would result in banking entities offering more foreign public funds or offering these funds at a lower cost. Further, investors that prefer to implement a trading or investing strategy through a legal entity structure may benefit from the proposed amendments, which would allow banking entities to implement or facilitate such trading or investing strategy while providing other banking and asset management services to the investor. At the same time, higher risk exposures of banking entities sponsoring or investing in more funds that would be excluded from the covered fund provisions by the proposed amendments could adversely affect markets through the impact on financial stability and, therefore, investors. Any such potential effects are expected to be mitigated by the various conditions of the proposed exclusions from the definition of covered fund. For example, the proposed amendments would permit the banking entity to sponsor or invest in certain excluded funds (*e.g.,* credit funds or qualifying venture capital funds) only to the extent the banking entity ensures that the activities of the fund are consistent with safety and soundness standards that are substantially similar to those that would apply if the banking entity engaged in the activities directly. These and other conditions of the proposed exclusions are discussed in greater detail below.

c. Analytical Approach

The SEC's economic analysis is informed by research [279] on the effects of section 13 of the BHC Act and the 2013 rule, comments received by the agencies from a variety of interested parties, and experience administering the 2013 rule since its adoption. Throughout this economic analysis, the SEC discusses how different market participants [280] may respond to various aspects of the proposed amendments. This analysis also considers the potential effects of the proposed amendments on activities by banking entities that involve risk, their willingness and ability to engage in client-facilitation activities, and competition, market quality, and capital formation.

The proposed amendments would tailor, remove, or alter the scope of various covered fund requirements in the 2013 rule. Since section 13 of the BHC Act and the 2013 rule impose a number of different requirements, and, as discussed above, the type and level of risk exposure of a banking entity is the result of a combination of activities,[281] it is difficult to attribute the observed effects to a specific

[279] *See* 2019 amendments at 62044–54.

[280] The SEC's economic analysis is focused on the potential effects of the proposed rule on SEC registrants, the functioning and efficiency of the securities markets, investor protection, and capital formation. Thus, the below analysis does not consider broker-dealers or investment advisers that are not banking entities, or banking entities that are not SEC registrants, in either case for purposes of section 13 of the BHC Act, beyond the potential spillover effects on these entities and effects on efficiency, competition, investor protection, and capital formation in securities markets. *See infra* section IV.F.2.b.

[281] *See, e.g.,* 2013 rule adopting release at 5541.

provision or subset of requirements. In addition, analysis of the effects of the implementation of the 2013 rule is confounded by macroeconomic factors, other policy interventions, and post-crisis changes to market participants' risk aversion and return expectations. Because of the extended timeline of implementation of section 13 of the BHC Act and the overlap of the period during which the 2013 rule was in effect with other post-crisis changes affecting the same group or certain sub-groups of SEC registrants, the SEC cannot rely on frequently utilized quantitative methods that might otherwise enable causal attribution and quantification of the effects of section 13 of the BHC Act and the 2013 rule on measures of capital formation, liquidity, competition, and informational or allocative efficiency. Moreover, empirical measures of capital formation or liquidity are substantially limited by the fact that they do not provide insight into security issuance and transaction activity that does not occur as a result of the 2013 rule. Accordingly, it is difficult to quantify the primary security issuance and secondary market liquidity that would have been observed following the financial crisis absent various provisions of section 13 of the BHC Act and the 2013 rule.

Importantly, the existing securities markets—including market participants, their business models, market structure, etc.—differ in significant ways from the securities markets that existed prior to enactment of section 13 of the BHC Act and the implementation of the 2013 rule. For example, the role of dealers in intermediating trading activity has changed in important ways, including the following: (1) In recent years, on both an absolute and relative basis, bank dealers generally committed less capital to intermediation activities while non-bank dealers generally committed more, although not always in the same manner or on the same terms as bank dealers; (2) the volume and profitability of certain trading activities after the financial crisis may have decreased for bank dealers while it may have increased for other intermediaries, including non-bank entities that provide intraday liquidity, but generally not overnight liquidity, using sophisticated electronic trading algorithms and high speed access to data and trading venues; and (3) the introduction of alternative credit markets, including non-bank direct lending markets, may have contributed to liquidity fragmentation across markets while potentially increasing access to capital.[282]

Where possible, the SEC has attempted to quantify the costs and benefits expected to result from the proposed amendments. In many cases, however, the SEC is unable to quantify these potential economic effects. Some of the primary economic effects, such as the effect on incentives that may give rise to conflicts of interest in various regulated entities and the degree to which the 2013 rule may be impeding activity of banking entities with respect to certain investment vehicles, are inherently difficult to quantify. Moreover, some of the benefits of the 2013 rule's definitions and prohibitions that the agencies propose to amend, such as the potential benefits for resilience during a crisis or periods of market stress, are less readily observable under strong economic conditions, particularly when markets are less volatile and are functioning well. Further, it is difficult to quantify the net economic effects of any individual proposed amendment because of overlapping implementation periods of various post-crisis regulations affecting the same group of SEC registrants, the long implementation timeline of the 2013 rule and the implementing regulations, and the fact that many market participants changed their behavior in anticipation of future changes in regulation.

In some instances, the SEC lacks the information or data necessary to provide reasonable estimates for the economic effects of the proposed amendments. For example, the SEC lacks information and data on how market participants may choose to restructure their relationships with various types of entities in response to the proposed amendments; the amount of capital formation in covered funds that does not occur because of current covered fund provisions, including those concerning the definition of covered fund, restrictions on relationships with covered funds, the definition of ownership interest, and the exclusion for loan securitizations; the volume of loans, guarantees, securities lending, and derivatives activity dealers may wish to engage in with related covered funds; as well as the extent of risk reduction associated with the covered fund provision of the 2013 rule. Where the SEC cannot quantify the relevant economic effects, they are discussed in qualitative terms.

[282] *See* U.S Sec. & Exch. Comm'n, Access to Capital and Market Liquidity (Aug. 2017) (''SEC Report 2017'').

2. Economic Baseline

In the context of this economic analysis, the economic costs and benefits, and the impact of the proposed amendments on efficiency, competition, and capital formation, are considered relative to a baseline that includes the 2013 rule; the 2019 amendments; legislative amendments in EGRRCPA [283] and conforming amendments to the implementing regulations, as applicable; and current practices aimed at compliance with these regulations.

a. Regulation

The economic baseline against which the SEC is assessing the economic impact of the proposed amendments includes the legal and regulatory framework as it exists at the time of this release. Thus, the regulatory baseline for the SEC's economic analysis includes section 13 of the BHC Act as amended by EGRRCPA, and the 2013 rule. Further, the baseline accounts for the fact that since the adoption of the 2013 rule, the agencies have adopted the 2019 amendments, which, among other things, related to the ability of banking entities to engage in certain activities, including underwriting, market-making, and risk-mitigating hedging, with respect to ownership interests in covered funds, as well as amendments conforming the 2013 rule to Sections 203 and 204 of EGRRCPA. In addition, the staffs of the agencies have provided FAQ responses related to the regulatory obligations of banking entities, including SEC-regulated entities that are also banking entities under the 2013 rule, which likely influenced these entities' decisions about how to comply with the 2013 rule.[284] The Federal banking agencies also issued policy statements in 2017 and 2019 with respect to foreign excluded funds.[285]

Although the 2013 rule also included restrictions on proprietary trading and compliance requirements (as modified by the 2019 amendments), the most relevant portion of the 2013 rule for establishing an economic baseline is that involving covered fund restrictions.[286] The features of the regulatory framework under the 2013 rule most relevant to the baseline include the definition of the term

[283] *See supra* note 267.

[284] *See* id.

[285] *See, e.g.,* Board of Governors of the Federal Reserve System, Statement regarding Treatment of Certain Foreign Funds under the Rules Implementing Section 13 of the Bank Holding Company Act (July 17, 2019), *available at https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20190717a1.pdf* (''2019 Policy Statement'').

[286] *See* 2019 amendments at 61974.

''covered fund''; restrictions on a banking entity's relationships with covered funds; and restrictions on parallel investment, co-investment, and investments in the fund by banking entity employees.

Scope of the Covered Fund Definition

The definition of ''covered fund'' impacts the scope of the substantive prohibitions on banking entities acquiring or retaining an ownership interest in, sponsoring, and having certain relationships with, covered funds. The covered fund provisions of the 2013 rule may reduce the ability and incentives of banking entities to bail out affiliated funds to mitigate reputational risk, limit conflicts of interest with clients, customers, and counterparties, and reduce the ability of banking entities to engage in proprietary trading indirectly through funds. The 2013 rule defines covered funds, in part, as issuers that would be investment companies but for section 3(c)(1) or 3(c)(7) of the Investment Company Act and then excludes specific types of entities from the definition. The definition also includes certain commodity pools as well as certain foreign funds. Funds that rely on the exclusions in sections 3(c)(1) or 3(c)(7) of the Investment Company Act are covered funds unless an exclusion from the covered fund definition is available. Funds that rely on any exclusion or exemption from the definition of ''investment company'' under the Investment Company Act, other than the exclusion contained in section 3(c)(1) or 3(c)(7), such as real estate and mortgage funds that rely on the exclusion in section 3(c)(5)(C), are not covered funds under the 2013 rule.[287]

The broad definition of covered funds encompasses many different types of vehicles, and the 2013 rule excludes some of them from the definition of a covered fund.[288] The excluded fund types relevant to the baseline are funds that are regulated by the SEC under the Investment Company Act: RICs and BDCs. Seeding vehicles for these funds are also excluded from the covered fund definition during their seeding period.[289]

Restrictions on Relationships Between Banking Entities and Covered Funds

Under the baseline, banking entities are limited in the types of transactions in which they are able to engage with covered funds with which they have certain relationships. Banking entities that serve, directly or indirectly, as the investment manager, adviser, or sponsor to a covered fund are prohibited from engaging in a ''covered transaction,'' as defined in section 23A of the Federal Reserve Act, with the covered fund or with any other covered fund that is controlled by such covered fund.[290] Similarly, a banking entity that organizes and offers a covered fund pursuant to § __.11 or that continues to hold an ownership interest in a covered fund in accordance with § __.11(b) is prohibited from engaging in such a ''covered transaction.'' This prohibits all ''covered transactions'' that cause the banking entity to have credit exposure to the affiliated covered fund, including short-term extensions of credit, and various other transactions required for a banking entity to provide an affiliated covered fund payment, clearing, and settlement services.

Definition of ''Banking Entity''

For foreign banking entities,[291] certain funds organized under foreign law and offered to foreign investors (''foreign excluded funds'') are not ''covered funds'' under the 2013 rule, but may be subject to the 2013 rule as ''banking entities'' under certain circumstances. The banking agencies (in consultation with the staffs of the SEC and the CFTC) have provided temporary relief for qualifying foreign excluded funds that will expire in July 2021.[292]

Definition of ''Ownership Interest''

The 2013 rule prohibits a banking entity, as principal, from directly or indirectly acquiring or retaining an ''ownership interest'' in a covered fund.[293] The 2013 rule defines an ''ownership interest'' in a covered fund to mean any equity, partnership, or other similar interest. Under the 2013 rule, ''other similar interest'' is defined as an interest that:

(A) Has the right to participate in the selection or removal of a general partner, managing member, member of the board of directors or trustees, investment manager, investment adviser, or commodity trading advisor of the covered fund (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event);

(B) Has the right under the terms of the interest to receive a share of the income, gains or profits of the covered fund;

(C) Has the right to receive the underlying assets of the covered fund after all other interests have been redeemed and/or paid in full (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event);

(D) Has the right to receive all or a portion of excess spread (the positive difference, if any, between the aggregate interest payments received from the underlying assets of the covered fund and the aggregate interest paid to the holders of other outstanding interests);

(E) Provides under the terms of the interest that the amounts payable by the covered fund with respect to the interest could be reduced based on losses arising from the underlying assets of the covered fund, such as allocation of losses, write-downs or charge-offs of the outstanding principal balance, or reductions in the amount of interest due and payable on the interest;

(F) Receives income on a pass-through basis from the covered fund, or has a rate of return that is determined by reference to the performance of the underlying assets of the covered fund; or

(G) Any synthetic right to have, receive, or be allocated any of the rights above.[294]

The 2013 rule permits a banking entity to acquire and retain an ownership interest in a covered fund that the banking entity organizes and offers pursuant to section __.11, but limits such ownership interests to three percent of the total number or value of the outstanding ownership interests of such fund (the per-fund limit).[295]

[287] *See* 2013 rule § __.10(c)(12)(ii).

[288] The exclusions from the covered fund definition are set forth in § __.10(c) of the 2013 rule.

[289] *See* 2013 rule § __.10(c)(12) (i) and § __.10(c)(12)(iii).

[290] *See* 2013 rule § __.14(a).

[291] For purposes of this analysis, ''foreign banking entity'' has the same meaning as used in the 2019 Policy Statement, *i.e.,* a banking entity that is not—and is not controlled directly or indirectly by a banking entity that is—located in or organized under the laws of the United States or any state.

[292] *See* 2019 Policy Statement. For purposes of the 2019 Policy Statement, a ''qualifying foreign excluded fund'' means, with respect to a foreign banking entity, a banking entity that (1) is organized or established outside the United States and the ownership interests of which are offered and sold solely outside the United States; (2) would be a covered fund were the entity organized or established in the United States, or is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments; (3) would not otherwise be a banking entity except by virtue of the foreign banking entity's acquisition or retention of an ownership interest in, or sponsorship of, the entity; (4) is established and operated as part of a bona fide asset management business; and (5) is not operated in a manner that enables the foreign banking entity to evade the requirements of section 13 or implementing regulations.

[293] 2013 rule § __.10(a).

[294] 2013 rule § __.10(d)(6)(i).

[295] 2013 rule § __.12(a) (1)(ii) and § __.12(a)(2)(ii)(A). The 2013 rule also requires that

Continued

Loan Securitizations

As discussed above, section 13 of the BHC Act provides a rule of construction that explicitly allows the sale and securitization of loans as otherwise permitted by law.[296] Accordingly, the 2013 rule excludes from the covered fund definition entities that issue asset-backed securities and meet specified conditions, including that they hold only loans, certain rights and assets, and a small set of other financial instruments (permissible assets).[297] In addition, the baseline includes the FAQs issued by agencies' staff in June 2014 regarding the servicing asset provision of the loan securitization exclusion, as discussed in section III.B.2 above.

Public Welfare and SBIC Exclusions

Under the 2013 rule, issuers in the business of making investments that are designed primarily to promote the public welfare, of the type permitted under paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24),[298] are excluded from the covered fund definition. Similarly, the 2013 rule excludes from the covered fund definition small business investment companies (SBICs) and issuers that have received notice from the Small Business Administration to proceed to qualify for a license as a SBIC and for which the notice or license has not been revoked.[299]

Attribution of Certain Investments to a Banking Entity

As discussed above, the 2013 rule includes a per fund limit and aggregate fund limit on a banking entity's ownership of covered funds that the banking entity organizes and offers.[300] The preamble to the 2013 rule stated, ''[I]f a banking entity makes investments side by side in substantially the same positions as a covered fund, then the value of such investments shall be included for purposes of determining the value of the banking entity's investment in the covered fund.'' [301] The agencies also stated that a banking entity that sponsors a covered fund should not make any additional side-by-side co-investment with the covered fund in a privately negotiated investment unless the value of such co-investment is less than 3% of the value of the total amount co-invested by other investors in such investment.[302] The 2019 amendments eliminated the aggregate fund limit and capital deduction requirement under § __.12(d) for the value of ownership interests in third-party covered funds (*e.g.,* covered funds that banking entities do not organize or offer), acquired or retained as a result of certain underwriting or market-making activities. However, the 2019 amendments did not change or amend the application of the per-fund limit or aggregate funds limit to co-investments alongside a covered fund.

For purposes of calculating the aggregate fund limit and capital deduction requirement, the 2013 rule requires attribution to a banking entity with respect to restricted profit interests in a covered fund for which the banking entity serves as investment manager, investment adviser, commodity trading advisor, or other service provider.[303] Under the 2013 rule, for purposes of calculating a banking entity's compliance with the aggregate fund limit and the capital deduction requirement, a banking entity must include any amounts paid by the banking entity or an employee in connection with obtaining a restricted profit interest in the covered fund.[304]

The sections that follow discuss rule provisions currently in effect, how each proposed amendment would change those provisions, and the anticipated costs and benefits of the proposed amendments, subject to the caveat that not all anticipated costs and benefits can be meaningfully quantified.

b. Affected Participants

The SEC-regulated entities directly affected by the proposed amendments include broker-dealers, security-based swap dealers, and investment advisers. The 2013 rule, as amended in 2019, imposed a range of restrictions and compliance obligations on banking entities with respect to their covered fund activities and investments. To the degree that the proposed amendments reduce or otherwise alter the scope of private funds subject to covered fund restrictions, SEC-registered banking entities, including broker-dealers, security-based swap dealers, and investment advisers may be affected by the proposal.

Broker-Dealers [305]

Under the 2013 rule, some of the largest SEC-regulated broker-dealers are banking entities. Table 1 reports the number, total assets, and holdings of broker-dealers affiliated with banks and broker-dealers that are not.

While the 3,504 domestic broker-dealers that are not affiliated with banks greatly outnumber the 198 banking entity broker-dealers subject to the 2013 rule, banking entity broker-dealers dominate non-banking entity broker-dealers in terms of total assets (73% of total broker-dealer assets) and aggregate holdings (68% of total broker-dealer holdings).

TABLE 1—BROKER-DEALER COUNT, ASSETS, AND HOLDINGS BY AFFILIATION

Broker-dealer affiliation	Number	Total assets, $mln [306]	Holdings, $mln [307]	Holdings (alternative), $mln [308]
Affected bank broker-dealers [309]	198	3,340,366	804,354	640,779
Non-bank broker-dealers [310]	3,504	1,242,246	385,137	218,777

the aggregate value of all ownership interests of a banking entity and its affiliates in all covered funds acquired or retained under § __.12 may not exceed three percent of the tier 1 capital of the banking entity. 2013 rule § __.12(a)(2)(iii) (the aggregate funds limit).

[296] 13 U.S.C. 1851(g)(2). *See supra* section III.B.2.

[297] *See* 2013 rule § __.10(c)(8). Loan is further defined as any loan, lease, extension of credit, or secured or unsecured receivable that is not a security or derivative. § __.2(t).

[298] *See* 2013 rule § __.10(c)(11)(ii).

[299] *See* 2013 rule § __.10(c)(11)(i).

[300] 2013 rule § __.12(a).

[301] 2013 rule adopting release at 5734.

[302] Id.

[303] 2013 rule § __.10(d)(6)(ii); § __.12(c)(1), (d); *See also* 12 U.S.C. 1851(d)(1)(G).

[304] 2013 rule § __.12(c)(1), (d).

[305] These estimates differ from those in the EGRRCPA Conforming Amendments Adopting Release, as these estimates rely on more recent data and information about both U.S. and global trading assets and liabilities of bank holding companies. This analysis is based on data from Reporting Form FR Y–9C for domestic holding companies on a consolidated basis and Report of Condition and Income for banks regulated by the Board, FDIC, and OCC for the most recent available four-quarter average, as well as data from S&P Market Intelligence LLC on the estimated amount of global trading activity of U.S. and non-U.S. bank holding companies. Broker-dealer bank affiliations were obtained from the Federal Financial Institutions Examination Council's (FFIEC) National Information Center (NIC). Broker-dealer assets and holdings were obtained from FOCUS Report data for Q3 2019.

TABLE 1—BROKER-DEALER COUNT, ASSETS, AND HOLDINGS BY AFFILIATION—Continued

Broker-dealer affiliation	Number	Total assets, $mln [306]	Holdings, $mln [307]	Holdings (alternative), $mln [308]
Total	3,702	4,582,612	1,189,491	859,556

Security-Based Swap Dealers

The proposed amendments may also affect bank-affiliated SBSDs. As compliance with SBSD registration requirements is not yet required, there are currently no registered SBSDs. However, the SEC has previously estimated that as many as 50 entities may potentially register with the SEC as security-based swap dealers and that as many as 16 may already be SEC-registered broker-dealers.[311] Given the analysis of DTCC Derivatives Repository Limited Trade Information Warehouse (''TIW'') transaction and positions data on single-name credit-default swaps and consistent with other recent SEC rulemakings, the SEC preliminarily believes that 41 entities that may register with the SEC as SBSDs are bank-affiliated firms, including those that are SEC-registered broker-dealers. Therefore, the SEC preliminarily estimates that, in addition to the bank-affiliated SBSDs that are already registered as broker-dealers and included in the discussion above, as many as 25 other bank-affiliated SBSDs may be affected by the proposed amendments.[312] Similarly, on the basis of the analysis of TIW data, the SEC estimates that none of the entities that may register with the SEC as Major Security-Based Swap Participants are affected by the final rule.

Importantly, because registration is not yet required, compliance with capital and other substantive requirements for SBSDs under Title VII of the Dodd-Frank Act is also not yet required.[313] The SEC recognizes that firms may choose to move security-based swap trading activity into (or out of) an affiliated bank or an affiliated broker-dealer instead of registering as a standalone SBSD if bank or broker-dealer capital and other regulatory requirements are less (or more) costly than those that may be imposed on SBSDs under Title VII. As a result, the above figures may overestimate or underestimate the number of SBSDs that are not broker-dealers and that may become SEC-registered entities affected by the proposed amendments.

Private Funds and Private Fund Advisers [314]

This section describes RIAs advising private funds that may be affected by the proposed amendments. Using Form ADV data, Table 2 reports the number of RIAs advising private funds by fund type, as those types are defined in Form ADV.[315] Private funds rely on either section 3(c)(1) or 3(c)(7) of the Investment Company Act and so meet the 2013 rule's definition of ''covered fund.'' Table 3 reports the number and gross assets of private funds advised by RIAs and separately reports these statistics for banking entity RIAs. As can be seen from Table 2, the two largest categories of private funds advised by RIAs are hedge funds and private equity funds.[316]

Banking entity RIAs advise a total of 4,274 private funds with approximately $1.97 trillion in gross assets. From Form ADV data, banking entity RIAs' gross private fund assets under management are concentrated in hedge funds and private equity funds. The SEC estimates on the basis of this data that banking entity RIAs advise 879 hedge funds with approximately $668 billion in gross assets and 1,430 private equity funds with approximately $397 billion in assets.

[306] Broker-dealer total assets are based on FOCUS report data for ''Total Assets.''

[307] Broker-dealer holdings are based on FOCUS report data for securities and spot commodities owned at market value, including bankers' acceptances, certificates of deposit and commercial paper, state and municipal government obligations, corporate obligations, stocks and warrants, options, arbitrage, other securities, U.S. and Canadian government obligations, and spot commodities.

[308] This alternative measure excludes U.S. and Canadian government obligations and spot commodities.

[309] This category includes all bank-affiliated broker-dealers except those exempted by section 203 of EGRRCPA.

[310] This category includes both bank affiliated broker-dealers subject to section 203 of EGRRCPA and broker-dealers that are not affiliated with banks or holding companies.

[311] *See* Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers, 84 FR 68550, 68607 (Dec. 16, 2019) (''Recordkeeping and Reporting Adopting Release'').

[312] *See* id.

[313] *See* Capital, Margin, Segregation Adopting Release at 43954. *See also* Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements, Exchange Act Release No. 34–87780 (Dec. 18, 2019) (''Cross Border Amendments Adopting Release'').

[314] These estimates are calculated from Form ADV data as of September 30, 2019. An investment adviser is defined as a ''private fund adviser'' for the purposes of this economic analysis if it indicates that it is an adviser to any private fund on Form ADV Item 7.B. An investment adviser is defined as a ''banking entity RIA'' if it indicates on Form ADV Item 6.A.(7) that it is actively engaged in business as a bank, or it indicates on Form ADV Item 7.A.(8) that it has a ''related person'' that is a banking or thrift institution. For purposes of Form ADV, a ''related person'' is any advisory affiliate and any person that is under common control with the adviser. The definition of ''control'' for purposes of Form ADV, which is used in identifying related persons on the form, differs from the definition of ''control'' under the BHC Act. In addition, this analysis does not exclude SEC-registered investment advisers affiliated with banks that have consolidated total assets less than or equal to $10 billion and trading assets and liabilities less than or equal to 5% of total assets. Those banks are no longer subject to the requirements of the 2013 rule following enactment of the EGRRCPA. Thus, these figures may overestimate or underestimate the number of banking entity RIAs.

[315] RIAs may also advise foreign public funds that are excluded from the covered fund definition in the 2013 rule, are the subject of proposed amendments discussed below, and are not reported on Form ADV.

[316] For purposes of Form ADV, ''private equity fund'' is defined as ''any private fund that is not a hedge fund, liquidity fund, real estate fund, securitized asset fund, or venture capital fund and does not provide investors with redemption rights in the ordinary course.'' *See* Form ADV: Instructions for Part 1A, Instruction 6. For purposes of Form ADV, ''hedge fund'' is defined as ''any private fund (other than a securitized asset fund): (a) with respect to which one or more investment advisers (or related persons of investment advisers) may be paid a performance fee or allocation calculated by taking into account unrealized gains (other than a fee or allocation the calculation of which may take into account unrealized gains solely for the purpose of reducing such fee or allocation to reflect net unrealized losses); (b) that may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or (c) that may sell securities or other assets short or enter into similar transactions (other than for the purpose of hedging currency exposure or managing duration).

[317] This table includes only the advisers that list private funds on Section 7.B.(1) of Form ADV. The number of advisers in the ''Any Private Fund'' row is not the sum of the rows that follow since an adviser may advise multiple types of private funds. Each listed private fund type (*e.g.,* real estate funds and liquidity funds) is defined in Form ADV, and those definitions are the same for purposes of the SEC's Form PF.

TABLE 2—SEC-REGISTERED INVESTMENT ADVISERS ADVISING PRIVATE FUNDS BY FUND TYPE [317]

Fund type	All RIA	Banking entity RIA
Hedge Funds	2,695	149
Private Equity Funds	1,707	96
Real Estate Funds	540	52
Securitized Asset Funds	226	44
Venture Capital Funds	207	8
Liquidity Funds	47	15
Other Private Funds	1,071	143
Total Private Fund Advisers	4,854	285

TABLE 3—THE NUMBER AND GROSS ASSETS OF PRIVATE FUNDS ADVISED BY SEC-REGISTERED INVESTMENT ADVISERS [318]

Fund type	Number of private funds		Gross assets, $bln	
	All RIA	Banking entity RIA	All RIA	Banking entity RIA
Hedge Funds	10,602	879	7,478	668
Private Equity Funds	15,144	1,430	3,541	397
Real Estate Funds	3,546	321	656	100
Securitized Asset Funds	1,836	355	674	131
Venture Capital Funds	1,286	43	158	3
Liquidity Funds	89	29	1,339	195
Other Private Funds	4,505	1,218	1,386	478
Total Private Funds	37,002	4,274	15,231	1,971

In addition, the SEC's economic analysis is informed by private fund statistics submitted by certain RIAs of private funds through Form PF as summarized in quarterly ''Private Fund Statistics.'' [319]

Registered Investment Companies and Business Development Companies

The baseline also reflects the potential that a registered investment company (RIC) or a business development company (BDC) would be treated as a banking entity where the RIC or BDC's sponsor is a banking entity that holds 25% or more of the RIC or BDC's voting securities after a seeding period.[320] On the basis of SEC filings and public data, the SEC estimates that, as of September 2019, there were approximately 15,500 RICs [321] and 106 BDCs. Although RICs and BDCs are generally not themselves banking entities subject to the 2013 rule, they may be indirectly affected by the 2013 rule and the proposed amendments, for example, if their sponsors or advisers are banking entities. For instance, bank-affiliated RIAs or their affiliates may reduce their level of investment in the RICs or BDCs they advise, or potentially close those funds, to eliminate the risk of those funds becoming banking entities themselves.

Small Business Investment Companies

Small business investment companies (SBICs) are generally ''privately owned and managed investment funds, licensed and regulated by the Small Business Administration (SBA), that use their own capital plus funds borrowed with an SBA guarantee to make equity and debt investments in qualifying small businesses.'' [322] The proposed amendments would provide relief with respect to banking entity investments in SBICs during the wind-down process by excluding from the definition of ''covered fund'' those SBICs.[323] While the SEC does not have data to quantify the number of SBICs undergoing wind-down, trends in the number of SBIC licenses can be indicative of the turnover in the total number of SBIC licensees. For example, according to SBA data, there were 302 SBIC licensees as of June 30, 2019 [324] and 300 SBIC licensees as of September 30, 2019.[325] By contrast, as of June 30, 2017, there were 315 SBICs licensed by the SBA.[326]

[318] Gross assets include uncalled capital commitments on Form ADV.

[319] *See* U.S. Securities and Exchange Commission, Division of Investment Management Analytics Office, Private Fund Statistics, First Calendar Quarter 2019, (Oct. 25, 2019), *available at https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2019-q1.pdf.* Statistics for preceding quarters are *available at https://www.sec.gov/divisions/investment/private-funds-statistics.shtml.*

[320] *See, e.g.,* 2019 amendments at 61979.

[321] This estimate includes open-end companies, exchange-traded funds, closed-end funds, and non-insurance unit investment trusts and does not include fund of funds. The inclusion of fund of funds increases this estimate to approximately 17,000.

[322] *See* U.S. Small Business Administration, SBIC Program Overview, *available at https://www.sba.gov/content/sbic-program-overview.*

Pursuant to Advisers Act section 203(b)(7), an SBIC is (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940): (A) A small business investment company that is licensed under the Small Business Investment Act of 1958 (''SBIA''), (B) an entity that has received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company under the SBIA, which notice or license has not been revoked, or (C) an applicant that is affiliated with 1 or more licensed small business investment companies described in subparagraph (A) and that has applied for another license under the SBIA, which application remains pending.

[323] Specifically, the proposed amendments would exclude from the definition of ''covered fund'' any SBIC that has voluntarily surrendered its license to operate as an SBIC in accordance with 13 CFR 107.1900 and does not make any new investments (with some exceptions) after such voluntary surrender. Proposed rule § __.10(c)(11)(i).

[324] *See* U.S. Small Business Administration, SBIC Program Overview as of June 30, 2019, *available at https://www.sba.gov/sites/default/files/2019-09/SBIC%20Quarterly%20Report%20as%20of%20June_30_2019.pdf.*

[325] *See* U.S. Small Business Administration, SBIC Program Overview as of September 30, 2019, *available at https://www.sba.gov/sites/default/files/2019-11/SBIC%20Quarterly%20Report%20as%20of%20September_30_2019.pdf.*

[326] *See* U.S. Small Business Administration, SBIC Quarterly Report as of March, 31 2017, *available at*

The agencies are requesting comment on whether they should provide relief to rural business investment companies (''RBICs'') from the 2013 rule that is similar to the relief provided to SBICs.[327] As the SEC has discussed elsewhere,[328] an RBIC is defined in Section 384A of the Consolidated Farm and Rural Development Act as a company that is approved by the Secretary of Agriculture and that has entered into a participation agreement with the Secretary.[329] Because SBICs and RBICs share the common purpose of promoting capital formation in their respective sectors, advisers to SBICs and RBICs are treated similarly under the Advisers Act in that they have the opportunity to take advantage of expanded exemptions from investment adviser registration.[330] As of August 2019, there were 5 RBICs who were licensed by the USDA managing approximately $352 million in assets.[331]

The Tax Cuts and Jobs Act established the ''opportunity zone'' program to provide tax incentives for long-term investing in designated economically distressed communities.[332] The program allows taxpayers to defer and reduce taxes on capital gains by reinvesting gains in ''qualified opportunity funds'' (QOFs) that are required to have at least 90 percent of their assets in designated low-income zones.[333] In this regard, QOFs are similar to SBICs and public welfare companies. The agencies are requesting comment on whether they should provide relief to QOFs from the 2013 rule that is similar to the relief provided to SBICs.[334] SEC staff are not aware of an official source for data regarding QOFs that are available for investment, but some private firms collect and report such data. One such firm reports that, as of January 2020, there were 292 QOFs that report raising $6.72 billion in equity, and have a fundraising goal of $27.9 billion.[335]

3. Costs and Benefits

Section 13 of the BHC Act generally prohibits banking entities from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with covered funds, subject to certain exemptions.[336] The SEC's economic analysis concerns the potential costs, benefits, and effects on efficiency, competition, and capital formation of the proposed amendments for five groups of market participants. First, the proposed amendments may impact SEC-registered investment advisers that are banking entities, including those that sponsor or advise covered funds and those that do not, as well as SEC-registered investment advisers that are not banking entities that sponsor or advise covered funds and compete with banking entity RIAs. Second, the proposed amendments would permit dealers greater flexibility in providing services to more types of funds since dealers could provide a broader array of services to funds that would be excluded from the covered fund definition. Third, banking entities that are broker-dealers or RIAs may enjoy reduced uncertainty and greater flexibility with respect to direct investments they make alongside covered funds. Fourth, the proposed amendments may impact private funds and other vehicles, including those entities scoped in or out of the covered fund provisions of the 2013 rule, as well as private funds competing with such funds. One such impact may be seen to the extent that the proposed amendments permit banking entities to provide a full range of traditional customer-facing banking and asset management services to certain entities, such as customer facilitation vehicles and family wealth management vehicles. Fifth, to the extent that the proposed amendments impact efficiency, competition, and capital formation in covered funds or underlying securities, investors in, and sponsors of, covered funds and underlying securities and issuers may be affected as well.

As discussed below, careful consideration was given to the competing effects that could potentially result from the proposed amendments and alternatives. For example, the proposed amendments could result in enhanced competition among, and capital formation driven by, entities that would be treated as covered funds under the 2013 rule. The proposed amendments could also potentially increase (or decrease) moral hazard and other financial risks posed by investments in covered funds; however, the agencies have sought to mitigate the potential for increased risk and other concerns by imposing various conditions on the proposed exclusions designed to address such risks. To the extent that the current covered fund provisions limit fund formation, the proposed amendments and other amendments on which the agencies seek comment could provide greater ability for banking entities to organize funds and attract capital from third party investors, which could increase revenues for banking entities while reducing long-term compliance costs; increase the availability of venture, credit, and other financing, including for small businesses and start-ups; and, as a result, increase capital formation. The SEC is not currently aware of any information or data that would allow a quantification of the extent to which the covered fund provisions of the 2013 rule are inhibiting capital formation via funds. Therefore, the bulk of the analysis below is necessarily qualitative. To the extent that the current covered fund provisions limit alignment of interests between banking entities and their clients, customers, or counterparties, and to the extent the proposed amendments would alter the alignment of interests, the proposed amendments could have a positive or negative effect on conflict of interest concerns.

The proposed amendments create new recordkeeping requirements and revise certain disclosure requirements. Specifically, a banking entity may only rely on the exclusion for customer

https://www.sba.gov/sites/default/files/files/Quarterly_Data_as_of_March_31_2017_0.pdf.

[327] Under the implementing regulations, an SBIC is excluded from the ''covered fund'' definition. *See* 2013 rule § __.10(c)(11)(i).

[328] *See* Amending the ''Accredited Investor'' Definition, 85 FR 2574 (Jan. 15, 2020) (''Accredited Investor Definition Proposing Release'').

[329] *See* the RBIC Advisers Relief Act of 2018, Public Law 115–417 (2019) (the ''RBIC Advisers Relief Act''). To be eligible to participate as an RBIC, the company must be a newly formed for-profit entity or a newly formed for-profit subsidiary of such an entity, have a management team with experience in community development financing or relevant venture capital financing, and invest in enterprises that will create wealth and job opportunities in rural areas, with an emphasis on smaller enterprises. *See* 7 U.S.C. 2009cc–3(a).

[330] Following enactment of the RBIC Advisers Relief Act, advisers to solely RBICs and advisers to solely SBICs are exempt from investment adviser registration pursuant to Advisers Act Sections 203(b)(8) and 203(b)(7), respectively. The venture capital fund adviser exemption deems RBICs and SBICs to be venture capital funds for purposes of the registration exemption 15 U.S.C. 80b–3(l). Accordingly, the proposed exclusion for certain venture capital funds discussed below (*see infra* text accompanying notes 380 and 381) which would require that a fund be a venture capital fund as defined in the SEC regulations implementing the registration exemption, could include RBICs and SBICs to the extent that they satisfy the other elements of the proposed exclusion.

[331] Rural Business Investment Company Applications filed with the USDA. To contact the USDA for data about Rural Business Investment Company Applications filed with the USDA *see https://www.rd.usda.gov/programs-services/rural-business-investment-program.*

[332] Tax Cuts and Jobs Act of 2017, Public Law 115–97, 131 Stat. 2054 (2017).

[333] *See* U.S. Securities and Exchange Commission and NASAA, Staff Statement on Opportunity Zones: Federal and State Securities Laws Considerations, *available at https://www.sec.gov/2019_Opportunity-Zones_FINAL_508v2.pdf (''Opportunity Zone Statement'').*

[334] *See supra* note 328.

[335] As reported by Novogradac, a national professional services organization that collects and reports information on QOFs. *See https://www.novoco.com/resource-centers/opportunity-zone-resource-center/opportunity-funds-listing.*

[336] *See* 12 U.S.C. 1851.

facilitation vehicles if the banking entity and its affiliates maintain documentation outlining how the banking entity intends to facilitate the customer's exposure to a transaction, investment strategy or service offered by the banking entity. As discussed in section IV.B [337]and below, these new recordkeeping burdens may impose an initial burden of $1,078,650 [338] and an ongoing annual burden of $1,078,650.[339] In addition, under certain circumstances, a banking entity must make certain disclosures with respect to an excluded credit fund, venture capital fund, family wealth vehicle, or customer facilitation vehicle, as if the entity were a covered fund. As discussed in section IV.B, these disclosure requirements may impose an initial burden of $53,933 [340] and an ongoing burden of $1,402,245.[341]

a. Amendments Related to Specific Types of Funds

As discussed elsewhere in this **SUPPLEMENTARY INFORMATION**, the proposed amendments modify a number of the provisions of the 2013 rule related to the treatment of certain types of funds (*e.g.,* credit funds, family wealth management vehicles, small business investment companies, venture capital funds, customer facilitation vehicles, foreign excluded funds, foreign public funds, and loan securitizations).

Broadly, such modifications reduce the number and types of funds that are within the scope of the 2013 rule, impacting the economic effects of section 13 of the BHC Act and the 2013 rule.[342]

Form ADV data is not sufficiently granular to allow the SEC to estimate the number of funds and fund advisers affected by the different proposed exclusions from the covered fund definition and other relief on which the agencies are seeking comment. However, Table 2 and Table 3 in the economic baseline quantify the number and asset size of private funds advised by banking entity RIAs by the type of private fund they advise, as those fund types are defined in Form ADV.[343]

Using Form ADV data, the SEC preliminarily estimates that approximately 149 banking entity RIAs advise hedge funds and 96 banking entity RIAs advise private equity funds (as those terms are defined in Form ADV).[344] As can be seen from Table 2 in the economic baseline, 44 banking entity RIAs advise securitized asset funds. Table 3 shows that banking entity RIAs advise 355 securitized asset funds with $131 billion in gross assets. Another 52 banking entity RIAs advise real estate funds, and banking entity RIAs advise 321 real estate funds with $100 billion in gross assets. Venture capital funds are advised by only 8 banking entity RIAs, and all 43 venture capital funds advised by banking entity RIAs have in aggregate approximately $3 billion in gross assets.

As noted elsewhere in this **SUPPLEMENTARY INFORMATION**, the covered fund provisions of the 2013 rule may limit the ability of banking entities to use covered funds to circumvent the proprietary trading prohibition, reduce bank incentives to bail out their covered funds, and mitigate conflicts of interest between banking entities and their clients, customers, or counterparties. However, the covered fund definition is broad,[345] and some commenters have stated that the 2013 rule may limit the ability of banking entities to conduct traditional asset management activities and reduce the availability of capital to entrepreneurs and the market as a whole.[346] The covered fund provisions of the 2013 rule, as currently in effect, may impose significant costs on some banking entities.[347] The breadth of the covered fund definition requires market participants to review a large number of issuers to determine if they are covered funds as defined in the 2013 rule. For example, the SEC understands that this has included a review of hundreds of thousands of CUSIPs issued by common types of securitizations for covered fund status.[348] The need to perform an in-depth analysis and make covered funds determinations across a large number of entities involves costs and may adversely affect the willingness of banking entities to acquire or retain ownership interests in, sponsor, and have relationships with entities that may be treated as covered funds under the 2013 rule. Moreover, the 2013 rule's limitations on banking entities' investment in covered funds may be more significant for covered funds that are typically small in size, with potentially more negative spillover effects on capital formation in underlying securities.[349]

The proposed amendments could reduce the scope of funds that need to be analyzed for covered fund status or could simplify this analysis and enable banking entities to own, sponsor, and have relationships with the types of entities that the proposed amendments would exclude from the covered fund definition. Accordingly, the proposed amendments may reduce costs of banking entity ownership in, sponsorship of, and transactions with certain funds; may promote greater capital formation in, and competition among such funds; and may improve access to capital for issuers of underlying debt or equity that possibly will be purchased by those funds.

The proposed amendments may also benefit banking entity dealers through higher profits or greater demand for derivatives, margin, payment, clearing, and settlement services. Reducing

[337] For the purposes of the burden estimates in this release, we are assuming the cost of $423 per hour for an attorney, from SIFMA's ''Management & Professional Earnings in the Securities Industry 2013,'' modified to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, and adjusted for inflation.

[338] In the 2019 amendments, amendments that sought, among other things, to provide greater clarity and certainty about what activities are prohibited by the 2013 rule—in particular, under the prohibition on proprietary trading—and to better tailor the compliance requirements based off of the risk of a banking entity's activities, banking entity PRA-related burdens were apportioned to SEC-regulated entities on the basis of the average weight of broker-dealer assets in holding company assets. *See* 2019 amendments at 62074. SEC staff preliminarily believe that such an approach would be inappropriate for the PRA-related burdens associated with the proposed amendments because we do not have a comparable proxy for an investment adviser's significance within the holding company. Since we do not have sufficient information to determine the extent to which the costs associated with any of the new recordkeeping and disclosure requirements would be borne by SEC registrants specifically, we report the entire burden estimated based on information in section IV.B.

Initial recordkeeping burdens: (10 hours) × (255 entities) × (Attorney at $423 per hour) = $1,078,650.

[339] Annual recordkeeping burdens: (10 hours) × (255 entities) × (Attorney at $423 per hour) = $1,078,650.

[340] Initial recordkeeping burdens: (0.5 hours) × (255 entities) × (Attorney at $423 per hour) = $53,933.

[341] Annual recordkeeping burdens: (0.5 hours) × (255 entities) × (26 disclosures per year) × (Attorney at $423 per hour) = $1,402,245.

[342] *See, e.g.,* 2019 amendments at 62037–92.

[343] These fund types include hedge funds, private equity funds, real estate funds, securitized asset funds, venture capital funds, liquidity, and other private funds. *See supra* note 317.

[344] As noted in the economic baseline, a single RIA may advise multiple types of funds. *See supra* note 318.

[345] *See, e.g.,* ABA; AAF; FSF; SIFMA; JBA.

[346] *See, e.g.,* AAF; Credit Suisse; JBA; NVCA; Chamber.

[347] *See, e.g.,* SIFMA; JBA; ACG; 10 Regional Banks; BPI; ICI; IIB; ABA; LTSA; SBIA; SFIG 2017.

[348] *See* comment letters responding to OCC Notice Seeking Public Input on the Volcker Rule (Aug. 2017), *available at https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=OCC-2017-0014.* A summary of the comment letters is *available at https://occ.gov/topics/capital-markets/financial-markets/trading-volcker-rule/volcker-notice-comment-summary.pdf.*

[349] The median venture capital fund size in some locations is approximately $15 million. One fund may have lost as much as $50 million dollars in investment because of the prohibitions of section 13 of the BHC Act and implementing regulations. *See* NVCA.

restrictions on banking entities by further tailoring the covered fund definition may encourage more launches of funds that are excluded from the definition, capital formation and, possibly, competition in those types of funds. If competition increases the quality of funds available to investors or reduces the fees they are charged, investors in funds may benefit. Moreover, to the degree that the proposed amendments may increase the spectrum of funds available to investors, the proposal may relax constraints around investor portfolio optimization and increase the efficiency of capital allocation.

The sections that follow further discuss these possible overarching economic costs, benefits, and effects of competition, efficiency, and capital formation with respect to specific types of funds and proposed amendments.

Foreign Excluded Funds

Under the baseline, foreign excluded funds are excluded from the covered fund definition, but could be considered banking entities if a foreign banking entity controls the foreign fund in certain circumstances. As discussed above, the federal banking agencies released a policy statement on July 17, 2019, which provides that the federal banking agencies would not propose to take action during the two-year period ending on July 21, 2021 (i) against a foreign banking entity based on attribution of the activities and investments of a qualifying foreign excluded fund to the foreign banking entity [350] or (ii) against a qualifying foreign excluded fund as a banking entity, in each case where the foreign banking entity's acquisition or retention of any ownership interest in, or sponsorship of, the qualifying foreign excluded fund would meet the requirements for permitted covered fund activities and investments solely outside the United States, as provided in section 13(d)(1)(I) of the BHC Act and § __.13(b) of the 2013 rule, as if the qualifying foreign excluded fund were a covered fund.[351] The proposed amendment would provide a permanent exemption from the proprietary trading and covered fund prohibitions for certain foreign excluded funds that is substantively similar to the temporary no-action relief currently provided to qualifying foreign excluded funds.[352]

The SEC recognizes that failing to exclude such funds from the definition of ''banking entity'' in the 2013 rule imposes proprietary trading restrictions, covered fund prohibitions, and compliance obligations on qualifying foreign excluded funds that may be more burdensome than the requirements that would apply under the 2013 rule to covered funds. The SEC has also received comment opposing carving out qualifying foreign excluded funds from the definition of banking entity.[353] The SEC preliminarily believes that, absent the proposed amendments and upon expiry of the temporary relief, the 2013 rule may have significant adverse effects on the ability of foreign banking entities to organize and offer certain private funds for foreign investments, disrupting foreign asset management activities. The SEC recognizes that the exemption of qualifying foreign excluded funds from the proprietary trading and covered fund prohibitions that apply to ''banking entities'' may result in increased activity by foreign banking entities in organizing and offering such funds, and that such activity may involve risk for those banking entities. At the same time, the SEC recognizes a statutory purpose of certain portions of section 13 of the BHC Act is to limit the extraterritorial impact on foreign banking entities.[354] Accordingly, the proposed amendments may benefit foreign banking entities and their foreign counterparties seeking to transact with and through such funds.

The proposed amendments may increase the incentive for some foreign banking entities seeking to organize and offer qualifying foreign excluded funds to reorganize their activities so that these funds' activities qualify for the proposed exemptions. The costs and feasibility of such reorganization will depend on the complexity and existing compliance structures for banking entities, the degree to which there is unmet demand for investment funds that may be organized as qualifying foreign excluded funds, and the profitability of such banking activities. Importantly, the principal risk of foreign banking entities' activities related to foreign excluded funds generally resides outside the United States and is unlikely to affect negatively the safety and soundness of U.S. banking entities or systemic risk to the U.S. financial system.

Foreign Public Funds

The 2013 rule excludes from the covered fund definition any foreign public fund that satisfies three sets of conditions. First, the issuer must be organized or established outside of the United States, be authorized to offer and sell ownership interests to retail investors in the issuer's home jurisdiction (the ''home jurisdiction'' requirement), and sell ownership interests predominantly through one or more public offerings outside of the United States. Second, for funds that are sponsored by a U.S. banking entity, or by a banking entity controlled by a U.S. banking entity, the ownership interests in the issuer must be sold ''predominantly'' (the ''predominantly'' requirement) to persons other than the sponsoring banking entity, the issuer, their affiliates, directors of such entities, or employees of such entities (the employee sales limitation). Third, such public offerings must occur outside the United States, must comply with applicable jurisdictional requirements, may not restrict availability to investors having a minimum level of net worth or net investment assets, and must have publicly available offering disclosure documents filed or submitted with the relevant jurisdiction.

The proposed amendments would make five changes to the foreign public fund exclusion. First, the proposal would remove the home jurisdiction requirement.[355] Second, the proposal would make the exclusion available with respect to issuers authorized to offer and sell ownership interests through one or more public offerings, removing the requirement that the issuer sells ownership interests ''predominantly'' through such public offerings.[356] Third, the agencies are also proposing to modify the definition of ''public offering'' from the 2013 rule to add a new requirement that the distribution is subject to substantive disclosure and retail investor protection laws or regulations in one or more jurisdictions where ownership interests are sold.[357] Fourth, the proposal would apply the condition that the distribution comply with all applicable requirements in the jurisdiction where it is made only to instances in which the banking entity serves as the investment manager, investment adviser, commodity trading advisor, commodity pool operator, or

[350] Foreign banking entity was defined for purposes of the policy statement to mean a banking entity that is not, and is not controlled directly or indirectly by, a banking entity that is located in or organized under the laws of the United States or any State.

[351] *See* 2019 Policy Statement. This policy statement continued the position of the Federal banking agencies that was released on July 21, 2017, and the position that the agencies expressed in the 2018 proposal.

[352] *See* proposed rule §§ __.6(f) and __.13(d).

[353] *See* Data Boiler.

[354] *See supra* note 30 and the referencing paragraph.

[355] *See* proposed rule § __.10(c)(1)(i)(B).

[356] *See* proposed rule § __.10(c)(1)(i)(B).

[357] *See* proposed rule § __.10(c)(1)(iii)(A).

sponsor.[358] Finally, the proposal would narrow the employee sales limitation to senior executive officers as defined in section 225.71(c) of the Board's Regulation Y.[359]

The SEC has received comments indicating that the foreign public fund exclusion under the 2013 rule is impractical, overly narrow, and prescriptive, and results in competitive disparities between foreign public funds and RICs.[360] The SEC has also received comment supporting the preservation of the existing conditions of the exclusion.[361]

The SEC has received comment that the home jurisdiction requirement under the 2013 rule is narrow and fails to recognize the prevalence of non-U.S. retail funds organized in one jurisdiction and authorized to sell interests in other jurisdictions.[362] For example, the SEC received comment that a banking entity sponsor may choose the domicile of a foreign public fund based on tax treatment, investment strategy, or flexibility to distribute into multiple markets (for instance, in the European Union).[363] The SEC recognizes that the home jurisdiction requirement may be impeding activity in foreign public funds that are organized and sold across different jurisdictions. While such offerings may not be subject to the laws and regulations of the foreign public fund's home jurisdiction, they are subject to the local laws and regulations of the jurisdictions in which the foreign public fund is authorized to sell ownership interests. The elimination of the home jurisdiction requirement may benefit such foreign public funds and may facilitate greater capital formation through such funds, with the potential to create more capital allocation choices for investors. To the degree that the 2013 rule may currently be disadvantaging foreign public funds relative to otherwise comparable RICs, the elimination of the home jurisdiction requirement may dampen such competitive disparities.

The SEC has also received comment that the ''predominantly'' requirement has been burdensome and poses significant compliance burdens.[364] For example, banking entities may not fully observe and predict both historical and potential future distributions of funds that are sponsored by third parties, listed on exchanges, or sold through third-party intermediaries or distributors.[365] To the degree that some banking entities are currently unable to quantify the volumes of distributions through foreign public offerings relative to, for instance, foreign private placements, the proposed amendment may enable greater activity of banking entities relating to foreign public funds. Similar to the above discussion, this aspect of the proposed amendment also provides for a similar treatment of RICs (which are not required to monitor or assess distributions) and foreign public funds, with corresponding competitive effects.

The proposed amendments to the foreign public funds provisions tailor the scope of disclosure and compliance obligations for those jurisdictions where ownership interests are sold in recognition of the prevalence of foreign retail fund sales across jurisdictions. Similarly, the proposal would limit the compliance obligation to settings in which the banking entity serves as the investment manager, investment adviser, commodity trading advisor, commodity pool operator, or sponsor—settings that may involve greater conflicts of interest between banking entities and fund investors.

The proposed amendments also would replace the employee sales limitation with a limitation on sales to senior officers.[366] The SEC has received comment that banking entities may face significant costs and logistical and interpretive challenges monitoring investments by their employees, including those who transact in fund shares through unaffiliated brokers or through independent exchange trading.[367] The SEC has also received comment that the employee sales limitation serves no discernible anti-evasion purpose.[368] In addition, commenters noted that employee ownership interest can be a meaningful mechanism of promoting incentive alignment.[369] The proposed amendments would replace the employee sales limitation with a corresponding sales limitation with respect only to senior officers. This change may reduce these reported compliance challenges and burdens while preserving in part the original anti-evasion purpose of the limitations on employee ownership.

The agencies could have proposed a variety of alternatives offering more or less relief with respect to foreign public funds. For example, the agencies could have proposed eliminating altogether the limit on sales to affiliated entities, directors and employees, which would have provided even greater alignment of treatment between foreign public funds and RICs.[370] Alternatives providing greater relief with respect to foreign public funds may facilitate greater banking entity activity and intermediation of such funds on the one hand, but they may also strengthen the competitive positioning of foreign public funds relative to U.S. registered funds. Moreover, providing greater relief with respect to foreign public funds may allow banking entities greater flexibility in the formation and operation of foreign public funds, but may also increase the risk that banking entities are able to use foreign public funds to engage in activities that the restrictions on covered funds were intended to prohibit, thereby reducing the magnitude of the expected economic benefits of section 13 of the BHC Act and the 2013 rule. Similarly, relative to the proposed amendments, alternatives providing less relief with respect to foreign public funds may strengthen the competitive positioning of U.S. RICs relative to foreign public funds and pose lower compliance or evasion risks, but may also reduce the benefits of the relief for capital formation in foreign public funds and their investors.

Credit Funds

Under the baseline, funds that raise capital to engage in loan originations or extensions of credit or purchase and hold debt instruments that a banking entity would be permitted to acquire directly may be ''covered funds'' under the 2013 rule. As a result, banking entities currently face limitations on sponsoring or investing in credit funds that engage in traditional banking activities—activities that banking entities are able to engage in directly outside of the fund structure. Banking entities may also be restricted in their relationships with credit funds that are related covered funds, as well as in their underwriting and market making activities relating to such funds. The proposal would create a separate exclusion from the covered fund definition for credit funds that meet certain conditions, including several conditions that are similar to certain conditions of the loan securitization exclusion, but that reflect the structure and operation of credit funds.

Credit funds are likely to carry similar returns and risks as direct extensions of

[358] *See* proposed rule § __.10(c)(1)(iii)(B).

[359] *See* proposed rule § __.10(c)(1)(ii)(D).

[360] *See, e.g.,* ABA; BPI; FSF; SIFMA; ICI; IIB; JPMAM.

[361] *See, e.g.,* Data Boiler.

[362] *See, e.g.,* ABA; BPI.

[363] *See, e.g.,* FSF; SIFMA.

[364] *See, e.g.,* BPI.

[365] *See* id.

[366] *See* proposed rule § __.10(c)(1)(ii)(D).

[367] *See, e.g.,* SIFMA; JPMAM.

[368] *See* id.

[369] *See* BPI.

[370] *See, e.g.,* FSF.

credit and loan origination outside of the fund structure, including the possibility of losses or gains related to changes in interest rates, borrower default or delinquent payments, fluctuations in foreign currencies, and overall market conditions. While the presence of a fund structure may introduce risks, *e.g.,* those related to governance of the fund and those related to relying on third-party investors providing capital to the fund, the SEC preliminarily believes those risks to banking entities to be limited. Moreover, fund structures may entail risk mitigating features (such as diversification across a larger number of borrowers) as well as significant cost efficiencies for banking entities. The SEC has received comment supporting an exclusion for credit funds. For example, some commenters suggested that a fund or partnership structure enables banking entities to engage in permissible activities more efficiently.[371] Specifically, one commenter indicated that credit funds facilitate investments by third parties, leading to the creation of a broader and deeper pool of capital, which may allow for more diversification in lending portfolios, the pooling of expertise of groups of market participants, and otherwise reduce the risk for banking entities and the financial system.[372] In addition, to the degree that credit funds require precommitments of capital, they may dampen cyclical fluctuations in loan originations and may facilitate ongoing extensions of credit during times of market stress.[373]

Another commenter indicated that debt instruments are generally held for the purpose of generating income, which may come both from interest and price appreciation, whether held directly on a banking entity's balance sheet or indirectly through a fund structure.[374]

Further, commenters have stated that some RICs and BDCs may engage in similar investment activities as credit funds.[375] The risks and returns of the core activities of credit funds may be similar to those of RICs and publicly offered business development companies that have an investment strategy to buy and hold debt instruments. The SEC has also received comment that, while some credit funds may be able to avail themselves of the existing exclusions for loan securitizations and joint ventures, those exclusions are not sufficient to accommodate the full range of credit funds and activities.[376]

The SEC preliminarily believes that the proposed credit fund exclusion may allow banking entities to engage, indirectly, in more loan origination and traditional extension of credit relative to the current baseline. To the degree that banking entities are currently constrained in their ability to engage in extension of credit through credit funds because of the 2013 rule, the proposed exclusion may increase the volume of intermediation of credit by banking entities and make it more efficient and less costly. In addition, permitting banking entities to extend financing to businesses through credit funds could allow banking entities to compete more effectively with non-banking entities that are not subject to the same prudential regulation or supervision as banking entities subject to section 13 of the BHC Act and thereby likely result in an increase in lending activity in banking entity-sponsored credit funds without negatively affecting capital formation or the availability of financing. In this respect, the proposed amendments could result in greater competition between bank and non-bank provision of credit with both expected lower costs that typically result from increased competition and a larger volume of permissible banking and financial activities to occur in the regulated banking system. In addition, since cost reductions and increased efficiencies are commonly passed along to customers, the proposed exclusion may also benefit banking entities' borrowers and facilitate the extension of credit in the real economy.

The SEC continues to recognize that banking entities already engage in a variety of permissible activities involving risk, including extensions of credit, underwriting, and market-making. To the degree that credit funds may enable greater formation of capital by banking entities through various debt instruments, this may influence the risks and returns of banking entities individually and of banking entities as a whole. However, the SEC recognizes that the activities of credit funds largely replicate permissible and traditional activities of banking entities. Moreover, banking entities subject to the 2013 rule may also be subject to multiple prudential, capital, margin, and liquidity requirements that facilitate the safety and soundness of banking entities and promote the financial stability of the United States. In addition, the proposed amendments include a set of conditions on the credit fund exclusion, including limitations on banking entities' guarantees, assumption or other insurance of the obligations or performance of the fund,[377] and compliance with applicable safety and soundness standards.[378]

Importantly, extensions of credit and loan origination by banking entities, whether directly or indirectly, are influenced by a wide variety of factors, including the prevailing macroeconomic conditions, the creditworthiness of borrowers and potential borrowers, competition between bank and non-bank credit providers, and many others. Moreover, the efficiencies of credit funds relative to direct extensions of credit described above are likely to vary considerably among banking entities and funds. The SEC recognizes that the potential effects described above of the proposed credit fund exclusion may be dampened or magnified in different phases of the macroeconomic cycle and across various types of banking entities.

As an alternative to the proposed amendment, the agencies could have proposed a credit fund exclusion that imposes additional restrictions. For example, as discussed above, the agencies could have imposed a quantitative limit on the amount of equity securities (or rights to acquire equity securities) that a credit fund may acquire in connection with its loans or debt instruments, rather than to require only that such securities and rights be received on customary terms. The SEC understands that in certain circumstances it is customary for lenders to receive a limited amount of warrants issued by the borrower or its affiliate in connection with certain extensions of credit, and that such a structure (*e.g.,* a note with warrants attached) can facilitate the availability of financing for small businesses and early stage companies that may be provided through credit funds. The SEC believes that there may be practical challenges to imposing and calculating a quantitative limit (for example, upon issuance, warrants could be worth relative little but the value could grow substantially over time). To the degree that a quantitative limit may result in unintended consequences and may impede the ability of some credit funds to provide financing to certain borrowers, particularly small businesses and early stage companies, the proposed condition could provide greater relief with respect to credit funds and potential borrowers relative to the alternative. At the same time, the

[371] *See, e.g.,* ABA.

[372] *See* id.

[373] *See* id.

[374] *See* Credit Suisse.

[375] *See* id.

[376] *See, e.g.,* FSF; GS.

[377] *See* proposed rule § __.10(c)(15)(iv)(A).

[378] *See* proposed rule § __.10(c)(15)(v)(B).

alternative would impose greater restrictions on the credit fund exclusion, reducing the above benefits and potentially increasing costs for banking entities and borrowers.

Venture Capital Funds

As discussed elsewhere in this **SUPPLEMENTARY INFORMATION**, the agencies are proposing to exclude certain venture capital funds from the definition of ''covered fund,'' which would allow banking entities to acquire or retain an ownership interest in, or sponsor, those venture capital funds to the extent the banking entity is otherwise permitted to engage in such activities under applicable law.[379] The exclusion would be available with respect to qualifying venture capital funds, which would include an issuer that meets the definition of ''venture capital fund'' in 17 CFR 275.203(l)-1 and that meets several additional criteria.[380]

A qualifying venture capital fund would be an issuer that, among other criteria, is a venture capital fund as defined in 17 CFR 275.203(l)–1.[381] In the preamble to the regulations adopting this definition of venture capital fund, the SEC explained that the definition's criteria distinguish venture capital funds from other types of funds, including private equity funds and hedge funds.[382] Moreover, the SEC explained that these criteria reflect the Congressional understanding that venture capital funds are less connected with the public markets and therefore may have less potential for systemic risk.[383] The SEC further explained that its regulation's restriction on the amount of borrowing, debt obligations, guarantees or other incurrence of leverage was appropriate to differentiate venture capital funds from other types of private funds that may engage in trading strategies that use financial leverage and may contribute to systemic risk.[384] The SEC preliminarily believes that this definition includes criteria reflecting the characteristics of venture capital funds that may pose less potential risk to a banking entity sponsoring or investing in venture capital funds and to the financial system—specifically, the smaller role of leverage financing and a lesser degree of interconnectedness with public markets.

A number of commenters supported an exclusion for venture capital funds and stated that venture capital funds do not commonly engage in short-term, high-risk activities, and that, by their nature, venture capital funds make long-term investments in private firms.[385] Moreover, the SEC received comment that venture capital funds promote economic growth and competitiveness of the U.S. more effectively than investments in expressly permissible vehicles, such as small business investment companies.[386] The SEC has also received comment that, by virtue of their investment strategy, long-term investment horizon, and intermediation between companies in need of capital and institutional investors seeking to deploy capital in efficient ways, venture capital funds may play a significant role in capital formation, economic growth, and efficient market function.[387] The proposed venture capital fund exclusion may provide banking entities with greater flexibility in their investments in private firms and private firms with a broader range of financing sources.

In addition, it is widely noted that the availability of venture capital and other financing from funds is not uniform throughout the United States and is generally available on a competitive basis for companies with a significant presence in certain geographic regions (*e.g.,* the New York metropolitan area, the Boston metropolitan area, and ''Silicon Valley'' and surrounding areas).[388] In this respect, the proposal could allow banking entities with a presence in and knowledge of the areas where venture capital and other types of financing are less readily available to businesses to provide this type of financing in those areas, further promoting capital formation.

The SEC remains cognizant of the fact that the overall level and structure of activities of banking entities that involve risk stems from a variety of permissible sources, including traditional capital provision, underwriting, and market-making. To the degree that qualifying venture capital funds may enable greater formation of capital by banking entities, this may influence the risks and returns of such entities individually and of banking entities as a whole. However, the proposed exclusion has a number of conditions, including a prohibition on direct or indirect guarantees by the banking entity, disclosures to investors, and compliance with applicable safety and soundness standards.

The SEC has also received comment opposing any exclusion for venture capital funds.[389] The SEC recognizes that venture capital funds commonly invest in illiquid private firms with few sources of market price information, with corresponding risks and returns. To the degree that the proposed exclusion for venture capital funds could facilitate banking entity activities related to venture capital funds, this proposed exclusion could increase the volume and alter the structure of banking entities' activities, affecting the risks associated with those activities. At the same time, as discussed elsewhere,[390] many other traditional and permissible activities of banking entities involve risk, and the provision of capital to private firms is an important function of banking entities within the financial system and securities markets that benefits the real economy.

As an alternative to the proposed amendment, the agencies are considering an additional restriction for which they are seeking specific comment. Under this additional restriction, and notwithstanding 17 CFR 275.203(1)–1(a)(2), the venture capital fund exclusion would be limited to funds that do not invest in companies that, at the time of the investment, have more than a limited dollar amount of total annual revenue. The agencies are considering what specific threshold would be appropriate to differentiate venture capital funds from other types of private funds. The potential benefit of including a revenue or other similar test is that it could be more difficult for

[379] *See* proposed rule § __.10(c)(16).

[380] *See supra* section III.C.2.

[381] *See id* for a discussion of the SEC's definition of ''venture capital fund'' in 17 CFR 275.203(l)–1. Following enactment of the RBIC Advisers Relief Act, the SEC's definition of ''venture capital fund'' includes any RBIC and any SBIC. *See* 15 U.S.C. 80b–3(l). The agencies are requesting comment on whether they should provide a separate, specific exclusion from the definition of ''covered fund'' for RBICs. *See supra* note 328.

[382] *See, e.g.,* Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers, 76 FR 39645, 39656 (July 6, 2011).

[383] *See id. at* 39648 (''[T]he proposed definition of venture capital fund was designed to . . . address concerns expressed by Congress regarding the potential for systemic risk.''); and at 39656 (''Congressional testimony asserted that these funds may be less connected with the public markets and may involve less potential for systemic risk. This appears to be a key consideration by Congress that led to the enactment of the venture capital exemption. As we discussed in the Proposing Release, the rule we proposed sought to incorporate this Congressional understanding of the nature of investments of a venture capital fund, and these principles guided our consideration of the proposed venture capital fund definition.'').

[384] *See id.*at 39662. *See also id.* at 39657 (''We proposed these elements of the qualifying portfolio company definition because of the focus on leverage in the Dodd-Frank Act as a potential contributor to systemic risk as discussed by the Senate Committee report, and the testimony before Congress that stressed the lack of leverage in venture capital investing.'').

[385] *See, e.g.,* ABA; BPI; Federated; Hultgren.

[386] *See id.*

[387] *See, e.g.,* BPI.

[388] *See, supra* note 152.

[389] *See, e.g.,* Data Boiler.

[390] *See* 2019 amendments at 62037–92.

banking entities to use the exclusion for qualifying venture capital funds to make investments that the agencies may not have intended to be permitted by this exclusion. However, any such anti-evasion benefits of this alternative could be offset by the extent to which anti-evasion concerns are already addressed by the other conditions of the proposed exclusion for qualifying venture capital funds.

Such an additional restriction as contemplated in the alternative would make it more difficult for banking entities to sponsor and invest in venture capital funds by limiting the pool of possible investments permitted for venture capital funds that qualify for the exclusion. This difficulty may be particularly pronounced for banking entities that would use the proposed venture capital fund exclusion to make investments in third-party venture capital funds, which may not be willing to restrict—and could be prohibited from restricting under other applicable laws—the fund's investments in companies that meet any such additional revenue or other similar test. As a result, such an additional condition could diminish the benefits discussed above, both by limiting the utility of the exclusion for banking entities to make permissible long-term investments and potentially reducing the availability of financing for businesses, including small businesses and start-ups in areas outside of certain major metropolitan areas.

Small Business Investment Companies

The 2013 rule excludes from the covered fund definition small business investment companies (SBICs). The 2013 rule includes within the scope of the exclusion SBICs and issuers that have received notice to proceed to qualify for a license as an SBIC and which have not received a revocation of the notice or license. The proposal would expand the exclusion to incorporate SBICs that have voluntarily surrendered their licenses to operate and do not make new investments (other than investments in cash equivalents) after such voluntary surrender.[391]

Clarifying that SBICs that have voluntarily surrendered their licenses and are winding-down remain excluded from the covered fund definition would eliminate regulatory uncertainty for banking entities. Currently, because it is unclear whether an SBIC that has voluntarily surrendered its license is still excluded from the definition of ''covered fund,'' banking entities must make a determination whether or not the SBIC that is winding-down is a covered fund. If the banking entity determines that when the SBIC that is winding-down and has voluntarily surrendered its license no longer qualifies for the exclusion from the covered fund definition, then the 2013 rule applies and the banking entity's existing investment in, and relationship with, the SBIC is prohibited. This potential result may discourage banking entities from making investments in SBICs.

The SEC has received comment that the 2013 rule is limiting banking entity activities in SBICs that may spur economic growth, and that banking entities face significant regulatory burdens that are not commensurate with the risk of the underlying activities.[392] Another commenter indicated that, in the ordinary course of business, SBIC fund managers often relinquish or voluntarily surrender a license during the wind-down of the fund while liquidating assets in the dissolution process (since the license is no longer necessary or an efficient use of partnership funds).[393]

SBICs are an important mechanism for capital allocation by banking entities and one important channel of capital raising for issuers. The proposed amendment would clarify that banking entities are able to continue to participate in SBIC-related activities during the dissolution of such funds, as long as certain conditions are met. To the degree that banking entities may currently be reluctant to invest in SBICs to avoid the risk of an SBIC being treated as a covered fund during SBIC dissolution, the proposal may increase the willingness of some banking entities to participate in SBICs. The proposed amendment would require that SBICs that have voluntarily surrendered their license may not make new investments during the wind-down process. This aspect of the proposed amendment seeks to address the possibility of banking entities becoming exposed to greater risk as part of their participation in SBICs during their wind-down process, even though such exposure may not be common in an SBIC's ordinary course of business. In any case, both the risks and the returns arising out of banking entity investments in SBICs at all stages of the vehicle's lifecycle are likely to flow through to banking entity shareholders. Moreover, banking entities participating in SBICs would remain subject to applicable safety and soundness regulations and requirements.

Public Welfare Funds

Similarly, as discussed elsewhere in this **SUPPLEMENTARY INFORMATION**, the SEC has received comment that the 2013 rule's exclusion for public welfare funds may not capture community development investments made through investment vehicles and comment supporting an exclusion of investments that qualify for Community Reinvestment Act (CRA) credit, including direct and indirect investments in a community development fund, SBIC, or similar fund.[394] The agencies are requesting comment on, among others, a separate exclusion from the covered fund definition for CRA-qualified investments or the incorporation of such an exclusion in the exclusion for public welfare investments. To the degree that some banking entities face uncertainty about their ability to make CRA-qualified investments and qualify for the exclusion, an explicit exclusion for such funds may increase the willingness of banking entities to intermediate such community development investments. At the same time, to the degree that banking entities currently finance community development projects eligible for the CRA through other fund structures and rely on corresponding exemptions, the economic effects of a potential exclusion for CRA-qualified investments may be limited to the difference in compliance burdens between such a new exclusion and existing covered fund exclusions.

The agencies are requesting comment on providing a separate specific exclusion for RBICs, similar to the separate, specific exclusion for SBICs.[395] As the SEC discussed elsewhere,[396] RBICs are intended to promote economic development and the creation of wealth and job opportunities in rural areas and among individuals living in such areas,[397] and their purpose is similar to the purpose of SBICs and public welfare companies.[398] Because SBICs and RBICs share the common purpose of promoting capital formation in their respective sectors, advisers to SBICs and RBICs are treated similarly

[391] *See* proposed rule § __.10(c)(11)(i).

[392] *See, e.g.,* SBIA; Capital One.

[393] *See, e.g.,* BB&T.

[394] *See* ABA.

[395] *See supra* note 328.

[396] *See* Accredited Investor Definition Proposing Release, at 2586–7.

[397] *See* U.S. Department of Agriculture, Rural Business Investment Program Overview, *available at http://www.rd.usda.gov/programs-services/rural-business-investment-program.*

[398] SBICs are intended to increase access to capital for growth stage businesses. *See* U.S. Small Business Administration, SBIC Program Overview, *available at https://www.sba.gov/partners/sbics.*

under the Advisers Act (in that they have the opportunity to take advantage of exemptions from investment adviser registration).[399] This alternative would expand the economic effects of the proposed SBIC exclusion discussed above and may facilitate capital formation by banking entities in growth stage businesses.

RBICs may already be excluded from the definition of covered fund under the 2013 rule.[400] For example, RBICs may qualify for the public welfare exclusion under the 2013 rule or an exclusion or exemption from the definition of ''investment company'' under the Investment Company Act other than section 3(c)(1) or 3(c)(7). To the extent that RBICs may already be excluded from the definition of covered fund, an express exclusion for RBICs would provide clarity and certainty and reduce costs for banking entities, which may otherwise be required to conduct a case-by-case analysis of each RBIC to determine whether it qualifies for an exclusion or exemption under the 2013 rule.

The agencies are also requesting comment on providing a specific exclusion for QOFs. As discussed above, the program allows taxpayers to defer and reduce taxes on capital gains by reinvesting gains in QOFs that are required to have at least 90 percent of their assets in designated low-income zones. In this regard, QOFs are similar to SBICs and public welfare companies. The alternative could expand the economic effects of the proposed amendments to the SBIC exclusion and public welfare exclusion discussed above, and may facilitate capital formation by banking entities.

QOFs may already be excluded from the definition of covered fund under the 2013 rule. For example, QOFs may qualify for the public welfare exclusion under the 2013 rule or an exclusion or exemption from the definition of ''investment company'' under the Investment Company Act other than section 3(c)(1) or 3(c)(7), such as section 3(c)(5)(C).[401] In addition, depending on the facts and circumstances, an issuer that holds securities issued by a QOF may not meet the definition of ''investment company'' under Section 3(a)(1) of the Investment Company Act, may be excluded under Rule 3a–1 thereunder, or may qualify for the exclusion under Section 3(c)(6) of the Investment Company Act.[402] To the extent that QOFs may already be excluded from the definition of covered fund, an express exclusion for QOFs would provide clarity and certainty and reduce costs for banking entities, which may otherwise be required to conduct a case-by-case analysis of each QOF to determine whether it qualifies for an exclusion or exemption under the 2013 rule.

Family Wealth Management Vehicles

As discussed above, the proposed amendments would exclude from the covered fund definition certain family wealth management vehicles. Family wealth management vehicles commonly engage in asset management activities, as well as estate planning and other related activities.[403] The SEC understands that some banking entities may currently be constrained in providing traditional banking and asset management services, including, for example, investment advice, brokerage execution, financing, clearing, and settlement services, to family wealth management vehicles due to the 2013 rule.[404] In addition, the SEC understands that certain family wealth management vehicles that are structured as trusts may prefer to appoint banking entities as trustees acting in a fiduciary capacity.[405] By specifically excluding family wealth management vehicles, the proposal may benefit such banking entities by permitting them to offer services to and engage in transactions with family wealth management vehicle customers. Importantly, the proposed amendment may benefit family wealth management vehicles and their investment advisers by increasing the spectrum of banking entity counterparties willing to provide traditional client-oriented financial and asset management services. Thus, the proposed amendment may enhance competition among banking and non-banking entities providing financial services to family wealth management vehicles and may lead to more efficient capital allocation of family wealth management vehicles' funds. To the degree banking entities pass compliance costs on to customers, family wealth vehicles may experience costs savings from the proposed amendment as well.

The SEC recognizes that some banking entities may respond to the proposed exclusion by seeking to structure other entities as family wealth management vehicles. However, as discussed in detail above, the proposed exclusion would only be available under a number of conditions. Specifically, if the entity is a trust, the grantor(s) of the entity must all be family customers; if the entity is not a trust, a majority of the voting interests in the entity must be owned by family customers, and the entity must be owned only by family customers and up to 3 closely related persons of the family customers.[406] In addition, banking entities may rely on this exclusion only if they: provide bona fide trust, fiduciary, investment advisory, or commodity trading advisory services to the entity;[407] do not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of such entity;[408] comply with the disclosure obligations under § __.11(a)(8), as if such entity were a covered fund;[409] do not acquire or retain, as principal, an ownership interest in the entity, other than up to 0.5 percent of the entity's outstanding ownership interests that may be held by the banking entity and its affiliates for the purpose of and to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns;[410] comply with the requirements of §§ __ .14(b) and __.15, as if such entity were a covered fund;[411] and comply with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the issuer were an affiliate thereof.[412]

The proposed definition of ''family customer'' would include any ''family client'' as defined in Rule 202(a)(11)(G)-1(d)(4) of the Investment Advisers Act of 1940, and any natural person who is a father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of a family client, or a spouse or a spousal equivalent of any of the foregoing.[413] The SEC believes that the conditions for the proposed exclusion and the proposed definition of ''family customer'' would require family wealth management vehicles to be used on arms-length, market terms for customer-oriented financial services, and the SEC preliminarily believes that this will reduce the risk that banking entities' involvement in these vehicles will give rise to the types of risks that

[399] *See supra* note 331. The private fund adviser exemption excludes the assets of RBICs and SBICs from counting towards the $150 million threshold. 15 U.S.C. 80b–3(m).

[400] RBICs may be excluded under the proposed venture capital exclusion. *See supra* note 331.

[401] *See* Opportunity Zone Statement.

[402] *See* id.

[403] *See e.g.,* IAI; SIFMA.

[404] *See e.g.,* BPI; IAI; SIFMA.

[405] *See* SIFMA.

[406] *See* proposed rule § __.10(c)(17)(i).

[407] *See* proposed rule § __.10(c)(17)(ii)(A).

[408] *See* proposed rule § __.10(c)(17)(ii)(B).

[409] *See* proposed rule § __.10(c)(17)(ii)(C).

[410] *See* proposed rule § __.10(c)(17)(ii)(D).

[411] *See* proposed rule § __.10(c)(17)(ii)(E).

[412] *See* proposed rule § __.10(c)(17)(ii)(F).

[413] *See* proposed rule § __.10(c)(17)(iii).

the covered funds provisions are meant to mitigate.

Alternative forms of relief with respect to family wealth management vehicles—for example, alternatives that define ''family customers'' more broadly or narrowly, or alternatives removing some of the proposed conditions for the exclusion—would increase or reduce the availability of the exclusion relative to the proposal. Alternatively, the agencies could have proposed amending the limitations on relationships with a covered fund to permit banking entity transactions with family wealth management vehicles that would otherwise be considered covered transactions (*e.g.,* ordinary extensions of credit) without subjecting them to 12 CFR 223.15(a) or section 23B of the Federal Reserve Act, as if such banking entity were a member bank and such family wealth management fund were an affiliate thereof. Broader (narrower) alternative forms of relief may increase (decrease) the magnitude of the economic benefits for capital formation, allocative efficiency, and the ability of banking entities to provide traditional customer oriented services to family wealth management vehicles. At the same time, such broader relief may increase the risk that some banking entities may respond to the relief by attempting to evade the intent of the rule, increasing the volume of their activities with family wealth management vehicles. Nevertheless, such risks of the alternatives relative to the proposed exclusion may be mitigated by the fact that banking entities would remain subject to the full scope of broker-dealer and prudential capital, margin, and other rules aimed at facilitating safety and soundness. Moreover, as discussed above, the SEC preliminarily believes that traditional banking and asset management services involving family wealth management vehicles do not involve the types of risks that section 13 of the BHC Act was designed to address.

Customer Facilitation Vehicles

The proposal would also exclude from the covered fund definition issuers acting as customer facilitation vehicles. The SEC understands that banking entities commonly use special purpose vehicles to accommodate exposure to securities, transactions, and services of a client or group of affiliated clients.[414] The SEC has received comment that, because of the 2013 rule's covered fund restrictions, some banking entities have been unable to engage in traditional banking and asset management services with respect to vehicles provided for customers, even though banking entities are otherwise able to provide such exposures and services to customers directly (outside of the fund structure).[415] The SEC has also received comment that some clients, particularly clients in markets such as Brazil, Germany, Hong Kong, and Japan, prefer to transact with or through such vehicles rather than banking entities directly because of a variety of legal, counterparty risk management, and accounting factors.[416] Moreover, the SEC is aware that limitations of the 2013 rule on the activities of such vehicles may be disrupting client relationships, reducing the efficiency of customer-facing financial services, and raising compliance costs of banking entities.[417] The proposed exclusion may eliminate these baseline costs and inefficiencies by allowing banking entities to provide customer-oriented financial services through vehicles, the purpose of which is providing such customers with exposure to a transaction, investment strategy, or other service. As a result, banking entities may become better able to engage in the full range of customer facilitation activities through special purpose vehicles and fund structures, which may benefit banking entities, their customers, and securities markets more broadly.

At the same time, financial services related to customer facilitation vehicles may involve market risk, and the proposed exclusion may enable banking entities to provide a greater array of financial services to, and otherwise transact with, such vehicles. The SEC preliminarily believes that such risks may be mitigated by at least two of the proposed conditions of the proposed exclusion. First, a banking entity and its affiliates can hold only a *de minimis* (up to 0.5%) interest in the customer facilitation vehicle for the purpose of and to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns.[418] Second, a banking entity and its affiliates may not directly or indirectly guarantee, assume, or otherwise insure the obligations or performance of the vehicle.[419] These proposed conditions, among the other conditions in the proposal, may mitigate risks that may be borne by individual banking entities and by banking entities as a whole as a result of the proposed exclusion, and may facilitate banking entities' ongoing compliance with section 13 of the BHC Act and the implementing regulations. Moreover, the SEC continues to believe that the provision of customer-oriented financial services by banking entities may benefit customers, counterparties, and securities markets.

The proposed amendments create new recordkeeping requirements for a banking entity that relies on the exclusion for customer facilitation vehicles.[420] The banking entity may only rely on the exclusion if it and its affiliates maintain documentation outlining how the banking entity intends to facilitate the customer's exposure to a transaction, investment strategy or service offered by the banking entity. As discussed in section IV.B[421] and above, these recordkeeping burdens may impose a total initial burden of $1,078,650[422] and a total ongoing annual burden of $1,078,650.[423]

The agencies could have proposed alternative forms of relief with respect to customer facilitation vehicles. For example, the agencies could have proposed a higher banking entity ownership limit (of, for example, 5% or 10%). Alternatively, the agencies could have proposed a 0.5% ownership interest limit, but without specifying a list of purposes for which such interest may be held, leading to banking entities accumulating greater ownership interests in such vehicles. As another example, the agencies could have proposed an exclusion for customer facilitation vehicles without subjecting the banking entity relying on the exclusion to 12 CFR 223.15(a) or section 23B of the Federal Reserve Act, as if such banking entity were a member bank and such customer facilitation vehicles were an affiliate thereof. Such alternatives would remove or loosen the conditions for the availability of the exclusion, which may increase the risk that customer facilitation vehicles could be used for evasion purposes or expose banking entities to additional risk, but could also further reduce compliance burdens and provide greater flexibility to banking entities and their customers.

b. Restrictions on Relationships Between Banking Entities and Covered Funds

As discussed above, under the 2013 rule, banking entities that either: (1) Serve as a sponsor, adviser, or manager of a covered fund; (2) organize and offer

[414] *See, e.g.,* ABA.

[415] *See, e.g.,* SIFMA; FSF; ABA.

[416] *See, e.g.,* ABA; BPI.

[417] *See, e.g.,* ABA; FSF.

[418] *See* proposed rule § __.10(c)(18)(ii)(B)(4).

[419] *See* proposed rule § __.10(c)(18)(ii)(B)(2).

[420] *See* proposed rule § __.10(c)(18)(ii)(B)(1).

[421] *See supra* note 338.

[422] *See supra* note 339.

[423] *See supra* note 340.

a covered fund under __.11; or (3) hold an ownership interest under __.11(b) are unable to engage in any covered transactions with such funds.[424] This prohibition may be limiting the services that such banking entities and their affiliates are able to provide to certain entities that are covered funds under the 2013 rule. For example, as noted above, banking entities are significantly limited in their ability to both organize and offer a covered fund, as well as to provide custody services to the fund. The proposed amendments would authorize banking entities to engage in certain transactions, such as extensions of intraday credit, payment, clearing, and settlement services, with covered funds—activities that could otherwise be covered transactions.[425]

The SEC has received comments suggesting that section 13(f)(1) of the BHC Act should be interpreted to include the exemptions provided under section 23A of the Federal Reserve Act, and that banking entities should be permitted to engage in a limited amount of covered transactions with related covered funds.[426] The SEC recognizes that outsourcing such activities to third parties may be adversely affecting customer relationships, increasing costs, and decreasing operational efficiency for banking entities and covered funds. The proposed amendments would provide banking entities greater flexibility to provide these and other services directly to covered funds. If being able to provide custody, clearing, and other services to related covered funds reduces the costs of these services and risks of operational failure of fund custodians, then fund advisers and, indirectly, fund investors, may benefit from the proposed amendments. Many direct benefits are likely to accrue to banking entity advisers to covered funds that are currently relying on third-party service providers as a result of the requirements of the 2013 rule.

The proposed amendments may increase banking entities' ability to engage in custody, clearing, and other transactions with related covered funds and benefit banking entities that are currently unable to engage in otherwise profitable or efficient activities with related covered funds. Moreover, this may enhance operational efficiency and reduce operational risks and costs incurred by covered funds, which are currently unable to rely on banking entities with which they have certain relationships for custody, clearing, and other transactions.

The SEC has also received a comment opposing incorporating the Federal Reserve Act section 23A exemptions or quantitative limits.[427] To the extent that the proposed approach may increase transactions between banking entities and related covered funds, banking entities could incur risks associated with these transactions. However, as discussed above, the proposed amendments impose a number of conditions aimed at reducing overall risks to banking entities, the ability of banking entities to lever up related covered funds, and the incentive of banking entities to bail out related covered funds, while enhancing their ability to provide ordinary-course banking, custody, and asset management services, and facilitate capital formation in covered funds.

The agencies could have proposed broader or narrower forms of relief. For example, in addition to the proposed relief, the agencies could have proposed permitting banking entities to engage in additional covered transactions in connection with payment, clearing, and settlement services beyond extensions of credit and purchases of assets. Further, under the proposal, each extension of credit would be required to be repaid, sold, or terminated by the end of 5 business days.[428] As another alternative, the agencies could have proposed allowing extensions of credit in connection with payment transactions, clearing, or settlement services for periods that are longer than 5 business days. However, the proposed 5 business day criteria is consistent with the federal banking agencies' capital rule and would generally require banking entities to rely on transactions with normal settlement periods, which have lower risk of delayed settlement or failure, when providing short-term extensions of credit.[429] In addition, the agencies could have imposed quantitative limits on the newly permitted covered transactions tied to bank capital or fund size. Relative to the proposed amendments, alternatives providing greater relief with respect to covered transactions with covered funds could magnify the cost savings and operational risk benefits described above, but may also increase risk to banking entities or the incentives for banking entities to bail out related covered funds. Similarly, narrower alternative forms of relief may dampen the economic effects of the proposed amendments discussed above.

c. Definition of Ownership Interest

As discussed above, the 2013 rule defines ''ownership interest'' in a covered fund to mean any equity, partnership, or ''other similar interest,'' which is an interest that exhibits any of several characteristics.[430] This definition focuses on the attributes of the interest and whether it provides a banking entity with voting rights or economic exposure to the profits and losses of the covered fund. The agencies are proposing to amend the definition of ownership interest in two ways. First, the proposed amendment would specify that certain creditors' rights are excluded from the prong of the definition that defines an ownership interest to mean an interest that has the right to participate in the selection or removal of a general partner, investment adviser, or other service provider to the covered fund. Specifically, the proposed amendment would provide that an excluded creditors' right upon the occurrence of an event of default or an acceleration event can include the right to participate in the removal of an investment manager for cause or to nominate or vote on a nominated replacement manager upon an investment manager's resignation or removal.[431] Accordingly, having this right would be recognized as a creditors' right that is excluded from the definition of ownership interest.

Second, the proposed amendment would add to the list of interests that are excluded from the definition of ownership interest. Specifically, the proposed amendment would provide that any senior loan or senior debt interest would not be an ownership interest, if such senior loan or senior debt interest had specific characteristics.[432] Those characteristics would be: (1) Under the terms of the interest, the holders do not have the right to receive a share of the income, gains, or profits of the covered fund, but are entitled to receive only certain interest and fees, and fixed principal payments on or before a maturity date; (2) the right to payments are absolute and cannot be reduced because of the losses arising from the covered fund's underlying assets; and (3) the holders of the interest do not have the right to receive the underlying assets of the covered fund after all other interests have been redeemed or paid in full

[424] *See* 12 U.S.C. 1851(f)(1).

[425] *See* proposed rule § __.14(a)(2)(iii) and proposed rule § __.14(a)(2)(iv).

[426] *See, e.g.,* BPI; FSF.

[427] *See* Public Citizen.

[428] *See* proposed rule § __.14(a)(2)(iv)(B).

[429] *See supra* note 205.

[430] *See* 2013 rule § __.10(d)(6). *See also, supra,* section III.E.

[431] Proposed rule § __.10(d)(6)(i)(A).

[432] Proposed rule § __.10(d)(6)(ii)(B).

(excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event).[433]

The SEC has received comment that the 2013 rule's definition of ownership interest captures instruments that do not have equity-like features and constrains banking entity investments in debt securitizations and client facilitation services.[434] For example, one commenter indicated that analyzing the ownership interest definition in the context of securitizations has resulted in added time and costs of executing transactions, as well as impeded securitization transactions.[435] Moreover, the commenter indicated that the ''other similar interest'' prong of the definition precludes some banking entities from investing in collateralized loan obligation (CLO) senior debt instruments, which affects lending to CLOs, and that banking entities with pre-existing CLO exposures had to waive credit-enhancing remedies to avoid triggering the ownership interest restrictions.[436] In addition, the SEC received comment that the ownership interest definition in the 2013 rule may require an extensive legal analysis and documentation review and that, as a result, some banking entities may default to treating interests without controlling positions or equity-like features as ownership interests.[437]

The SEC recognizes that banking entities may have contractual rights to participate in the selection or removal of a general partner, managing member, or member of the board of directors or trustees of their borrower that are not limited to the exercise of a remedy upon an event of default or other default event.[438] The proposed amendments may provide greater clarity and predictability to banking entities and enable them to determine whether they have an ownership interest under section 13 of the BHC Act and the implementing regulations. Moreover, to the degree that banking entities may have responded to the ownership interest definition in the 2013 rule by reducing their investments in certain debt instruments, the proposed amendments may result in greater banking entity investments in covered funds and greater ability of covered funds to allocate capital to the underlying assets.

The SEC recognizes that such debt instrument investments carry risk,[439] and that the risks and returns of such investments flow through to banking entities' shareholders. While the proposed amendments to the ownership interest definition may permit banking entities to increase exposures related to certain debt instrument transactions, three key considerations may mitigate the risks associated with such activities. First, the proposed amendments would not change any of the applicable prudential capital, margin, or liquidity requirements intended to ensure safety and soundness of banking entities. Second, to the degree that the ownership interest definition has actually discouraged banking entities from obtaining credit enhancements to avoid triggering the ownership interest restrictions, the proposed amendments may result in banking entities receiving stronger credit enhancements. Finally, the proposed amendments would include a number of conditions and restrictions aimed at reducing the risk to banking entities while facilitating traditional lending activity.

The agencies could have proposed broader relief by limiting the particular forms of a banking entity's interest (*e.g.,* equity or partnership shares) that would qualify as an ownership interest or by limiting the definition of ownership interest to ''voting securities'' as defined by the Board's Regulation Y. By providing broader relief relative to the proposed amendments, such an alternative may produce greater reductions in uncertainty and compliance burdens, and a greater willingness of banking entities to become involved in certain debt transactions. However, such greater involvement in certain debt transactions may also give rise to greater risks being borne by banking entities. The proposed amendments are intended to provide sufficient safeguards to prevent banking entities from acquiring interests in covered funds that run counter to the intentions of the 2013 rule and limit a banking entity's exposure to the economic risks of covered funds and their underlying assets, while reducing compliance uncertainty and increasing the willingness of banking entities to participate in covered funds.

d. Loan Securitizations

As discussed above, the 2013 rule excludes from the definition of covered fund any loan securitization that issues asset-backed securities, holds only loans, certain rights and assets, and a small set of other financial instruments (permissible assets), and meets other criteria.[440] The SEC has received comment that, as a result of the 2013 rule, some banking entities may have divested or restructured their interests in loan securitizations due to the narrowly-drawn conditions of the exclusion, and that a limited holding of non-loan assets may enable banking entities to provide traditional securitization products and services demanded by customers, clients, and counterparties.[441] Moreover, commenters indicated that the ability to hold non-loan assets may allow loan securitizations to increase diversification and enable asset managers to be more responsive to changing market demand for the underlying debt products.[442] Another commenter acknowledged the strong statutory and public policy arguments in favor of excluding credit securitizations.[443] Yet another commenter suggested that expanding permitted bank activities adds to the complexity of the 2013 rule, and that securitizations and asset-backed vehicles were involved directly in the 2008 financial crisis.[444]

The staffs of the agencies released a frequently asked question addressing the servicing asset provision of the loan securitization exclusion in June 2014.[445] The agencies are proposing to codify the staff-level approach to the loan securitization exclusion in the Loan Securitization Servicing FAQ.[446] To the degree that market participants may have restructured their activities consistent with the Loan Securitization Servicing FAQ, an effect of the proposed amendments may be to reduce uncertainty. However, the economic effects of the proposed amendments on enabling greater capital formation through loan securitizations on the one hand, and potential risks related to such activities on the other, may be limited.

The agencies are also proposing to allow loan securitizations to hold up to five percent of the entity's assets in non-

[433] *See supra* note 431.

[434] *See, e.g.,* BPI; SIFMA; ABA; Center for American Entrepreneurship; LSTA.

[435] *See, e.g.,* SFIG.

[436] *See* id.

[437] *See, e.g.,* SIFMA.

[438] See, *e.g.,* SFIG.

[439] *See, e.g.,* Occupy the SEC.

[440] *See* 2013 rule § __.10(c)(8). Loan is further defined as any loan, lease, extension of credit, or secured or unsecured receivable that is not a security or derivative. *See also* 2013 rule § __.2(t).

[441] *See, e.g.,* ABA; BPI.

[442] *See, e.g.,* IAA; LTSA.

[443] *See* Federated.

[444] *See* AFR.

[445] U.S. Securities and Exchange Commission, Responses to Frequently Asked Questions Regarding the Commission's Rule under Section 13 of the Bank Holding Company Act (the ''Volcker Rule'') (June 10, 2014), *available at https://www.sec.gov/divisions/marketreg/faq-volcker-rule-section13.htm* (''Loan Securitization Servicing FAQ''). *See also, supra,* section III.B.2.

[446] Proposed rule § __.10(c)(8)(i)(B).

loan assets.[447] Several commenters on the 2018 proposal supported expanding the range of permissible assets that could be held by an excluded loan securitization.[448] Many commenters recommended allowing loan securitizations to hold up to five or ten percent of non-loan assets.[449] Commenters argued that banking entities would use such authority to incorporate into securitizations corporate bonds, interests in letters of credit, cash and short-term highly liquid investments, derivatives, and senior secured bonds that do not significantly change the nature and risk profile of the securitization.[450] Authorizing loan securitizations to hold small amounts of non-loan assets could, consistent with the statute, permit loan securitizations to respond to market demand and reduce compliance costs associated with the securitization process without significantly increasing risk to banking entities and the financial system. The proposed limits on the amount of non-loan assets also would reduce the potential risk that allowing certain non-loan assets could lead to evasion, indirect proprietary trading, and other impermissible activities. Moreover, loan securitizations provide an important avenue for banking entities to fund lending programs, and allowing loan securitizations to hold a small amount of non-loan assets in response to customer and market demand may increase a banking entity's capacity to provide financing and lending.

The agencies could have proposed expanding the types of permissible assets beyond what is described in the 2013 rule and the Loan Securitization Servicing FAQ. For example, the agencies could have proposed expanding the range of permissible assets in an excluded loan securitization. Such alternatives could potentially allow banking entities to incorporate into securitizations corporate bonds, interests in letters of credit, cash and short-term highly liquid investments, derivatives, and senior secured bonds that do not significantly change the nature and risk profile of the securitization.

However, the SEC recognizes that the loan securitization industry may have evolved since the issuance of the 2013 rule. As a result, the SEC preliminarily believes that, even if the scope of non-loan assets permitted to be held were expanded, loan securitization issuers may continue to exclude non-loan assets from securitizations. Further, such an alternative would not affect the applicable prudential requirements aimed at safety and soundness of banking entities. Banking entities currently take on a variety of risks arising out of a broad range of permissible activities, including the core traditional banking activity related to the extension of credit and direct and indirect extension of credit by banking entities flows through to the real economy in the form of greater access to capital.

e. Parallel Investments

As discussed above, the preamble to the 2013 rule stated that if a banking entity makes investments side by side in substantially the same positions as a covered fund, then the value of such investments would be included for the purposes of determining the value of the banking entity's investment in the covered fund.[451] The agencies also stated that a banking entity that sponsors a covered fund should not make any additional side-by-side co-investment with the covered fund in a privately negotiated investment unless the value of such co-investment is less than three percent of the value of the total amount co-invested by other investors in such investment.[452]

In response to the 2018 proposal, the agencies received comments that argued the implementing regulations should not impose a limit on parallel investments and noted that such a restriction is not reflected in the text of the 2013 rule.[453] The agencies are proposing a rule of construction that (1) a banking entity will not be required to include in the calculation of the investment limits under § __.12(a)(2) any investment the banking entity makes alongside a covered fund, as long as the investment is made in compliance with applicable laws and regulations, and (2) a banking entity shall not be restricted in the amount of any investment the banking entity makes alongside a covered fund as long as the investment is made in compliance with applicable laws and regulations, including applicable safety and soundness standards.[454]

The SEC recognizes that the proposed approach may increase the risk that some banking entities may seek to use parallel investments for the purpose of artificially maintaining or increasing the value of the assets of a fund that is organized and offered by the banking entity. Supporting a fund in such a manner would increase these banking entities' exposures to the fund's assets and would generally be inconsistent with the 2013 rule's restriction on a banking entity guaranteeing, assuming, or otherwise insuring the obligations or performance of such a covered fund.[455]

Further, as stated above, the agencies would expect that any investments made alongside a covered fund by a director or employee of a banking entity or its affiliate, if made in compliance with applicable laws and regulations, would not be treated as an investment by the director or employee in the covered fund.

The SEC recognizes, however, that a restriction on investments made alongside a covered fund may interfere with banking entities' ability to make otherwise permissible investments directly on their balance sheets.[456] In particular, as noted by commenters, including the value of parallel investments within the ownership limits imposed on a banking entity or otherwise restricting a co-investment could prevent the banking entity from making investments that would otherwise be permissible under applicable laws and regulations.[457] In addition to removing impediments for banking entities' otherwise permissible investments, the proposed rule of construction may enable banking entities to make investments alongside a covered fund that will signal the quality of the investment(s) to the banking entities' clients and investors in the fund, and may also help align the incentives of banking entities, and their directors and employees, with those of the covered funds and their investors.

4. Efficiency, Competition, and Capital Formation

As discussed above, the proposed amendments would exclude certain groups of private funds and other entities from the scope of the covered fund definition and modify other covered fund restrictions applicable to banking entities subject to the implementing regulations. Moreover, the proposed amendments would reduce compliance obligations of banking entities subject to the implementing regulations. The SEC preliminarily believes that the proposed amendments may impact competition, capital formation, and allocative efficiency.

[447] Proposed rule § __.10(c)(8)(i)(E).

[448] *See e.g.,* IAA; LSTA; ABA; SFIG; GS; BPI; JBA; SIFMA.

[449] *See e.g.,* LSTA; JBA.

[450] *See* id.

[451] *See supra* section III.F and references therein.

[452] *See* id.

[453] *See* FSF; Goldman; SIFMA.

[454] Proposed rule § __.12(b)(5)(i).

[455] *See* 2013 rule § __.11(a)(5).

[456] *See supra* note 454.

[457] *See* id.

The proposed amendments may have three groups of competitive effects. First, the proposed amendments may make it easier for bank affiliated broker-dealers, SBSDs, and RIAs to compete with bank unaffiliated broker-dealers, SBSDs, and RIAs in their activities with certain groups of private funds and other entities. Second, the proposal may reduce competitive disparities between banking entities subject to the implementing regulations and affected by the proposed amendments, and banking entities that are not. Third, certain aspects of the proposed amendments (such as the amendments related to foreign excluded funds and foreign public funds) may reduce competitive disparities between U.S. banking entities and foreign banking entities in their covered fund activities. Because competition may reduce costs or increase quality, and because some affected banking entities may face economies of scale or scope in the provision of services to certain private funds, these competitive effects may flow through to customers, clients, and investors in the form of reduced transaction costs and greater quality of private fund and other offerings and related financial services.

The proposed amendments may also impact capital formation. For example, by reducing the scope of application of covered fund restrictions in the implementing regulations, the proposal relaxes restrictions related to banking entity underwriting and market-making of certain private funds. Moreover, the proposal would amend certain restrictions related to banking entity relationships with certain covered funds. Further, as discussed above, many of the proposed amendments would enable banking entities to engage indirectly (through a fund structure) in certain of the same activities that they are currently able to engage in directly (extending credit or direct ownership stakes). To the degree that the implementing regulations impede or otherwise constrain banking entity activities in such funds, the proposed amendments may result in a greater number of such private funds being launched by banking entities, increasing capital formation via private funds. The effects of the proposed amendments on capital formation are likely to flow through to investors (in the form of greater availability or variety or private funds available for investors) as well as to firms seeking to raise capital or obtain financing from private funds.[458]

The possible effects of the proposed amendments on allocative efficiency are related to the proposal's likely impacts on capital formation. Specifically, as discussed above, the SEC preliminarily believes that the proposed amendments may result in a greater number and variety of private funds launched by banking entities. To the degree that banking entities may be able to provide superior private funds due to their expertise or economies of scale or scope, and to the degree that fund structures may be more efficient than direct investments (due to, *e.g.,* superior risk sharing and pooling of expertise across fund investors), the proposed amendments may enhance the ability of market participants, investors, and issuers to allocate their capital efficiently.

The SEC recognizes that the proposed amendments may increase the ability of banking entities to engage in certain types of activities involving risk, and that increases in risk exposures of large groups of banking entities may negatively impact capital formation, securities markets, and the real economy, particularly during adverse economic conditions. Moreover, losses on investment portfolios may discourage capital market participation by various groups of investors. Three important considerations may mitigate these potential risks. First, as discussed throughout this economic analysis, banking entities already engage in a variety of permissible activities involving risk, including extensions of credit, underwriting, and market-making, and the activities of many types of private funds that would be excluded under the proposal largely replicate permissible and traditional activities of banking entities. Second, banking entities subject to the implementing regulations may also be subject to multiple prudential capital, margin, and liquidity requirements that facilitate the safety and soundness of banking entities and promote financial stability. Third, the proposed exclusions from the definition of covered fund each would include a number of conditions aimed at preventing evasion of section 13 of the BHC Act and the implementing regulations, promoting safety and soundness, and/or allowing for customer oriented financial services provided on arms-length, market terms.

Under the implementing regulations, a banking entity is not prohibited from acquiring or retaining an ownership interest in, or acting as sponsor to, a covered fund if the banking entity organizes or offers the covered fund and satisfies other requirements. One such requirement is that the banking entity provide specified disclosures to prospective and actual investors in the covered fund.[459] Under the proposed amendments, the disclosures specified by § __.11(a)(8) would be required to satisfy the exclusions for credit funds and venture capital funds if the banking entity is a sponsor, investment adviser, or commodity trading advisor of the fund, and for family wealth vehicles and customer facilitation vehicles under all circumstances. To the extent that the proposed amendments lead banking entities to establish or provide services to more of these vehicles, the volume of information available to market participants could increase. Specifically, if banking entities respond to the proposed amendments by establishing or providing services to more of these vehicles because they are excluded from the definition of ''covered fund,'' then the amount of such disclosures would increase accordingly. However, the SEC preliminarily believes that the change in volume and type of information available to market participants is unlikely to have a significant impact on informational efficiency.

Importantly, the magnitude of the above effects on competition, capital formation, and allocative efficiency would be influenced by a large number of factors, such as prevailing macroeconomic conditions, the financial condition of firms seeking to raise capital, and of funds seeking to transact with banking entities, market saturation, and search for higher yields by investors during low interest rate environments. Moreover, the relative efficiency between fund structures and the direct provision of capital is likely to vary widely among banking entities and funds. The SEC recognizes that such economic effects may be dampened or magnified in different phases of the macroeconomic cycle and across various types of banking entities.

The SEC is unable to observe the amount of capital formation in different types of covered funds or underlying equity and debt securities that did not occur because of the 2013 rule. Because of the prolonged and overlapping implementation timeline of various post-crisis reforms, and because market participants restructured their trading and covered funds activities in anticipation of the 2013 rule being effective, the SEC cannot measure the counterfactual levels of capital formation and liquidity that would have

[458] For example, the proposed amendments could result in additional venture capital being available in geographic areas where it is relatively less available. *See supra,* section IV.F.3.a (Venture Capital Funds).

[459] 2013 rule § __.11(a)(8).

been observed after the financial crisis, absent the covered fund restrictions currently in place. Similarly, the SEC cannot quantify the degree to which competition in covered funds is adversely affected by the covered fund definition currently in effect. The SEC solicits any information, particularly quantitative data that would allow us to estimate the magnitudes of the potential costs and benefits of the proposed amendments on banking entity-affiliated broker-dealers and on banking entity-affiliated investment advisers advising the different types of funds discussed above. The SEC also solicits any information that would allow it to estimate any effects on efficiency, competition, and capital formation in different types of funds and their underlying securities.

5. Request for Comment

The SEC is requesting comment regarding all aspects of the economic analysis set forth here. To the extent possible, the SEC requests that market participants and other commenters provide supporting data and analysis with respect to the benefits, costs, and effects on competition, efficiency, and capital formation of adopting the proposed amendments or any reasonable alternatives. In addition, the SEC asks commenters to consider the following questions:

Question SEC–1. What additional qualitative or quantitative information should the SEC consider as part of the baseline for its economic analysis of the proposed amendments?

Question SEC–2. What additional considerations can the SEC use to estimate the costs and benefits of implementing the proposed amendments for SEC-regulated banking entities?

Question SEC–3. Is it likely that certain potential benefits or costs associated with the proposed amendments will not be recognized by SEC-regulated banking entities because of the nature of their activities or because of new conditions or restrictions the proposal would impose on these activities? Why or why not? Are there other benefits or costs associated with the proposed amendments that will impact SEC-regulated banking entities differently than other types of banking entities?

Question SEC–4. Has the SEC considered all relevant aspects of the proposed amendments? Have we accurately described the costs and benefits of the proposed amendments? Why or why not? Please identify any other benefits associated with the proposed amendments in detail. Please identify any costs associated with the proposed amendments that we have not identified. If possible, please provide quantification or data that would enable a quantification of such effects.

Question SEC–5. What are the economic effects of the discussed reasonable alternatives? Are there any additional reasonable alternatives that the SEC should consider? If so, please identify such alternatives and any economic effects associated with such alternatives. If possible, please provide quantification or data that would enable a quantification of such effects.

Question SEC–6. Would permitting banking entities to invest in or sponsor a qualifying venture capital fund be likely to result in additional venture capital becoming available to start-ups and young, growing firms in geographic regions of the United States where such capital is relatively less available?

G. SEC Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [460] the SEC requests comment on the potential effect of the proposed rule on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

List of Subjects

12 CFR Part 44

Banks, Banking, Compensation, Credit, Derivatives, Government securities, Insurance, Investments, National banks, Penalties, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Trusts and trustees.

12 CFR Part 248

Administrative practice and procedure, Banks, banking, Conflict of interests, Credit, Foreign banking, Government securities, Holding companies, Insurance, Insurance companies, Investments, Penalties, Reporting and recordkeeping requirements, Securities, State nonmember banks, State savings associations, Trusts and trustees.

12 CFR Part 351

Banks, banking, Capital, Compensation, Conflicts of interest, Credit, Derivatives, Government securities, Insurance, Insurance companies, Investments, Penalties, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Trusts and trustees.

17 CFR Part 75

Banks, Banking, Compensation, Credit, Derivatives, Federal branches and agencies, Federal savings associations, Government securities, Hedge funds, Insurance, Investments, National banks, Penalties, Proprietary trading, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Swap dealers, Trusts and trustees, Volcker rule.

17 CFR Part 255

Banks, Brokers, Dealers, Investment advisers, Recordkeeping, Reporting, Securities.

[460] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the Common Preamble, the Office of the Comptroller of the Currency proposes to amend chapter I of Title 12, Code of Federal Regulations as follows:

PART 44—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

■ 1. The authority citation for part 44 continues to read as follows:

Authority: 7 U.S.C. 27 *et seq.,* 12 U.S.C. 1, 24, 92a, 93a, 161, 1461, 1462a, 1463, 1464, 1467a, 1813(q), 1818, 1851, 3101, 3102, 3108, 5412.

Subpart B—Proprietary Trading

■ 2. Amend § 44.6 by adding paragraph (f) to read as follows:

§ 44.6 Other permitted proprietary trading activities.

* * * * *

(f) *Permitted trading activities of qualifying foreign excluded funds.* The prohibition contained in § 44.3(a) does not apply to the purchase or sale of a financial instrument by a qualifying foreign excluded fund. For purposes of this paragraph (f), a qualifying foreign excluded fund means a banking entity that:

(1) Is organized or established outside the United States, and the ownership interests of which are offered and sold solely outside the United States;

(2)(i) Would be a covered fund if the entity were organized or established in the United States, or

(ii) Is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;

(3) Would not otherwise be a banking entity except by virtue of the acquisition or retention of an ownership interest in, sponsorship of, or relationship with the entity, by another banking entity that meets the following:

(i) The banking entity is not organized, or directly or indirectly controlled by a banking entity that is organized, under the laws of the United States or of any State; and

(ii) The banking entity's acquisition or retention of an ownership interest in or sponsorship of the fund meets the requirements for permitted covered fund activities and investments solely outside the United States, as provided in § 44.13(b);

(4) Is established and operated as part of a bona fide asset management business; and

(5) Is not operated in a manner that enables any other banking entity to evade the requirements of section 13 of the BHC Act or this part.

Subpart C—Covered Funds Activities and Investments

■ 3. Amend § 44.10 by:
■ a. Revising paragraph (c)(1);
■ b. Revising paragraph (c)(3)(i);
■ c. Revising paragraph (c)(8);
■ d. Revising paragraph (c)(10)(i);
■ e. Revising paragraph (c)(11)(i);
■ f. Adding paragraphs (c)(15), (16), (17), and (18); and
■ g. Revising paragraph (d)(6).

The revisions and additions read as follows:

§ 44.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.

* * * * *

(c) * * *

(1) *Foreign public funds.* (i) Subject to paragraphs (c)(1)(ii) and (iii) of this section, an issuer that:

(A) Is organized or established outside of the United States; and

(B) Is authorized to offer and sell ownership interests, and such interests are offered and sold, through one or more public offerings.

(ii) With respect to a banking entity that is, or is controlled directly or indirectly by a banking entity that is, located in or organized under the laws of the United States or of any State and any issuer for which such banking entity acts as sponsor, the sponsoring banking entity may not rely on the exemption in paragraph (c)(1)(i) of this section for such issuer unless ownership interests in the issuer are sold predominantly to persons other than:

(A) Such sponsoring banking entity;

(B) Such issuer;

(C) Affiliates of such sponsoring banking entity or such issuer; and

(D) Directors and senior executive officers as defined in section 225.71(c) of the Board's Regulation Y (12 CFR 225.71(c)) of such entities.

(iii) For purposes of paragraph (c)(1)(i)(B) of this section, the term ''public offering'' means a distribution (as defined in § 44.4(a)(3)) of securities in any jurisdiction outside the United States to investors, including retail investors, provided that:

(A) The distribution is subject to substantive disclosure and retail investor protection laws or regulations;

(B) With respect to an issuer for which the banking entity serves as the investment manager, investment adviser, commodity trading advisor, commodity pool operator, or sponsor, the distribution complies with all applicable requirements in the jurisdiction in which such distribution is being made;

(C) The distribution does not restrict availability to investors having a minimum level of net worth or net investment assets; and

(D) The issuer has filed or submitted, with the appropriate regulatory authority in such jurisdiction, offering disclosure documents that are publicly available.

* * * * *

(3) * * *

(i) Is composed of no more than 10 unaffiliated co-venturers;

* * * * *

(8) *Loan securitizations*—(i) *Scope.* An issuing entity for asset-backed securities that satisfies all the conditions of this paragraph (c)(8) and the assets or holdings of which are composed solely of:

(A) Loans as defined in § 44.2(t);

(B) Rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of such securities and rights or other assets that are related or incidental to purchasing or otherwise acquiring and holding the loans, provided that each asset that is a security (other than special units of beneficial interest and collateral certificates meeting the requirements of paragraph (c)(8)(v) of this section) meets the requirements of paragraph (c)(8)(iii) of this section;

(C) Interest rate or foreign exchange derivatives that meet the requirements of paragraph (c)(8)(iv) of this section; and

(D) Special units of beneficial interest and collateral certificates that meet the requirements of paragraph (c)(8)(v) of this section.

(E) Any other assets, provided that the aggregate value of any such other assets that do not meet the criteria specified in paragraphs (c)(8)(i)(A) through (c)(8)(i)(D) of this section do not exceed five percent of the aggregate value of the issuing entity's assets.

(ii) *Impermissible assets.* For purposes of this paragraph (c)(8), except as permitted under paragraph (c)(8)(i)(E) of this section, the assets or holdings of the issuing entity shall not include any of the following:

(A) A security, including an asset-backed security, or an interest in an equity or debt security other than as permitted in paragraphs (c)(8)(iii), (iv), or (v) of this section;

(B) A derivative, other than a derivative that meets the requirements of paragraph (c)(8)(iv) of this section; or

(C) A commodity forward contract.

(iii) *Permitted securities.* Notwithstanding paragraph (c)(8)(ii)(A) of this section, the issuing entity may hold securities if those securities are:

(A) Cash equivalents—which, for the purposes of this paragraph, means high quality, highly liquid investments whose maturity corresponds to the securitization's expected or potential need for funds and whose currency corresponds to either the underlying loans or the asset-backed securities—for purposes of the rights and assets in paragraph (c)(8)(i)(B) of this section; or

(B) Securities received in lieu of debts previously contracted with respect to the loans supporting the asset-backed securities.

(iv) *Derivatives.* The holdings of derivatives by the issuing entity shall be limited to interest rate or foreign exchange derivatives that satisfy all of the following conditions:

(A) The written terms of the derivatives directly relate to the loans, the asset-backed securities, or the contractual rights or other assets described in paragraph (c)(8)(i)(B) of this section; and

(B) The derivatives reduce the interest rate and/or foreign exchange risks related to the loans, the asset-backed securities, or the contractual rights or other assets described in paragraph (c)(8)(i)(B) of this section.

(v) *Special units of beneficial interest and collateral certificates.* The assets or holdings of the issuing entity may include collateral certificates and

special units of beneficial interest issued by a special purpose vehicle, provided that:

(A) The special purpose vehicle that issues the special unit of beneficial interest or collateral certificate meets the requirements in this paragraph (c)(8);

(B) The special unit of beneficial interest or collateral certificate is used for the sole purpose of transferring to the issuing entity for the loan securitization the economic risks and benefits of the assets that are permissible for loan securitizations under this paragraph (c)(8) and does not directly or indirectly transfer any interest in any other economic or financial exposure;

(C) The special unit of beneficial interest or collateral certificate is created solely to satisfy legal requirements or otherwise facilitate the structuring of the loan securitization; and

(D) The special purpose vehicle that issues the special unit of beneficial interest or collateral certificate and the issuing entity are established under the direction of the same entity that initiated the loan securitization.

* * * * *

(10) *Qualifying covered bonds*—(i) *Scope.* An entity owning or holding a dynamic or fixed pool of loans or other assets as provided in paragraph (c)(8) of this section for the benefit of the holders of covered bonds, provided that the assets in the pool are composed solely of assets that meet the conditions in paragraph (c)(8)(i) of this section.

* * * * *

(11) * * *

(i) That is a small business investment company, as defined in section 103(3) of the Small Business Investment Act of 1958 (15 U.S.C. 662), or that has received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company, which notice or license has not been revoked, or that has voluntarily surrendered its license to operate as a small business investment company in accordance with 13 CFR 107.1900 and does not make any new investments (other than investments in cash equivalents, which, for the purposes of this paragraph, means high quality, highly liquid investments whose maturity corresponds to the issuer's expected or potential need for funds and whose currency corresponds to the issuer's assets) after such voluntary surrender; or

* * * * *

(15) *Credit funds.* Subject to paragraphs (c)(15)(iii), (iv), and (v) of this section, an issuer that satisfies the asset and activity requirements of paragraphs (c)(15)(i) and (ii) of this section.

(i) *Asset requirements.* The issuer's assets must be composed solely of:

(A) Loans as defined in § 44.2(t);

(B) Debt instruments, subject to paragraph (c)(15)(iv) of this section;

(C) Rights and other assets that are related or incidental to acquiring, holding, servicing, or selling such loans or debt instruments, provided that:

(*1*) Each right or asset that is a security is either:

(*i*) A cash equivalent (which, for the purposes of this paragraph, means high quality, highly liquid investments whose maturity corresponds to the issuer's expected or potential need for funds and whose currency corresponds to either the underlying loans or the debt instruments);

(*ii*) A security received in lieu of debts previously contracted with respect to such loans or debt instruments; or

(*iii*) An equity security (or right to acquire an equity security) received on customary terms in connection with such loans or debt instruments; and

(*2*) Rights or other assets held under this paragraph (c)(15)(i)(C) of this section may not include commodity forward contracts; and

(D) Interest rate or foreign exchange derivatives, if:

(*1*) The written terms of the derivative directly relate to the loans, debt instruments, or other rights or assets described in paragraph (c)(15)(i)(C) of this section; and

(*2*) The derivative reduces the interest rate and/or foreign exchange risks related to the loans, debt instruments, or other rights or assets described in paragraph (c)(15)(i)(C) of this section.

(ii) *Activity requirements.* To be eligible for the exclusion of paragraph (c)(15) of this section, an issuer must:

(A) Not engage in any activity that would constitute proprietary trading under § 44.3(b)(l)(i) of subpart A of this part, as if the issuer were a banking entity; and

(B) Not issue asset-backed securities.

(iii) *Requirements for a sponsor, investment adviser, or commodity trading advisor.* A banking entity that acts as a sponsor, investment adviser, or commodity trading advisor to an issuer that meets the conditions in paragraphs (c)(15)(i) and (ii) of this section may not rely on this exclusion unless the banking entity:

(A) Provides in writing to any prospective and actual investor in the issuer the disclosures required under § 44.11(a)(8), as if the issuer were a covered fund; and

(B) Ensures that the activities of the issuer are consistent with safety and soundness standards that are substantially similar to those that would apply if the banking entity engaged in the activities directly.

(iv) *Additional Banking Entity Requirements.* A banking entity may not rely on this exclusion with respect to an issuer that meets the conditions in paragraphs (c)(15)(i) and (ii) of this section unless:

(A) The banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the issuer or of any entity to which such issuer extends credit or in which such issuer invests; and

(B) Any assets the issuer holds pursuant to paragraphs (c)(15)(i)(B) or (c)(15)(i)(C)(*1*)(*iii*) of this section would be permissible for the banking entity to acquire and hold directly.

(v) *Investment and Relationship Limits.* A banking entity's investment in, and relationship with, the issuer must:

(A) Comply with the limitations imposed in §§ 44.14 (except the banking entity may acquire and retain any ownership interest in the issuer) and 44.15, as if the issuer were a covered fund; and

(B) Be conducted in compliance with, and subject to, applicable banking laws and regulations, including applicable safety and soundness standards.

(16) *Qualifying venture capital funds.* (i) Subject to paragraphs (c)(16)(ii) through (iv) of this section, an issuer that:

(A) Is a venture capital fund as defined in 17 CFR 275.203(l)–1; and

(B) Does not engage in any activity that would constitute proprietary trading under § 44.3(b)(1)(i), as if the issuer were a banking entity.

(ii) A banking entity that acts as a sponsor, investment adviser, or commodity trading advisor to an issuer that meets the conditions in paragraph (c)(16)(i) of this section may not rely on this exclusion unless the banking entity:

(A) Provides in writing to any prospective and actual investor in the issuer the disclosures required under § 44.11 (a)(8), as if the issuer were a covered fund; and

(B) Ensures that the activities of the issuer are consistent with safety and soundness standards that are substantially similar to those that would apply if the banking entity engaged in the activities directly.

(iii) The banking entity must not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the issuer.

(iv) A banking entity's ownership interest in or relationship with the issuer must:

(A) Comply with the limitations imposed in §§ 44.14 (except the banking entity may acquire and retain any ownership interest in the issuer) and 44.15, as if the issuer were a covered fund; and

(B) Be conducted in compliance with, and subject to, applicable banking laws and regulations, including applicable safety and soundness standards.

(17) *Family wealth management vehicles.* (i) Subject to paragraph (c)(17)(ii) of this section, any entity that is not, and does not hold itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities, and:

(A) If the entity is a trust, the grantor(s) of the entity are all family customers; and

(B) If the entity is not a trust:

(*1*) A majority of the voting interests in the entity are owned (directly or indirectly) by family customers; and

(*2*) The entity is owned only by family customers and up to 3 closely related persons of the family customers.

(ii) A banking entity may rely on the exclusion in paragraph (c)(17)(i) of this section with respect to an entity provided that the banking entity (or an affiliate):

(A) Provides bona fide trust, fiduciary, investment advisory, or commodity trading advisory services to the entity;

(B) Does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of such entity;

(C) Complies with the disclosure obligations under § 44.11(a)(8), as if such entity were a covered fund;

(D) Does not acquire or retain, as principal, an ownership interest in the entity, other than up to 0.5 percent of the entity's outstanding ownership interests that may be held by the banking entity and its affiliates for the purpose of and to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns;

(E) Complies with the requirements of §§ 44.14(b) and 44.15, as if such entity were a covered fund; and

(F) Complies with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the issuer were an affiliate thereof.

(iii) For purposes of paragraph (c)(17) of this section, the following definitions apply:

(A) ''Closely related person'' means a natural person (including the estate and estate planning vehicles of such person) who has longstanding business or personal relationships with any family customer.

(B) ''Family customer'' means:

(*1*) A family client, as defined in Rule 202(a)(11)(G)–1(d)(4) of the Investment Advisers Act of 1940 (17 CFR 275.202(a)(11)(G)–1(d)(4)); or

(*2*) Any natural person who is a father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of a family client, or a spouse or a spousal equivalent of any of the foregoing.

(18) *Customer facilitation vehicles.* (i) Subject to paragraph (c)(18)(ii) of this section, an issuer that is formed by or at the request of a customer of the banking entity for the purpose of providing such customer (which may include one or more affiliates of such customer) with exposure to a transaction, investment strategy, or other service provided by the banking entity.

(ii) A banking entity may rely on the exclusion in paragraph (c)(18)(i) of this section with respect to an issuer provided that:

(A) All of the ownership interests of the issuer are owned by the customer (which may include one or more of its affiliates) for whom the issuer was created, subject to paragraph (c)(18)(ii)(B)(*4*) of this section; and

(B) The banking entity and its affiliates:

(*1*) Maintain documentation outlining how the banking entity intends to facilitate the customer's exposure to such transaction, investment strategy, or service;

(*2*) Do not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of such issuer;

(*3*) Comply with the disclosure obligations under § 44.11(a)(8), as if such issuer were a covered fund;

(*4*) Do not acquire or retain, as principal, an ownership interest in the issuer, other than up to 0.5 percent of the issuer's outstanding ownership interests that may be held by the banking entity and its affiliates for the purpose of and to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns;

(*5*) Comply with the requirements of §§ 44.14(b) and 44.15, as if such issuer were a covered fund; and

(*6*) Comply with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the issuer were an affiliate thereof.

(d) * * *

(6) *Ownership interest*—(i) Ownership interest means any equity, partnership, or other similar interest. An ''other similar interest'' means an interest that:

(A) Has the right to participate in the selection or removal of a general partner, managing member, member of the board of directors or trustees, investment manager, investment adviser, or commodity trading advisor of the covered fund (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event, which includes the right to participate in the removal of an investment manager for cause or to nominate or vote on a nominated replacement manager upon an investment manager's resignation or removal);

(B) Has the right under the terms of the interest to receive a share of the income, gains or profits of the covered fund;

(C) Has the right to receive the underlying assets of the covered fund after all other interests have been redeemed and/or paid in full (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event);

(D) Has the right to receive all or a portion of excess spread (the positive difference, if any, between the aggregate interest payments received from the underlying assets of the covered fund and the aggregate interest paid to the holders of other outstanding interests);

(E) Provides under the terms of the interest that the amounts payable by the covered fund with respect to the interest could be reduced based on losses arising from the underlying assets of the covered fund, such as allocation of losses, write-downs or charge-offs of the outstanding principal balance, or reductions in the amount of interest due and payable on the interest;

(F) Receives income on a pass-through basis from the covered fund, or has a rate of return that is determined by reference to the performance of the underlying assets of the covered fund; or

(G) Any synthetic right to have, receive, or be allocated any of the rights in paragraphs (d)(6)(i)(A) through (F) of this section.

(ii) Ownership interest does not include:

(A) Restricted profit interest which is an interest held by an entity (or an employee or former employee thereof) in a covered fund for which the entity (or employee thereof) serves as investment manager, investment adviser, commodity trading advisor, or other service provider, so long as:

(*1*) The sole purpose and effect of the interest is to allow the entity (or employee or former employee thereof) to share in the profits of the covered fund as performance compensation for the investment management, investment advisory, commodity trading advisory, or other services provided to the covered fund by the entity (or employee or former employee thereof), provided that the entity (or employee or former employee thereof) may be obligated under the terms of such interest to return profits previously received;

(*2*) All such profit, once allocated, is distributed to the entity (or employee or former employee thereof) promptly after being earned or, if not so distributed, is retained by the covered fund for the sole purpose of establishing a reserve amount to satisfy contractual obligations with respect to subsequent losses of the covered fund and such undistributed profit of the entity (or employee or former employee thereof) does not share in the subsequent investment gains of the covered fund;

(*3*) Any amounts invested in the covered fund, including any amounts paid by the entity in connection with obtaining the restricted profit interest, are within the limits of § 44.12 of this subpart; and

(*4*) The interest is not transferable by the entity (or employee or former employee thereof) except to an affiliate thereof (or an employee of the banking entity or affiliate), to immediate family members, or through the intestacy, of the employee or former employee, or in connection with a sale of the business that gave rise to the restricted profit interest by the entity (or employee or former employee thereof) to an unaffiliated party that provides investment management, investment advisory, commodity trading advisory, or other services to the fund.

(B) Any senior loan or senior debt interest that has the following characteristics:

(*1*) Under the terms of the interest the holders of such interest do not have the right to receive a share of the income, gains, or profits of the covered fund, but are entitled to receive only:

(*i*) Interest at a stated interest rate, as well as commitment fees or other fees, which are not determined by reference to the performance of the underlying assets of the covered fund; and

(*ii*) Fixed principal payments on or before a maturity date (which may include prepayment premiums intended solely to reflect, and compensate holders of the interest for, foregone income resulting from an early prepayment);

(*2*) The entitlement to payments under the terms of the interest are absolute and could not be reduced based on losses arising from the underlying assets of the covered fund, such as allocation of losses, write-downs or charge-offs of the outstanding principal balance, or reductions in the amount of interest due and payable on the interest; and

(*3*) The holders of the interest are not entitled to receive the underlying assets of the covered fund after all other interests have been redeemed or paid in full (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event).

■ 4. Amend § 44.12 by:
■ a. Revising paragraph (b)(1)(ii);
■ b. Revising paragraph (b)(4);
■ c. Adding paragraph (b)(5);
■ d. Revising paragraph (c)(1); and
■ e. Revising paragraphs (d) and (e).

The revisions and addition read as follows:

§ 44.12 Permitted investment in a covered fund.

* * * * *

(b) * * *

(1) * * *

(ii) *Treatment of registered investment companies, SEC-regulated business development companies, and foreign public funds.* For purposes of paragraph (b)(1)(i) of this section, a registered investment company, SEC-regulated business development companies, or foreign public fund as described in § 44.10(c)(1) of this subpart will not be considered to be an affiliate of the banking entity so long as the banking entity:

(A) Does not own, control, or hold with the power to vote 25 percent or more of the voting shares of the company or fund; and

(B) Provides investment advisory, commodity trading advisory, administrative, and other services to the company or fund in compliance with the limitations under applicable regulation, order, or other authority.

* * * * *

(4) *Multi-tier fund investments*—(i) *Master-feeder fund investments.* If the principal investment strategy of a covered fund (the ''feeder fund'') is to invest substantially all of its assets in another single covered fund (the ''master fund''), then for purposes of the investment limitations in paragraphs (a)(2)(i)(B) and (a)(2)(ii) of this section, the banking entity's permitted investment in such funds shall be measured only by reference to the value of the master fund. The banking entity's permitted investment in the master fund shall include any investment by the banking entity in the master fund, as well as the banking entity's pro-rata share of any ownership interest in the master fund that is held through the feeder fund; and

(ii) *Fund-of-funds investments.* If a banking entity organizes and offers a covered fund pursuant to § 44.11 of this subpart for the purpose of investing in other covered funds (a ''fund of funds'') and that fund of funds itself invests in another covered fund that the banking entity is permitted to own, then the banking entity's permitted investment in that other fund shall include any investment by the banking entity in that other fund, as well as the banking entity's pro-rata share of any ownership interest in the fund that is held through the fund of funds. The investment of the banking entity may not represent more than 3 percent of the amount or value of any single covered fund.

(5) *Parallel Investments and Co-Investments*—(i) A banking entity shall not be required to include in the calculation of the investment limits under paragraph (a)(2) of this section any investment the banking entity makes alongside a covered fund as long as the investment is made in compliance with applicable laws and regulations, including applicable safety and soundness standards.

(ii) A banking entity shall not be restricted under this section in the amount of any investment the banking entity makes alongside a covered fund as long as the investment is made in compliance with applicable laws and regulations, including applicable safety and soundness standards.

(c) * * *

(1)(i) For purposes of paragraph (a)(2)(iii) of this section, the aggregate value of all ownership interests held by a banking entity shall be the sum of all amounts paid or contributed by the banking entity in connection with acquiring or retaining an ownership interest in covered funds (together with any amounts paid by the entity in connection with obtaining a restricted profit interest under § 44.10(d)(6)(ii)), on a historical cost basis;

(ii) Treatment of employee and director restricted profit interests financed by the banking entity. For purposes of paragraph (c)(1)(i) of this section, an investment by a director or employee of a banking entity who acquires a restricted profit interest in their personal capacity in a covered fund sponsored by the banking entity will be attributed to the banking entity if the banking entity, directly or indirectly, extends financing for the purpose of enabling the director or

employee to acquire the restricted profit interest in the fund and the financing is used to acquire such ownership interest in the covered fund.

* * * * *

(d) *Capital treatment for a permitted investment in a covered fund.* For purposes of calculating compliance with the applicable regulatory capital requirements, a banking entity shall deduct from the banking entity's tier 1 capital (as determined under paragraph (c)(2) of this section) the greater of:

(1)(i) The sum of all amounts paid or contributed by the banking entity in connection with acquiring or retaining an ownership interest (together with any amounts paid by the entity in connection with obtaining a restricted profit interest under § 44.10(d)(6)(ii)), on a historical cost basis, plus any earnings received; and

(ii) The fair market value of the banking entity's ownership interests in the covered fund as determined under paragraph (b)(2)(ii) or (b)(3) of this section (together with any amounts paid by the entity in connection with obtaining a restricted profit interest under § 44.10(d)(6)(ii)), if the banking entity accounts for the profits (or losses) of the fund investment in its financial statements.

(2) Treatment of employee and director restricted profit interests financed by the banking entity. For purposes of paragraph (d)(1) of this section, an investment by a director or employee of a banking entity who acquires a restricted profit interest in his or her personal capacity in a covered fund sponsored by the banking entity will be attributed to the banking entity if the banking entity, directly or indirectly, extends financing for the purpose of enabling the director or employee to acquire the restricted profit interest in the fund and the financing is used to acquire such ownership interest in the covered fund.

(e) *Extension of time to divest an ownership interest.* (1) *Extension Period.* Upon application by a banking entity, the Board may extend the period under paragraph (a)(2)(i) of this section for up to 2 additional years if the Board finds that an extension would be consistent with safety and soundness and not detrimental to the public interest.

(2) *Application Requirements.* An application for extension must:

(i) Be submitted to the Board at least 90 days prior to the expiration of the applicable time period;

(ii) Provide the reasons for application, including information that addresses the factors in paragraph (e)(3) of this section; and

(iii) Explain the banking entity's plan for reducing the permitted investment in a covered fund through redemption, sale, dilution or other methods as required in paragraph (a)(2) of this section.

(3) *Factors governing the Board determinations.* In reviewing any application under paragraph (e)(1) of this section, the Board may consider all the facts and circumstances related to the permitted investment in a covered fund, including:

(i) Whether the investment would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies;

(ii) The contractual terms governing the banking entity's interest in the covered fund;

(iii) The date on which the covered fund is expected to have attracted sufficient investments from investors unaffiliated with the banking entity to enable the banking entity to comply with the limitations in paragraph (a)(2)(i) of this section;

(iv) The total exposure of the covered banking entity to the investment and the risks that disposing of, or maintaining, the investment in the covered fund may pose to the banking entity and the financial stability of the United States;

(v) The cost to the banking entity of divesting or disposing of the investment within the applicable period;

(vi) Whether the investment or the divestiture or conformance of the investment would involve or result in a material conflict of interest between the banking entity and unaffiliated parties, including clients, customers, or counterparties to which it owes a duty;

(vii) The banking entity's prior efforts to reduce through redemption, sale, dilution, or other methods its ownership interests in the covered fund, including activities related to the marketing of interests in such covered fund;

(viii) Market conditions; and

(ix) Any other factor that the Board believes appropriate.

(4) *Authority to impose restrictions on activities or investment during any extension period.* The Board may impose such conditions on any extension approved under paragraph (e)(1) of this section as the Board determines are necessary or appropriate to protect the safety and soundness of the banking entity or the financial stability of the United States, address material conflicts of interest or other unsound banking practices, or otherwise further the purposes of section 13 of the BHC Act and this part.

(5) *Consultation.* In the case of a banking entity that is primarily regulated by another Federal banking agency, the SEC, or the CFTC, the Board will consult with such agency prior to acting on an application by the banking entity for an extension under paragraph (e)(1) of this section.

■ 5. Amend § 44.13 by adding paragraph (d) to read as follows:

§ 44.13 Other permitted covered fund activities and investments.

* * * * *

(d) *Permitted covered fund activities and investments of qualifying foreign excluded funds.* (1) The prohibition contained in § 44.10(a) does not apply to a qualifying foreign excluded fund.

(2) For purposes of this paragraph (d), a qualifying foreign excluded fund means a banking entity that:

(i) Is organized or established outside the United States, and the ownership interests of which are offered and sold solely outside the United States;

(ii)(A) Would be a covered fund if the entity were organized or established in the United States, or

(B) Is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;

(iii) Would not otherwise be a banking entity except by virtue of the acquisition or retention of an ownership interest in, sponsorship of, or relationship with the entity, by another banking entity that meets the following:

(A) The banking entity is not organized, or directly or indirectly controlled by a banking entity that is organized, under the laws of the United States or of any State; and

(B) The banking entity's acquisition of an ownership interest in or sponsorship of the fund by the foreign banking entity meets the requirements for permitted covered fund activities and investments solely outside the United States, as provided in § 44.13(b);

(iv) Is established and operated as part of a bona fide asset management business; and

(v) Is not operated in a manner that enables any other banking entity to evade the requirements of section 13 of the BHC Act or this part.

■ 6. Amend § 44.14 by:

■ a. Revising paragraph (a)(2)(i);

■ b. Revising paragraph (a)(2)(ii)(C);

■ c. Adding paragraphs (a)(2)(iii), (a)(2)(iv); and (a)(3); and

■ d. Revising paragraph (c).

The revisions and additions read as follows:

§ 44.14 Limitations on relationships with a covered fund.

(a) * * *

(2) * * *

(i) Acquire and retain any ownership interest in a covered fund in accordance with the requirements of §§ 44.11, 44.12, or 44.13;

(ii) * * *

(C) The Board has not determined that such transaction is inconsistent with the safe and sound operation and condition of the banking entity; and

(iii) Enter into a transaction with a covered fund that would be an exempt covered transaction under 12 U.S.C. 371c(d) or § 223.42 of the Board's Regulation W (12 CFR 223.42); and

(iv) Extend credit to or purchase assets from a covered fund, provided:

(A) Each extension of credit or purchase of assets is in the ordinary course of business in connection with payment transactions; settlement services; or futures, derivatives, and securities clearing;

(B) Each extension of credit is repaid, sold, or terminated by the end of five business days; and

(C) The banking entity making each extension of credit meets the requirements of § 223.42(l)(1)(i) and (ii) of the Board's Regulation W (12 CFR 223.42(l)(1)(i) and(ii)), as if the extension of credit was an intraday extension of credit, regardless of the duration of the extension of credit.

(3) Any transaction or activity permitted under paragraphs (a)(2)(iii) or (iv) must comply with the limitations in § 44.15.

* * * * *

(c) *Restrictions on other permitted transactions.* Any transaction permitted under paragraphs (a)(2)(ii), (a)(2)(iii), or (a)(2)(iv) of this section shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c–1) as if the counterparty were an affiliate of the banking entity.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE

12 CFR Chapter II

Authority and Issuance

For the reasons stated in the Common Preamble, the Board proposes to amend chapter I of Title 12, Code of Federal Regulations as follows:

PART 248—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS (Regulation VV)

■ 7. The authority citation for part 248 continues to read as follows:

Authority: 12 U.S.C. 1851, 12 U.S.C. 221 *et seq.,* 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* and 12 U.S.C. 3103 *et seq.*

Subpart B—Proprietary Trading

■ 8. Amend § 248.6 by adding paragraph (f) to read as follows:

§ 248.6 Other permitted proprietary trading activities.

* * * * *

(f) *Permitted trading activities of qualifying foreign excluded funds.* The prohibition contained in § 248.3(a) does not apply to the purchase or sale of a financial instrument by a qualifying foreign excluded fund. For purposes of this paragraph (f), a qualifying foreign excluded fund means a banking entity that:

(1) Is organized or established outside the United States, and the ownership interests of which are offered and sold solely outside the United States;

(2)(i) Would be a covered fund if the entity were organized or established in the United States, or

(ii) Is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;

(3) Would not otherwise be a banking entity except by virtue of the acquisition or retention of an ownership interest in, sponsorship of, or relationship with the entity, by another banking entity that meets the following:

(i) The banking entity is not organized, or directly or indirectly controlled by a banking entity that is organized, under the laws of the United States or of any State; and

(ii) The banking entity's acquisition or retention of an ownership interest in or sponsorship of the fund meets the requirements for permitted covered fund activities and investments solely outside the United States, as provided in § 248.13(b);

(4) Is established and operated as part of a bona fide asset management business; and

(5) Is not operated in a manner that enables any other banking entity to evade the requirements of section 13 of the BHC Act or this part.

Subpart C—Covered Funds Activities and Investments

■ 9. Amend § 248.10 is amended by:

■ a. Revising paragraph (c)(1);

■ b. Revising paragraph (c)(3)(i);

■ c. Revising paragraph (c)(8);

■ d. Revising paragraph (c)(10)(i);

■ e. Revising paragraph (c)(11)(i);

■ f. Adding paragraphs (c)(15), (16), (17), and (18); and

■ g. Revising paragraph (d)(6).

The revisions and additions read as follows:

§ 248.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.

* * * * *

(c) * * *

(1) *Foreign public funds.* (i) Subject to paragraphs (c)(1)(ii) and (iii) of this section, an issuer that:

(A) Is organized or established outside of the United States; and

(B) Is authorized to offer and sell ownership interests, and such interests are offered and sold, through one or more public offerings.

(ii) With respect to a banking entity that is, or is controlled directly or indirectly by a banking entity that is, located in or organized under the laws of the United States or of any State and any issuer for which such banking entity acts as sponsor, the sponsoring banking entity may not rely on the exemption in paragraph (c)(1)(i) of this section for such issuer unless ownership interests in the issuer are sold predominantly to persons other than:

(A) Such sponsoring banking entity;

(B) Such issuer;

(C) Affiliates of such sponsoring banking entity or such issuer; and

(D) Directors and senior executive officers as defined in § 225.71(c) of the Board's Regulation Y (12 CFR 225.71(c)) of such entities.

(iii) For purposes of paragraph (c)(1)(i)(B) of this section, the term ''public offering'' means a distribution (as defined in § 248.4(a)(3)) of securities in any jurisdiction outside the United States to investors, including retail investors, provided that:

(A) The distribution is subject to substantive disclosure and retail investor protection laws or regulations;

(B) With respect to an issuer for which the banking entity serves as the investment manager, investment adviser, commodity trading advisor, commodity pool operator, or sponsor, the distribution complies with all applicable requirements in the jurisdiction in which such distribution is being made;

(C) The distribution does not restrict availability to investors having a minimum level of net worth or net investment assets; and

(D) The issuer has filed or submitted, with the appropriate regulatory authority in such jurisdiction, offering disclosure documents that are publicly available.

* * * * *

(3) * * *

(i) Is composed of no more than 10 unaffiliated co-venturers;

* * * * *

(8) *Loan securitizations*—(i) *Scope.* An issuing entity for asset-backed securities that satisfies all the conditions of this paragraph (c)(8) and the assets or holdings of which are composed solely of:

(A) Loans as defined in § 248.2(t);

(B) Rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of such securities and rights or other assets that are related or incidental to purchasing or otherwise acquiring and holding the loans, provided that each asset that is a security (other than special units of beneficial interest and collateral certificates meeting the requirements of paragraph (c)(8)(v) of this section) meets the requirements of paragraph (c)(8)(iii) of this section;

(C) Interest rate or foreign exchange derivatives that meet the requirements of paragraph (c)(8)(iv) of this section; and

(D) Special units of beneficial interest and collateral certificates that meet the requirements of paragraph (c)(8)(v) of this section.

(E) Any other assets, provided that the aggregate value of any such other assets that do not meet the criteria specified in paragraphs (c)(8)(i)(A) through (c)(8)(i)(D) of this section do not exceed five percent of the aggregate value of the issuing entity's assets.

(ii) *Impermissible assets.* For purposes of this paragraph (c)(8), except as permitted under paragraph (c)(8)(i)(E) of this section, the assets or holdings of the issuing entity shall not include any of the following:

(A) A security, including an asset-backed security, or an interest in an equity or debt security other than as permitted in paragraphs (c)(8)(iii), (iv), or (v) of this section;

(B) A derivative, other than a derivative that meets the requirements of paragraph (c)(8)(iv) of this section; or

(C) A commodity forward contract.

(iii) *Permitted securities.* Notwithstanding paragraph (c)(8)(ii)(A) of this section, the issuing entity may hold securities if those securities are:

(A) Cash equivalents—which, for the purposes of this paragraph, means high quality, highly liquid investments whose maturity corresponds to the securitization's expected or potential need for funds and whose currency corresponds to either the underlying loans or the asset-backed securities—for purposes of the rights and assets in paragraph (c)(8)(i)(B) of this section; or

(B) Securities received in lieu of debts previously contracted with respect to the loans supporting the asset-backed securities.

(iv) *Derivatives.* The holdings of derivatives by the issuing entity shall be limited to interest rate or foreign exchange derivatives that satisfy all of the following conditions:

(A) The written terms of the derivatives directly relate to the loans, the asset-backed securities, or the contractual rights or other assets described in paragraph (c)(8)(i)(B) of this section; and

(B) The derivatives reduce the interest rate and/or foreign exchange risks related to the loans, the asset-backed securities, or the contractual rights or other assets described in paragraph (c)(8)(i)(B) of this section.

(v) *Special units of beneficial interest and collateral certificates.* The assets or holdings of the issuing entity may include collateral certificates and special units of beneficial interest issued by a special purpose vehicle, provided that:

(A) The special purpose vehicle that issues the special unit of beneficial interest or collateral certificate meets the requirements in this paragraph (c)(8);

(B) The special unit of beneficial interest or collateral certificate is used for the sole purpose of transferring to the issuing entity for the loan securitization the economic risks and benefits of the assets that are permissible for loan securitizations under this paragraph (c)(8) and does not directly or indirectly transfer any interest in any other economic or financial exposure;

(C) The special unit of beneficial interest or collateral certificate is created solely to satisfy legal requirements or otherwise facilitate the structuring of the loan securitization; and

(D) The special purpose vehicle that issues the special unit of beneficial interest or collateral certificate and the issuing entity are established under the direction of the same entity that initiated the loan securitization.

* * * * *

(10) *Qualifying covered bonds*—(i) *Scope.* An entity owning or holding a dynamic or fixed pool of loans or other assets as provided in paragraph (c)(8) of this section for the benefit of the holders of covered bonds, provided that the assets in the pool are composed solely of assets that meet the conditions in paragraph (c)(8)(i) of this section.

* * * * *

(11) * * *

(i) That is a small business investment company, as defined in section 103(3) of the Small Business Investment Act of 1958 (15 U.S.C. 662), or that has received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company, which notice or license has not been revoked, or that has voluntarily surrendered its license to operate as a small business investment company in accordance with 13 CFR 107.1900 and does not make any new investments (other than investments in cash equivalents, which, for the purposes of this paragraph, means high quality, highly liquid investments whose maturity corresponds to the issuer's expected or potential need for funds and whose currency corresponds to the issuer's assets) after such voluntary surrender; or

* * * * *

(15) *Credit funds.* Subject to paragraphs (c)(15)(iii), (iv), and (v) of this section, an issuer that satisfies the asset and activity requirements of paragraphs (c)(15)(i) and (ii) of this section.

(i) *Asset requirements.* The issuer's assets must be composed solely of:

(A) Loans as defined in § 248.2(t);

(B) Debt instruments, subject to paragraph (c)(15)(iv) of this section;

(C) Rights and other assets that are related or incidental to acquiring, holding, servicing, or selling such loans or debt instruments, provided that:

(*1*) Each right or asset that is a security is either:

(*i*) A cash equivalent (which, for the purposes of this paragraph, means high quality, highly liquid investments whose maturity corresponds to the issuer's expected or potential need for funds and whose currency corresponds to either the underlying loans or the debt instruments);

(*ii*) A security received in lieu of debts previously contracted with respect to such loans or debt instruments; or

(*iii*) An equity security (or right to acquire an equity security) received on customary terms in connection with such loans or debt instruments; and

(*2*) Rights or other assets held under this paragraph (c)(15)(i)(C) of this section may not include commodity forward contracts; and

(D) Interest rate or foreign exchange derivatives, if:

(*1*) The written terms of the derivative directly relate to the loans, debt instruments, or other rights or assets described in paragraph (c)(15)(i)(C) of this section; and

(*2*) The derivative reduces the interest rate and/or foreign exchange risks related to the loans, debt instruments, or other rights or assets described in paragraph (c)(15)(i)(C) of this section.

(ii) *Activity requirements.* To be eligible for the exclusion of paragraph (c)(15) of this section, an issuer must:

(A) Not engage in any activity that would constitute proprietary trading under § 248.3(b)(l)(i), as if the issuer were a banking entity; and

(B) Not issue asset-backed securities.

(iii) *Requirements for a sponsor, investment adviser, or commodity trading advisor.* A banking entity that acts as a sponsor, investment adviser, or commodity trading advisor to an issuer that meets the conditions in paragraphs (c)(15)(i) and (ii) of this section may not rely on this exclusion unless the banking entity:

(A) Provides in writing to any prospective and actual investor in the issuer the disclosures required under § 248.11(a)(8) of this subpart, as if the issuer were a covered fund; and

(B) Ensures that the activities of the issuer are consistent with safety and soundness standards that are substantially similar to those that would apply if the banking entity engaged in the activities directly.

(iv) *Additional Banking Entity Requirements.* A banking entity may not rely on this exclusion with respect to an issuer that meets the conditions in paragraphs (c)(15)(i) and (ii) of this section unless:

(A) The banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the issuer or of any entity to which such issuer extends credit or in which such issuer invests; and

(B) Any assets the issuer holds pursuant to paragraphs (c)(15)(i)(B) or (i)(C)(*1*)(*iii*) of this section would be permissible for the banking entity to acquire and hold directly.

(v) *Investment and Relationship Limits.* A banking entity's investment in, and relationship with, the issuer must:

(A) Comply with the limitations imposed in §§ 248.14 (except the banking entity may acquire and retain any ownership interest in the issuer) and 248.15, as if the issuer were a covered fund; and

(B) Be conducted in compliance with, and subject to, applicable banking laws and regulations, including applicable safety and soundness standards.

(16) *Qualifying venture capital funds.*(i) Subject to paragraphs (c)(16)(ii) through (iv) of this section, an issuer that:

(A) Is a venture capital fund as defined in 17 CFR 275.203(l)–1; and

(B) Does not engage in any activity that would constitute proprietary trading under § 248.3(b)(1)(i), as if the issuer were a banking entity.

(ii) A banking entity that acts as a sponsor, investment adviser, or commodity trading advisor to an issuer that meets the conditions in paragraph (c)(16)(i) of this section may not rely on this exclusion unless the banking entity:

(A) Provides in writing to any prospective and actual investor in the issuer the disclosures required under § 248.11 (a)(8), as if the issuer were a covered fund; and

(B) Ensures that the activities of the issuer are consistent with safety and soundness standards that are substantially similar to those that would apply if the banking entity engaged in the activities directly.

(iii) The banking entity must not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the issuer.

(iv) A banking entity's ownership interest in or relationship with the issuer must:

(A) Comply with the limitations imposed in §§ 248.14 (except the banking entity may acquire and retain any ownership interest in the issuer) and 248.15, as if the issuer were a covered fund; and

(B) Be conducted in compliance with, and subject to, applicable banking laws and regulations, including applicable safety and soundness standards.

(17) *Family wealth management vehicles.* (i) Subject to paragraph (c)(17)(ii) of this section, any entity that is not, and does not hold itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities, and:

(A) If the entity is a trust, the grantor(s) of the entity are all family customers; and

(B) If the entity is not a trust:

(1) A majority of the voting interests in the entity are owned (directly or indirectly) by family customers; and

(2) The entity is owned only by family customers and up to 3 closely related persons of the family customers.

(ii) A banking entity may rely on the exclusion in paragraph (c)(17)(i) of this section with respect to an entity provided that the banking entity (or an affiliate):

(A) Provides bona fide trust, fiduciary, investment advisory, or commodity trading advisory services to the entity;

(B) Does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of such entity;

(C) Complies with the disclosure obligations under § 248.11(a)(8), as if such entity were a covered fund;

(D) Does not acquire or retain, as principal, an ownership interest in the entity, other than up to 0.5 percent of the entity's outstanding ownership interests that may be held by the banking entity and its affiliates for the purpose of and to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns;

(E) Complies with the requirements of §§ 248.14(b) and 248.15, as if such entity were a covered fund; and

(F) Complies with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the issuer were an affiliate thereof.

(iii) For purposes of paragraph (c)(17) of this section, the following definitions apply:

(A) ''Closely related person'' means a natural person (including the estate and estate planning vehicles of such person) who has longstanding business or personal relationships with any family customer.

(B) ''Family customer'' means:

(1) A family client, as defined in Rule 202(a)(11)(G)–1(d)(4) of the Investment Advisers Act of 1940 (17 CFR 275.202(a)(11)(G)–1(d)(4)); or

(2) Any natural person who is a father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of a family client, or a spouse or a spousal equivalent of any of the foregoing.

(18) *Customer facilitation vehicles.* (i) Subject to paragraph (c)(18)(ii) of this section, an issuer that is formed by or at the request of a customer of the banking entity for the purpose of providing such customer (which may include one or more affiliates of such customer) with exposure to a transaction, investment strategy, or other service provided by the banking entity.

(ii) A banking entity may rely on the exclusion in paragraph (c)(18)(i) of this section with respect to an issuer provided that:

(A) All of the ownership interests of the issuer are owned by the customer (which may include one or more of its affiliates) for whom the issuer was created, subject to paragraph (c)(18)(ii)(B)(*4*) of this section; and

(B) The banking entity and its affiliates:

(*1*) Maintain documentation outlining how the banking entity intends to facilitate the customer's exposure to such transaction, investment strategy, or service;

(*2*) Do not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of such issuer;

(*3*) Comply with the disclosure obligations under § 248.11(a)(8), as if such issuer were a covered fund;

(*4*) Do not acquire or retain, as principal, an ownership interest in the issuer, other than up to 0.5 percent of the issuer's outstanding ownership interests that may be held by the banking entity and its affiliates for the purpose of and to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns;

(*5*) Comply with the requirements of §§ 248.14(b) and 248.15, as if such issuer were a covered fund; and

(*6*) Comply with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the issuer were an affiliate thereof.

* * * * *

(d) * * *

(6) *Ownership interest*—(i) Ownership interest means any equity, partnership, or other similar interest. An ''other similar interest'' means an interest that:

(A) Has the right to participate in the selection or removal of a general partner, managing member, member of the board of directors or trustees, investment manager, investment adviser, or commodity trading advisor of the covered fund (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event, which includes the right to participate in the removal of an investment manager for cause or to nominate or vote on a nominated replacement manager upon an investment manager's resignation or removal);

(B) Has the right under the terms of the interest to receive a share of the income, gains or profits of the covered fund;

(C) Has the right to receive the underlying assets of the covered fund after all other interests have been redeemed and/or paid in full (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event);

(D) Has the right to receive all or a portion of excess spread (the positive difference, if any, between the aggregate interest payments received from the underlying assets of the covered fund and the aggregate interest paid to the holders of other outstanding interests);

(E) Provides under the terms of the interest that the amounts payable by the covered fund with respect to the interest could be reduced based on losses arising from the underlying assets of the covered fund, such as allocation of losses, write-downs or charge-offs of the outstanding principal balance, or reductions in the amount of interest due and payable on the interest;

(F) Receives income on a pass-through basis from the covered fund, or has a rate of return that is determined by reference to the performance of the underlying assets of the covered fund; or

(G) Any synthetic right to have, receive, or be allocated any of the rights in paragraphs (d)(6)(i)(A) through (F) of this section.

(ii) Ownership interest does not include:

(A) Restricted profit interest which is an interest held by an entity (or an employee or former employee thereof) in a covered fund for which the entity (or employee thereof) serves as investment manager, investment adviser, commodity trading advisor, or other service provider, so long as:

(*1*) The sole purpose and effect of the interest is to allow the entity (or employee or former employee thereof) to share in the profits of the covered fund as performance compensation for the investment management, investment advisory, commodity trading advisory, or other services provided to the covered fund by the entity (or employee or former employee thereof), provided that the entity (or employee or former employee thereof) may be obligated under the terms of such interest to return profits previously received;

(*2*) All such profit, once allocated, is distributed to the entity (or employee or former employee thereof) promptly after being earned or, if not so distributed, is retained by the covered fund for the sole purpose of establishing a reserve amount to satisfy contractual obligations with respect to subsequent losses of the covered fund and such undistributed profit of the entity (or employee or former employee thereof) does not share in the subsequent investment gains of the covered fund;

(*3*) Any amounts invested in the covered fund, including any amounts paid by the entity in connection with obtaining the restricted profit interest, are within the limits of § 248.12 of this subpart; and

(*4*) The interest is not transferable by the entity (or employee or former employee thereof) except to an affiliate thereof (or an employee of the banking entity or affiliate), to immediate family members, or through the intestacy, of the employee or former employee, or in connection with a sale of the business that gave rise to the restricted profit interest by the entity (or employee or former employee thereof) to an unaffiliated party that provides investment management, investment advisory, commodity trading advisory, or other services to the fund.

(B) Any senior loan or senior debt interest that has the following characteristics:

(*1*) Under the terms of the interest the holders of such interest do not have the right to receive a share of the income, gains, or profits of the covered fund, but are entitled to receive only:

(*i*) Interest at a stated interest rate, as well as commitment fees or other fees, which are not determined by reference to the performance of the underlying assets of the covered fund; and

(*ii*) Fixed principal payments on or before a maturity date (which may include prepayment premiums intended solely to reflect, and compensate holders of the interest for, foregone income resulting from an early prepayment);

(*2*) The entitlement to payments under the terms of the interest are absolute and could not be reduced based on losses arising from the underlying assets of the covered fund, such as allocation of losses, write-downs or charge-offs of the outstanding principal balance, or reductions in the amount of interest due and payable on the interest; and

(*3*) The holders of the interest are not entitled to receive the underlying assets of the covered fund after all other interests have been redeemed or paid in full (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event).

■ 10. Amend § 248.12 by:
■ a. Revising paragraph (b)(1)(ii);
■ b. Revising paragraph (b)(4);
■ c. Adding paragraph (b)(5);
■ d. Revising paragraph (c)(1); and
■ e. Revising paragraphs (d) and (e).

The revisions and addition read as follows:

§ 248.12 Permitted investment in a covered fund.

* * * * *

(b) * * *

(1) * * *

(ii) *Treatment of registered investment companies, SEC-regulated business development companies, and foreign public funds.* For purposes of paragraph (b)(1)(i) of this section, a registered investment company, SEC-regulated business development companies, or foreign public fund as described in § 248.10(c)(1) will not be considered to be an affiliate of the banking entity so long as the banking entity:

(A) Does not own, control, or hold with the power to vote 25 percent or more of the voting shares of the company or fund; and

(B) Provides investment advisory, commodity trading advisory, administrative, and other services to the company or fund in compliance with the limitations under applicable regulation, order, or other authority.

* * * * *

(4) *Multi-tier fund investments*—(i) *Master-feeder fund investments.* If the principal investment strategy of a covered fund (the ''feeder fund'') is to invest substantially all of its assets in another single covered fund (the ''master fund''), then for purposes of the investment limitations in paragraphs (a)(2)(i)(B) and (a)(2)(ii) of this section, the banking entity's permitted investment in such funds shall be measured only by reference to the value of the master fund. The banking entity's permitted investment in the master fund shall include any investment by the banking entity in the master fund, as well as the banking entity's pro-rata share of any ownership interest in the master fund that is held through the feeder fund; and

(ii) *Fund-of-funds investments.* If a banking entity organizes and offers a covered fund pursuant to § 248.11 for the purpose of investing in other covered funds (a ''fund of funds'') and that fund of funds itself invests in another covered fund that the banking entity is permitted to own, then the banking entity's permitted investment in that other fund shall include any investment by the banking entity in that other fund, as well as the banking entity's pro-rata share of any ownership interest in the fund that is held through the fund of funds. The investment of the banking entity may not represent more than 3 percent of the amount or value of any single covered fund.

(5) *Parallel Investments and Co-Investments*—(i) A banking entity shall not be required to include in the calculation of the investment limits under paragraph (a)(2) of this section any investment the banking entity makes alongside a covered fund as long as the investment is made in compliance with applicable laws and regulations, including applicable safety and soundness standards.

(ii) A banking entity shall not be restricted under this section in the amount of any investment the banking entity makes alongside a covered fund as long as the investment is made in compliance with applicable laws and regulations, including applicable safety and soundness standards.

(c) * * *

(1)(i) For purposes of paragraph (a)(2)(iii) of this section, the aggregate value of all ownership interests held by a banking entity shall be the sum of all amounts paid or contributed by the banking entity in connection with acquiring or retaining an ownership interest in covered funds (together with any amounts paid by the entity in connection with obtaining a restricted profit interest under § 248.10(d)(6)(ii)), on a historical cost basis;

(ii) Treatment of employee and director restricted profit interests financed by the banking entity. For purposes of paragraph (c)(1)(i) of this section, an investment by a director or employee of a banking entity who acquires a restricted profit interest in their personal capacity in a covered fund sponsored by the banking entity will be attributed to the banking entity if the banking entity, directly or indirectly, extends financing for the purpose of enabling the director or employee to acquire the restricted profit interest in the fund and the financing is used to acquire such ownership interest in the covered fund.

* * * * *

(d) *Capital treatment for a permitted investment in a covered fund.* For purposes of calculating compliance with the applicable regulatory capital requirements, a banking entity shall deduct from the banking entity's tier 1 capital (as determined under paragraph (c)(2) of this section) the greater of:

(1)(i) The sum of all amounts paid or contributed by the banking entity in connection with acquiring or retaining an ownership interest (together with any amounts paid by the entity in connection with obtaining a restricted profit interest under § 248.10(d)(6)(ii) of subpart C of this part), on a historical cost basis, plus any earnings received; and

(ii) The fair market value of the banking entity's ownership interests in the covered fund as determined under paragraph (b)(2)(ii) or (b)(3) of this section (together with any amounts paid by the entity in connection with obtaining a restricted profit interest under § 248.10(d)(6)(ii) of subpart C of this part), if the banking entity accounts for the profits (or losses) of the fund investment in its financial statements.

(2) Treatment of employee and director restricted profit interests financed by the banking entity. For purposes of paragraph (d)(1) of this section, an investment by a director or employee of a banking entity who acquires a restricted profit interest in his or her personal capacity in a covered fund sponsored by the banking entity will be attributed to the banking entity if the banking entity, directly or indirectly, extends financing for the purpose of enabling the director or employee to acquire the restricted profit interest in the fund and the financing is used to acquire such ownership interest in the covered fund.

(e) *Extension of time to divest an ownership interest.* (1) *Extension Period.* Upon application by a banking entity, the Board may extend the period under paragraph (a)(2)(i) of this section for up to 2 additional years if the Board finds that an extension would be consistent with safety and soundness and not detrimental to the public interest.

(2) *Application Requirements.* An application for extension must:

(i) Be submitted to the Board at least 90 days prior to the expiration of the applicable time period;

(ii) Provide the reasons for application, including information that addresses the factors in paragraph (e)(3) of this section; and

(iii) Explain the banking entity's plan for reducing the permitted investment in a covered fund through redemption, sale, dilution or other methods as required in paragraph (a)(2) of this section.

(3) *Factors governing the Board determinations.* In reviewing any application under paragraph (e)(1) of this section, the Board may consider all the facts and circumstances related to the permitted investment in a covered fund, including:

(i) Whether the investment would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies;

(ii) The contractual terms governing the banking entity's interest in the covered fund;

(iii) The date on which the covered fund is expected to have attracted sufficient investments from investors unaffiliated with the banking entity to enable the banking entity to comply with the limitations in paragraph (a)(2)(i) of this section;

(iv) The total exposure of the covered banking entity to the investment and the risks that disposing of, or maintaining, the investment in the covered fund may pose to the banking entity and the financial stability of the United States;

(v) The cost to the banking entity of divesting or disposing of the investment within the applicable period;

(vi) Whether the investment or the divestiture or conformance of the investment would involve or result in a material conflict of interest between the banking entity and unaffiliated parties, including clients, customers, or counterparties to which it owes a duty;

(vii) The banking entity's prior efforts to reduce through redemption, sale,

dilution, or other methods its ownership interests in the covered fund, including activities related to the marketing of interests in such covered fund;

(viii) Market conditions; and

(ix) Any other factor that the Board believes appropriate.

(4) *Authority to impose restrictions on activities or investment during any extension period.* The Board may impose such conditions on any extension approved under paragraph (e)(1) of this section as the Board determines are necessary or appropriate to protect the safety and soundness of the banking entity or the financial stability of the United States, address material conflicts of interest or other unsound banking practices, or otherwise further the purposes of section 13 of the BHC Act and this part.

(5) *Consultation.* In the case of a banking entity that is primarily regulated by another Federal banking agency, the SEC, or the CFTC, the Board will consult with such agency prior to acting on an application by the banking entity for an extension under paragraph (e)(1) of this section.

■ 11. Amend § 248.13 by adding paragraph (d) to read as follows:

§ 248.13 Other permitted covered fund activities and investments.

* * * * *

(d) *Permitted covered fund activities and investments of qualifying foreign excluded funds.* (1) The prohibition contained in § 248.10(a) does not apply to a qualifying foreign excluded fund.

(2) For purposes of this paragraph (d), a qualifying foreign excluded fund means a banking entity that:

(i) Is organized or established outside the United States, and the ownership interests of which are offered and sold solely outside the United States;

(ii)(A) Would be a covered fund if the entity were organized or established in the United States, or

(B) Is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;

(iii) Would not otherwise be a banking entity except by virtue of the acquisition or retention of an ownership interest in, sponsorship of, or relationship with the entity, by another banking entity that meets the following:

(A) The banking entity is not organized, or directly or indirectly controlled by a banking entity that is organized, under the laws of the United States or of any State; and

(B) The banking entity's acquisition of an ownership interest in or sponsorship of the fund by the foreign banking entity meets the requirements for permitted covered fund activities and investments solely outside the United States, as provided in § 248.13(b);

(iv) Is established and operated as part of a bona fide asset management business; and

(v) Is not operated in a manner that enables any other banking entity to evade the requirements of section 13 of the BHC Act or this part.

■ 12. Amend § 248.14 by:

■ a. Revising paragraph (a)(2)(i);

■ b. Revising paragraph (a)(2)(ii)(C);

■ c. Adding paragraphs (a)(2)(iii), (a)(2)(iv); and (a)(3); and

■ d. Revising paragraph (c).

The revisions and additions read as follows:

§ 248.14 Limitations on relationships with a covered fund.

(a) * * *

(2) * * *

(i) Acquire and retain any ownership interest in a covered fund in accordance with the requirements of §§ 248.11, 248.12, or 248.13;

(ii) * * *

(C) The Board has not determined that such transaction is inconsistent with the safe and sound operation and condition of the banking entity; and

(iii) Enter into a transaction with a covered fund that would be an exempt covered transaction under 12 U.S.C. 371c(d) or § 223.42 of the Board's Regulation W (12 CFR 223.42); and

(iv) Extend credit to or purchase assets from a covered fund, provided:

(A) Each extension of credit or purchase of assets is in the ordinary course of business in connection with payment transactions; settlement services; or futures, derivatives, and securities clearing;

(B) Each extension of credit is repaid, sold, or terminated by the end of five business days; and

(C) The banking entity making each extension of credit meets the requirements of § 223.42(l)(1)(i) and (ii) of the Board's Regulation W (12 CFR 223.42(l)(1)(i) and(ii)), as if the extension of credit was an intraday extension of credit, regardless of the duration of the extension of credit.

(3) Any transaction or activity permitted under paragraphs (a)(2)(iii) or (iv) must comply with the limitations in § 248.15.

* * * * *

(c) *Restrictions on other permitted transactions.* Any transaction permitted under paragraphs (a)(2)(ii), (a)(2)(iii), or (a)(2)(iv) of this section shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c–1) as if the counterparty were an affiliate of the banking entity.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 351

Authority and Issuance

For the reasons set forth in the Common Preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III of Title 12, Code of Federal Regulations as follows:

PART 351—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

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

Authority: 12 U.S.C. 1851; 1811 *et seq.;* 3101 *et seq.;* and 5412.

Subpart B—Proprietary Trading

■ 14. Amend § 351.6 by adding paragraph (f) to read as follows:

§ 351.6 Other permitted proprietary trading activities.

* * * * *

(f) *Permitted trading activities of qualifying foreign excluded funds.* The prohibition contained in § 351.3(a) does not apply to the purchase or sale of a financial instrument by a qualifying foreign excluded fund. For purposes of this paragraph (f), a qualifying foreign excluded fund means a banking entity that:

(1) Is organized or established outside the United States, and the ownership interests of which are offered and sold solely outside the United States;

(2)(i) Would be a covered fund if the entity were organized or established in the United States, or

(ii) Is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;

(3) Would not otherwise be a banking entity except by virtue of the acquisition or retention of an ownership interest in, sponsorship of, or relationship with the entity, by another banking entity that meets the following:

(i) The banking entity is not organized, or directly or indirectly controlled by a banking entity that is organized, under the laws of the United States or of any State; and

(ii) The banking entity's acquisition or retention of an ownership interest in or sponsorship of the fund meets the requirements for permitted covered fund activities and investments solely

outside the United States, as provided in § 351.13(b);

(4) Is established and operated as part of a bona fide asset management business; and

(5) Is not operated in a manner that enables any other banking entity to evade the requirements of section 13 of the BHC Act or this part.

Subpart C—Covered Funds Activities and Investments

■ 15. Amend § 351.10 by:
■ a. Revising paragraph (c)(1);
■ b. Revising paragraph (c)(3)(i);
■ c. Revising paragraph (c)(8);
■ d. Revising paragraph (c)(10)(i);
■ e. Revising paragraph (c)(11)(i);
■ f. Adding paragraphs (c)(15), (16), (17), and (18); and
■ g. Revising paragraph (d)(6).

The revisions and additions read as follows:

§ 351.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.

* * * * *

(c) * * *

(1) *Foreign public funds.* (i) Subject to paragraphs (c)(1)(ii) and (iii) of this section, an issuer that:

(A) Is organized or established outside of the United States; and

(B) Is authorized to offer and sell ownership interests, and such interests are offered and sold, through one or more public offerings.

(ii) With respect to a banking entity that is, or is controlled directly or indirectly by a banking entity that is, located in or organized under the laws of the United States or of any State and any issuer for which such banking entity acts as sponsor, the sponsoring banking entity may not rely on the exemption in paragraph (c)(1)(i) of this section for such issuer unless ownership interests in the issuer are sold predominantly to persons other than:

(A) Such sponsoring banking entity;

(B) Such issuer;

(C) Affiliates of such sponsoring banking entity or such issuer; and

(D) Directors and senior executive officers as defined in § 225.71(c) of the Board's Regulation Y (12 CFR 225.71(c)) of such entities.

(iii) For purposes of paragraph (c)(1)(i)(B) of this section, the term ''public offering'' means a distribution (as defined in § 351.4(a)(3)) of securities in any jurisdiction outside the United States to investors, including retail investors, provided that:

(A) The distribution is subject to substantive disclosure and retail investor protection laws or regulations;

(B) With respect to an issuer for which the banking entity serves as the investment manager, investment adviser, commodity trading advisor, commodity pool operator, or sponsor, the distribution complies with all applicable requirements in the jurisdiction in which such distribution is being made;

(C) The distribution does not restrict availability to investors having a minimum level of net worth or net investment assets; and

(D) The issuer has filed or submitted, with the appropriate regulatory authority in such jurisdiction, offering disclosure documents that are publicly available.

* * * * *

(3) * * *

(i) Is composed of no more than 10 unaffiliated co-venturers;

* * * * *

(8) *Loan securitizations*—(i) *Scope.* An issuing entity for asset-backed securities that satisfies all the conditions of this paragraph (c)(8) and the assets or holdings of which are composed solely of:

(A) Loans as defined in § 351.2(t);

(B) Rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of such securities and rights or other assets that are related or incidental to purchasing or otherwise acquiring and holding the loans, provided that each asset that is a security (other than special units of beneficial interest and collateral certificates meeting the requirements of paragraph (c)(8)(v) of this section) meets the requirements of paragraph (c)(8)(iii) of this section;

(C) Interest rate or foreign exchange derivatives that meet the requirements of paragraph (c)(8)(iv) of this section; and

(D) Special units of beneficial interest and collateral certificates that meet the requirements of paragraph (c)(8)(v) of this section.

(E) Any other assets, provided that the aggregate value of any such other assets that do not meet the criteria specified in paragraphs (c)(8)(i)(A) through (c)(8)(i)(D) of this section do not exceed five percent of the aggregate value of the issuing entity's assets.

(ii) *Impermissible assets.* For purposes of this paragraph (c)(8), except as permitted under paragraph (c)(8)(i)(E) of this section, the assets or holdings of the issuing entity shall not include any of the following:

(A) A security, including an asset-backed security, or an interest in an equity or debt security other than as permitted in paragraphs (c)(8)(iii), (iv), or (v) of this section;

(B) A derivative, other than a derivative that meets the requirements of paragraph (c)(8)(iv) of this section; or

(C) A commodity forward contract.

(iii) *Permitted securities.* Notwithstanding paragraph (c)(8)(ii)(A) of this section, the issuing entity may hold securities if those securities are:

(A) Cash equivalents—which, for the purposes of this paragraph, means high quality, highly liquid investments whose maturity corresponds to the securitization's expected or potential need for funds and whose currency corresponds to either the underlying loans or the asset-backed securities—for purposes of the rights and assets in paragraph (c)(8)(i)(B) of this section; or

(B) Securities received in lieu of debts previously contracted with respect to the loans supporting the asset-backed securities.

(iv) *Derivatives.* The holdings of derivatives by the issuing entity shall be limited to interest rate or foreign exchange derivatives that satisfy all of the following conditions:

(A) The written terms of the derivatives directly relate to the loans, the asset-backed securities, or the contractual rights or other assets described in paragraph (c)(8)(i)(B) of this section; and

(B) The derivatives reduce the interest rate and/or foreign exchange risks related to the loans, the asset-backed securities, or the contractual rights or other assets described in paragraph (c)(8)(i)(B) of this section.

(v) *Special units of beneficial interest and collateral certificates.* The assets or holdings of the issuing entity may include collateral certificates and special units of beneficial interest issued by a special purpose vehicle, provided that:

(A) The special purpose vehicle that issues the special unit of beneficial interest or collateral certificate meets the requirements in this paragraph (c)(8);

(B) The special unit of beneficial interest or collateral certificate is used for the sole purpose of transferring to the issuing entity for the loan securitization the economic risks and benefits of the assets that are permissible for loan securitizations under this paragraph (c)(8) and does not directly or indirectly transfer any interest in any other economic or financial exposure;

(C) The special unit of beneficial interest or collateral certificate is created solely to satisfy legal requirements or otherwise facilitate the structuring of the loan securitization; and

(D) The special purpose vehicle that issues the special unit of beneficial interest or collateral certificate and the issuing entity are established under the direction of the same entity that initiated the loan securitization.

* * * * *

(10) *Qualifying covered bonds*—(i) *Scope.* An entity owning or holding a dynamic or fixed pool of loans or other assets as provided in paragraph (c)(8) of this section for the benefit of the holders of covered bonds, provided that the assets in the pool are composed solely of assets that meet the conditions in paragraph (c)(8)(i) of this section.

* * * * *

(11) * * *

(i) That is a small business investment company, as defined in section 103(3) of the Small Business Investment Act of 1958 (15 U.S.C. 662), or that has received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company, which notice or license has not been revoked, or that has voluntarily surrendered its license to operate as a small business investment company in accordance with 13 CFR 107.1900 and does not make any new investments (other than investments in cash equivalents, which, for the purposes of this paragraph, means high quality, highly liquid investments whose maturity corresponds to the issuer's expected or potential need for funds and whose currency corresponds to the issuer's assets) after such voluntary surrender; or

* * * * *

(15) *Credit funds.* Subject to paragraphs (c)(15)(iii), (iv), and (v) of this section, an issuer that satisfies the asset and activity requirements of paragraphs (c)(15)(i) and (ii) of this section.

(i) *Asset requirements.* The issuer's assets must be composed solely of:

(A) Loans as defined in § 351.2(t);

(B) Debt instruments, subject to paragraph (c)(15)(iv) of this section;

(C) Rights and other assets that are related or incidental to acquiring, holding, servicing, or selling such loans or debt instruments, provided that:

(*1*) Each right or asset that is a security is either:

(*i*) A cash equivalent (which, for the purposes of this paragraph, means high quality, highly liquid investments whose maturity corresponds to the issuer's expected or potential need for funds and whose currency corresponds to either the underlying loans or the debt instruments);

(*ii*) A security received in lieu of debts previously contracted with respect to such loans or debt instruments; or

(*iii*) An equity security (or right to acquire an equity security) received on customary terms in connection with such loans or debt instruments; and

(*2*) Rights or other assets held under this paragraph (c)(15)(i)(C) of this section may not include commodity forward contracts; and

(D) Interest rate or foreign exchange derivatives, if:

(*1*) The written terms of the derivative directly relate to the loans, debt instruments, or other rights or assets described in paragraph (c)(15)(i)(C) of this section; and

(*2*) The derivative reduces the interest rate and/or foreign exchange risks related to the loans, debt instruments, or other rights or assets described in paragraph (c)(15)(i)(C) of this section.

(ii) *Activity requirements.* To be eligible for the exclusion of paragraph (c)(15) of this section, an issuer must:

(A) Not engage in any activity that would constitute proprietary trading under § 351.3(b)(l)(i) of subpart A of this part, as if the issuer were a banking entity; and

(B) Not issue asset-backed securities.

(iii) *Requirements for a sponsor, investment adviser, or commodity trading advisor.* A banking entity that acts as a sponsor, investment adviser, or commodity trading advisor to an issuer that meets the conditions in paragraphs (c)(15)(i) and (ii) of this section may not rely on this exclusion unless the banking entity:

(A) Provides in writing to any prospective and actual investor in the issuer the disclosures required under § 351.11(a)(8), as if the issuer were a covered fund; and

(B) Ensures that the activities of the issuer are consistent with safety and soundness standards that are substantially similar to those that would apply if the banking entity engaged in the activities directly.

(iv) *Additional Banking Entity Requirements.* A banking entity may not rely on this exclusion with respect to an issuer that meets the conditions in paragraphs (c)(15)(i) and (ii) of this section unless:

(A) The banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the issuer or of any entity to which such issuer extends credit or in which such issuer invests; and

(B) Any assets the issuer holds pursuant to paragraphs (c)(15)(i)(B) or (i)(C)(*1*)(*iii*) of this section would be permissible for the banking entity to acquire and hold directly.

(v) *Investment and Relationship Limits.* A banking entity's investment in, and relationship with, the issuer must:

(A) Comply with the limitations imposed in §§ 351.14 (except the banking entity may acquire and retain any ownership interest in the issuer) and 351.15, as if the issuer were a covered fund; and

(B) Be conducted in compliance with, and subject to, applicable banking laws and regulations, including applicable safety and soundness standards.

(16) *Qualifying venture capital funds.* (i) Subject to paragraphs (c)(16)(ii) through (iv) of this section, an issuer that:

(A) Is a venture capital fund as defined in 17 CFR 275.203(l)–1; and

(B) Does not engage in any activity that would constitute proprietary trading under § 351.3(b)(1)(i), as if the issuer were a banking entity.

(ii) A banking entity that acts as a sponsor, investment adviser, or commodity trading advisor to an issuer that meets the conditions in paragraph (c)(16)(i) of this section may not rely on this exclusion unless the banking entity:

(A) Provides in writing to any prospective and actual investor in the issuer the disclosures required under § 351.11(a)(8), as if the issuer were a covered fund; and

(B) Ensures that the activities of the issuer are consistent with safety and soundness standards that are substantially similar to those that would apply if the banking entity engaged in the activities directly.

(iii) The banking entity must not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the issuer.

(iv) A banking entity's ownership interest in or relationship with the issuer must:

(A) Comply with the limitations imposed in §§ 351.14 (except the banking entity may acquire and retain any ownership interest in the issuer) and 351.15, as if the issuer were a covered fund; and

(B) Be conducted in compliance with, and subject to, applicable banking laws and regulations, including applicable safety and soundness standards.

(17) *Family wealth management vehicles.* (i) Subject to paragraph (c)(17)(ii) of this section, any entity that is not, and does not hold itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities, and:

(A) If the entity is a trust, the grantor(s) of the entity are all family customers; and

(B) If the entity is not a trust:

(*1*) A majority of the voting interests in the entity are owned (directly or indirectly) by family customers; and

(*2*) The entity is owned only by family customers and up to 3 closely related persons of the family customers.

(ii) A banking entity may rely on the exclusion in paragraph (c)(17)(i) of this section with respect to an entity provided that the banking entity (or an affiliate):

(A) Provides bona fide trust, fiduciary, investment advisory, or commodity trading advisory services to the entity;

(B) Does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of such entity;

(C) Complies with the disclosure obligations under § 351.11(a)(8), as if such entity were a covered fund;

(D) Does not acquire or retain, as principal, an ownership interest in the entity, other than up to 0.5 percent of the entity's outstanding ownership interests that may be held by the banking entity and its affiliates for the purpose of and to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns;

(E) Complies with the requirements of §§ 351.14(b) and 351.15, as if such entity were a covered fund; and

(F) Complies with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the issuer were an affiliate thereof.

(iii) For purposes of paragraph (c)(17) of this section, the following definitions apply:

(A) ''Closely related person'' means a natural person (including the estate and estate planning vehicles of such person) who has longstanding business or personal relationships with any family customer.

(B) ''Family customer'' means:

(*1*) A family client, as defined in Rule 202(a)(11)(G)–1(d)(4) of the Investment Advisers Act of 1940 (17 CFR 275.202(a)(11)(G)–1(d)(4)); or

(*2*) Any natural person who is a father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of a family client, or a spouse or a spousal equivalent of any of the foregoing.

(18) *Customer facilitation vehicles.* (i) Subject to paragraph (c)(18)(ii) of this section, an issuer that is formed by or at the request of a customer of the banking entity for the purpose of providing such customer (which may include one or more affiliates of such customer) with exposure to a transaction, investment strategy, or other service provided by the banking entity.

(ii) A banking entity may rely on the exclusion in paragraph (c)(18)(i) of this section with respect to an issuer provided that:

(A) All of the ownership interests of the issuer are owned by the customer (which may include one or more of its affiliates) for whom the issuer was created, subject to paragraph (c)(18)(ii)(B)(*4*) of this section; and

(B) The banking entity and its affiliates:

(*1*) Maintain documentation outlining how the banking entity intends to facilitate the customer's exposure to such transaction, investment strategy, or service;

(*2*) Do not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of such issuer;

(*3*) Comply with the disclosure obligations under § 351.11(a)(8), as if such issuer were a covered fund;

(*4*) Do not acquire or retain, as principal, an ownership interest in the issuer, other than up to 0.5 percent of the issuer's outstanding ownership interests that may be held by the banking entity and its affiliates for the purpose of and to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns;

(*5*) Comply with the requirements of §§ 351.14(b) and 351.15, as if such issuer were a covered fund; and

(*6*) Comply with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the issuer were an affiliate thereof.

* * * * *

(d) * * *

(6) *Ownership interest*—(i) Ownership interest means any equity, partnership, or other similar interest. An ''other similar interest'' means an interest that:

(A) Has the right to participate in the selection or removal of a general partner, managing member, member of the board of directors or trustees, investment manager, investment adviser, or commodity trading advisor of the covered fund (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event, which includes the right to participate in the removal of an investment manager for cause or to nominate or vote on a nominated replacement manager upon an investment manager's resignation or removal);

(B) Has the right under the terms of the interest to receive a share of the income, gains or profits of the covered fund;

(C) Has the right to receive the underlying assets of the covered fund after all other interests have been redeemed and/or paid in full (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event);

(D) Has the right to receive all or a portion of excess spread (the positive difference, if any, between the aggregate interest payments received from the underlying assets of the covered fund and the aggregate interest paid to the holders of other outstanding interests);

(E) Provides under the terms of the interest that the amounts payable by the covered fund with respect to the interest could be reduced based on losses arising from the underlying assets of the covered fund, such as allocation of losses, write-downs or charge-offs of the outstanding principal balance, or reductions in the amount of interest due and payable on the interest;

(F) Receives income on a pass-through basis from the covered fund, or has a rate of return that is determined by reference to the performance of the underlying assets of the covered fund; or

(G) Any synthetic right to have, receive, or be allocated any of the rights in paragraphs (d)(6)(i)(A) through (F) of this section.

(ii) Ownership interest does not include:

(A) Restricted profit interest which is an interest held by an entity (or an employee or former employee thereof) in a covered fund for which the entity (or employee thereof) serves as investment manager, investment adviser, commodity trading advisor, or other service provider, so long as:

(*1*) The sole purpose and effect of the interest is to allow the entity (or employee or former employee thereof) to share in the profits of the covered fund as performance compensation for the investment management, investment advisory, commodity trading advisory, or other services provided to the covered fund by the entity (or employee or former employee thereof), provided that the entity (or employee or former employee thereof) may be obligated under the terms of such interest to return profits previously received;

(*2*) All such profit, once allocated, is distributed to the entity (or employee or former employee thereof) promptly after being earned or, if not so distributed, is retained by the covered fund for the sole purpose of establishing a reserve amount to satisfy contractual obligations with respect to subsequent losses of the

covered fund and such undistributed profit of the entity (or employee or former employee thereof) does not share in the subsequent investment gains of the covered fund;

(*3*) Any amounts invested in the covered fund, including any amounts paid by the entity in connection with obtaining the restricted profit interest, are within the limits of § 351.12 of this subpart; and

(*4*) The interest is not transferable by the entity (or employee or former employee thereof) except to an affiliate thereof (or an employee of the banking entity or affiliate), to immediate family members, or through the intestacy, of the employee or former employee, or in connection with a sale of the business that gave rise to the restricted profit interest by the entity (or employee or former employee thereof) to an unaffiliated party that provides investment management, investment advisory, commodity trading advisory, or other services to the fund.

(B) Any senior loan or senior debt interest that has the following characteristics:

(*1*) Under the terms of the interest the holders of such interest do not have the right to receive a share of the income, gains, or profits of the covered fund, but are entitled to receive only:

(*i*) Interest at a stated interest rate, as well as commitment fees or other fees, which are not determined by reference to the performance of the underlying assets of the covered fund; and

(*ii*) Fixed principal payments on or before a maturity date (which may include prepayment premiums intended solely to reflect, and compensate holders of the interest for, foregone income resulting from an early prepayment);

(*2*) The entitlement to payments under the terms of the interest are absolute and could not be reduced based on losses arising from the underlying assets of the covered fund, such as allocation of losses, write-downs or charge-offs of the outstanding principal balance, or reductions in the amount of interest due and payable on the interest; and

(*3*) The holders of the interest are not entitled to receive the underlying assets of the covered fund after all other interests have been redeemed or paid in full (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event).

■ 16. Amend § 351.12 by:

■ a. Revising paragraph (b)(1)(ii);

■ b. Revising paragraph (b)(4);

■ c. Adding paragraph (b)(5);

■ d. Revising paragraph (c)(1); and

■ e. Revising paragraphs (d) and (e).

The revisions and addition read as follows:

§ 351.12 Permitted investment in a covered fund.

* * * * *

(b) * * *

(1) * * *

(ii) *Treatment of registered investment companies, SEC-regulated business development companies, and foreign public funds.* For purposes of paragraph (b)(1)(i) of this section, a registered investment company, SEC-regulated business development companies, or foreign public fund as described in § 351.10(c)(1) will not be considered to be an affiliate of the banking entity so long as the banking entity:

(A) Does not own, control, or hold with the power to vote 25 percent or more of the voting shares of the company or fund; and

(B) Provides investment advisory, commodity trading advisory, administrative, and other services to the company or fund in compliance with the limitations under applicable regulation, order, or other authority.

* * * * *

(4) *Multi-tier fund investments*—(i) *Master-feeder fund investments.* If the principal investment strategy of a covered fund (the ''feeder fund'') is to invest substantially all of its assets in another single covered fund (the ''master fund''), then for purposes of the investment limitations in paragraphs (a)(2)(i)(B) and (a)(2)(ii) of this section, the banking entity's permitted investment in such funds shall be measured only by reference to the value of the master fund. The banking entity's permitted investment in the master fund shall include any investment by the banking entity in the master fund, as well as the banking entity's pro-rata share of any ownership interest in the master fund that is held through the feeder fund; and

(ii) *Fund-of-funds investments.* If a banking entity organizes and offers a covered fund pursuant to § 351.11 for the purpose of investing in other covered funds (a ''fund of funds'') and that fund of funds itself invests in another covered fund that the banking entity is permitted to own, then the banking entity's permitted investment in that other fund shall include any investment by the banking entity in that other fund, as well as the banking entity's pro-rata share of any ownership interest in the fund that is held through the fund of funds. The investment of the banking entity may not represent more than 3 percent of the amount or value of any single covered fund.

(5) *Parallel Investments and Co-Investments*—(i) A banking entity shall not be required to include in the calculation of the investment limits under paragraph (a)(2) of this section any investment the banking entity makes alongside a covered fund as long as the investment is made in compliance with applicable laws and regulations, including applicable safety and soundness standards.

(ii) A banking entity shall not be restricted under this section in the amount of any investment the banking entity makes alongside a covered fund as long as the investment is made in compliance with applicable laws and regulations, including applicable safety and soundness standards.

(c) * * *

(1)(i) For purposes of paragraph (a)(2)(iii) of this section, the aggregate value of all ownership interests held by a banking entity shall be the sum of all amounts paid or contributed by the banking entity in connection with acquiring or retaining an ownership interest in covered funds (together with any amounts paid by the entity in connection with obtaining a restricted profit interest under § 351.10(d)(6)(ii)), on a historical cost basis;

(ii) Treatment of employee and director restricted profit interests financed by the banking entity. For purposes of paragraph (c)(1)(i) of this section, an investment by a director or employee of a banking entity who acquires a restricted profit interest in their personal capacity in a covered fund sponsored by the banking entity will be attributed to the banking entity if the banking entity, directly or indirectly, extends financing for the purpose of enabling the director or employee to acquire the restricted profit interest in the fund and the financing is used to acquire such ownership interest in the covered fund.

* * * * *

(d) *Capital treatment for a permitted investment in a covered fund.* For purposes of calculating compliance with the applicable regulatory capital requirements, a banking entity shall deduct from the banking entity's tier 1 capital (as determined under paragraph (c)(2) of this section) the greater of:

(1)(i) The sum of all amounts paid or contributed by the banking entity in connection with acquiring or retaining an ownership interest (together with any amounts paid by the entity in connection with obtaining a restricted profit interest under § 351.10(d)(6)(ii)), on a historical cost basis, plus any earnings received; and

(ii) The fair market value of the banking entity's ownership interests in

the covered fund as determined under paragraph (b)(2)(ii) or (b)(3) of this section (together with any amounts paid by the entity in connection with obtaining a restricted profit interest under § 351.10(d)(6)(ii)), if the banking entity accounts for the profits (or losses) of the fund investment in its financial statements.

(2) Treatment of employee and director restricted profit interests financed by the banking entity. For purposes of paragraph (d)(1) of this section, an investment by a director or employee of a banking entity who acquires a restricted profit interest in his or her personal capacity in a covered fund sponsored by the banking entity will be attributed to the banking entity if the banking entity, directly or indirectly, extends financing for the purpose of enabling the director or employee to acquire the restricted profit interest in the fund and the financing is used to acquire such ownership interest in the covered fund.

(e) *Extension of time to divest an ownership interest.* (1) *Extension Period.* Upon application by a banking entity, the Board may extend the period under paragraph (a)(2)(i) of this section for up to 2 additional years if the Board finds that an extension would be consistent with safety and soundness and not detrimental to the public interest.

(2) *Application Requirements.* An application for extension must:

(i) Be submitted to the Board at least 90 days prior to the expiration of the applicable time period;

(ii) Provide the reasons for application, including information that addresses the factors in paragraph (e)(3) of this section; and

(iii) Explain the banking entity's plan for reducing the permitted investment in a covered fund through redemption, sale, dilution or other methods as required in paragraph (a)(2) of this section.

(3) *Factors governing the Board determinations.* In reviewing any application under paragraph (e)(1) of this section, the Board may consider all the facts and circumstances related to the permitted investment in a covered fund, including:

(i) Whether the investment would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies;

(ii) The contractual terms governing the banking entity's interest in the covered fund;

(iii) The date on which the covered fund is expected to have attracted sufficient investments from investors unaffiliated with the banking entity to enable the banking entity to comply with the limitations in paragraph (a)(2)(i) of this section;

(iv) The total exposure of the covered banking entity to the investment and the risks that disposing of, or maintaining, the investment in the covered fund may pose to the banking entity and the financial stability of the United States;

(v) The cost to the banking entity of divesting or disposing of the investment within the applicable period;

(vi) Whether the investment or the divestiture or conformance of the investment would involve or result in a material conflict of interest between the banking entity and unaffiliated parties, including clients, customers, or counterparties to which it owes a duty;

(vii) The banking entity's prior efforts to reduce through redemption, sale, dilution, or other methods its ownership interests in the covered fund, including activities related to the marketing of interests in such covered fund;

(viii) Market conditions; and

(ix) Any other factor that the Board believes appropriate.

(4) *Authority to impose restrictions on activities or investment during any extension period.* The Board may impose such conditions on any extension approved under paragraph (e)(1) of this section as the Board determines are necessary or appropriate to protect the safety and soundness of the banking entity or the financial stability of the United States, address material conflicts of interest or other unsound banking practices, or otherwise further the purposes of section 13 of the BHC Act and this part.

(5) *Consultation.* In the case of a banking entity that is primarily regulated by another Federal banking agency, the SEC, or the CFTC, the Board will consult with such agency prior to acting on an application by the banking entity for an extension under paragraph (e)(1) of this section.

■ 17. Amend § 351.13 by adding paragraph (d) to read as follows:

§ 351.13 Other permitted covered fund activities and investments.

* * * * *

(d) *Permitted covered fund activities and investments of qualifying foreign excluded funds.* (1) The prohibition contained in § 351.10(a) does not apply to a qualifying foreign excluded fund.

(2) For purposes of this paragraph (d), a qualifying foreign excluded fund means a banking entity that:

(i) Is organized or established outside the United States, and the ownership interests of which are offered and sold solely outside the United States;

(ii)(A) Would be a covered fund if the entity were organized or established in the United States, or

(B) Is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;

(iii) Would not otherwise be a banking entity except by virtue of the acquisition or retention of an ownership interest in, sponsorship of, or relationship with the entity, by another banking entity that meets the following:

(A) The banking entity is not organized, or directly or indirectly controlled by a banking entity that is organized, under the laws of the United States or of any State; and

(B) The banking entity's acquisition of an ownership interest in or sponsorship of the fund by the foreign banking entity meets the requirements for permitted covered fund activities and investments solely outside the United States, as provided in § 351.13(b);

(iv) Is established and operated as part of a bona fide asset management business; and

(v) Is not operated in a manner that enables any other banking entity to evade the requirements of section 13 of the BHC Act or this part.

■ 18. Amend § 351.14 by:

■ a. Revising paragraph (a)(2)(i);

■ b. Revising paragraph (a)(2)(ii)(C);

■ c. Adding paragraphs (a)(2)(iii), (a)(2)(iv); and (a)(3); and

■ d. Revising paragraph (c).

The revisions and additions read as follows:

§ 351.14 Limitations on relationships with a covered fund.

(a) * * *

(2) * * *

(i) Acquire and retain any ownership interest in a covered fund in accordance with the requirements of §§ 351.11, 351.12, or 351.13;

(ii) * * *

(C) The Board has not determined that such transaction is inconsistent with the safe and sound operation and condition of the banking entity; and

(iii) Enter into a transaction with a covered fund that would be an exempt covered transaction under 12 U.S.C. 371c(d) or § 223.42 of the Board's Regulation W (12 CFR 223.42); and

(iv) Extend credit to or purchase assets from a covered fund, provided:

(A) Each extension of credit or purchase of assets is in the ordinary course of business in connection with payment transactions; settlement services; or futures, derivatives, and securities clearing;

(B) Each extension of credit is repaid, sold, or terminated by the end of five business days; and

(C) The banking entity making each extension of credit meets the requirements of section 223.42(l)(1)(i) and (ii) of the Board's Regulation W (12 CFR 223.42(l)(1)(i) and (ii)), as if the extension of credit was an intraday extension of credit, regardless of the duration of the extension of credit.

(3) Any transaction or activity permitted under paragraphs (a)(2)(iii) or (iv) must comply with the limitations in § 351.15 of this section.

* * * * *

(c) *Restrictions on other permitted transactions.* Any transaction permitted under paragraphs (a)(2)(ii), (a)(2)(iii), or (a)(2)(iv) of this section shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c–1) as if the counterparty were an affiliate of the banking entity.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Authority and Issuance

For the reasons set forth in the Common Preamble, the Commodity Futures Trading Commission proposes to amend part 75 to chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 75—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

■ 19. The authority citation for part 75 continues to read as follows:

Authority: 12 U.S.C. 1851.

Subpart B—Proprietary Trading

■ 20. Amend § 75.6 by adding paragraph (f) to read as follows:

§ 75.6 Other permitted proprietary trading activities.

* * * * *

(f) *Permitted trading activities of qualifying foreign excluded funds.* The prohibition contained in § 75.3(a) does not apply to the purchase or sale of a financial instrument by a qualifying foreign excluded fund. For purposes of this paragraph (f), a qualifying foreign excluded fund means a banking entity that:

(1) Is organized or established outside the United States, and the ownership interests of which are offered and sold solely outside the United States;

(2)(i) Would be a covered fund if the entity were organized or established in the United States, or

(ii) Is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;

(3) Would not otherwise be a banking entity except by virtue of the acquisition or retention of an ownership interest in, sponsorship of, or relationship with the entity, by another banking entity that meets the following:

(i) The banking entity is not organized, or directly or indirectly controlled by a banking entity that is organized, under the laws of the United States or of any State; and

(ii) The banking entity's acquisition or retention of an ownership interest in or sponsorship of the fund meets the requirements for permitted covered fund activities and investments solely outside the United States, as provided in § 75.13(b);

(4) Is established and operated as part of a bona fide asset management business; and

(5) Is not operated in a manner that enables any other banking entity to evade the requirements of section 13 of the BHC Act or this part.

Subpart C—Covered Funds Activities and Investments

■ 21. Amend § 75.10 by:
■ a. Revising paragraph (c)(1);
■ b. Revising paragraph (c)(3)(i);
■ c. Revising paragraph (c)(8);
■ d. Revising paragraph (c)(10)(i);
■ e. Revising paragraph (c)(11)(i);
■ f. Adding paragraphs (c)(15), (16), (17), and (18); and
■ g. Revising paragraph (d)(6).

The revisions and additions read as follows:

§ 75.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.

* * * * *

(c) * * *

(1) *Foreign public funds.* (i) Subject to paragraphs (c)(1)(ii) and (iii) of this section, an issuer that:

(A) Is organized or established outside of the United States; and

(B) Is authorized to offer and sell ownership interests, and such interests are offered and sold, through one or more public offerings.

(ii) With respect to a banking entity that is, or is controlled directly or indirectly by a banking entity that is, located in or organized under the laws of the United States or of any State and any issuer for which such banking entity acts as sponsor, the sponsoring banking entity may not rely on the exemption in paragraph (c)(1)(i) of this section for such issuer unless ownership interests in the issuer are sold predominantly to persons other than:

(A) Such sponsoring banking entity;

(B) Such issuer;

(C) Affiliates of such sponsoring banking entity or such issuer; and

(D) Directors and senior executive officers as defined in § 225.71(c) of the Board's Regulation Y (12 CFR 225.71(c)) of such entities.

(iii) For purposes of paragraph (c)(1)(i)(B) of this section, the term ''public offering'' means a distribution (as defined in § 75.4(a)(3)) of securities in any jurisdiction outside the United States to investors, including retail investors, provided that:

(A) The distribution is subject to substantive disclosure and retail investor protection laws or regulations;

(B) With respect to an issuer for which the banking entity serves as the investment manager, investment adviser, commodity trading advisor, commodity pool operator, or sponsor, the distribution complies with all applicable requirements in the jurisdiction in which such distribution is being made;

(C) The distribution does not restrict availability to investors having a minimum level of net worth or net investment assets; and

(D) The issuer has filed or submitted, with the appropriate regulatory authority in such jurisdiction, offering disclosure documents that are publicly available.

* * * * *

(3) * * *

(i) Is composed of no more than 10 unaffiliated co-venturers;

* * * * *

(8) *Loan securitizations*—(i) *Scope.* An issuing entity for asset-backed securities that satisfies all the conditions of this paragraph (c)(8) and the assets or holdings of which are composed solely of:

(A) Loans as defined in § 75.2(t);

(B) Rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of such securities and rights or other assets that are related or incidental to purchasing or otherwise acquiring and holding the loans, provided that each asset that is a security (other than special units of beneficial interest and collateral certificates meeting the requirements of paragraph (c)(8)(v) of this section) meets the requirements of paragraph (c)(8)(iii) of this section;

(C) Interest rate or foreign exchange derivatives that meet the requirements of paragraph (c)(8)(iv) of this section; and

(D) Special units of beneficial interest and collateral certificates that meet the requirements of paragraph (c)(8)(v) of this section.

(E) Any other assets, provided that the aggregate value of any such other assets that do not meet the criteria specified in paragraphs (c)(8)(i)(A) through (c)(8)(i)(D) of this section do not exceed five percent of the aggregate value of the issuing entity's assets.

(ii) *Impermissible assets.* For purposes of this paragraph (c)(8), except as permitted under paragraph (c)(8)(i)(E) of this section, the assets or holdings of the issuing entity shall not include any of the following:

(A) A security, including an asset-backed security, or an interest in an equity or debt security other than as permitted in paragraphs (c)(8)(iii), (iv), or (v) of this section;

(B) A derivative, other than a derivative that meets the requirements of paragraph (c)(8)(iv) of this section; or

(C) A commodity forward contract.

(iii) *Permitted securities.* Notwithstanding paragraph (c)(8)(ii)(A) of this section, the issuing entity may hold securities if those securities are:

(A) Cash equivalents—which, for the purposes of this paragraph, means high quality, highly liquid investments whose maturity corresponds to the securitization's expected or potential need for funds and whose currency corresponds to either the underlying loans or the asset-backed securities—for purposes of the rights and assets in paragraph (c)(8)(i)(B) of this section; or

(B) Securities received in lieu of debts previously contracted with respect to the loans supporting the asset-backed securities.

(iv) *Derivatives.* The holdings of derivatives by the issuing entity shall be limited to interest rate or foreign exchange derivatives that satisfy all of the following conditions:

(A) The written terms of the derivatives directly relate to the loans, the asset-backed securities, or the contractual rights or other assets described in paragraph (c)(8)(i)(B) of this section; and

(B) The derivatives reduce the interest rate and/or foreign exchange risks related to the loans, the asset-backed securities, or the contractual rights or other assets described in paragraph (c)(8)(i)(B) of this section.

(v) *Special units of beneficial interest and collateral certificates.* The assets or holdings of the issuing entity may include collateral certificates and special units of beneficial interest issued by a special purpose vehicle, provided that:

(A) The special purpose vehicle that issues the special unit of beneficial interest or collateral certificate meets the requirements in this paragraph (c)(8);

(B) The special unit of beneficial interest or collateral certificate is used for the sole purpose of transferring to the issuing entity for the loan securitization the economic risks and benefits of the assets that are permissible for loan securitizations under this paragraph (c)(8) and does not directly or indirectly transfer any interest in any other economic or financial exposure;

(C) The special unit of beneficial interest or collateral certificate is created solely to satisfy legal requirements or otherwise facilitate the structuring of the loan securitization; and

(D) The special purpose vehicle that issues the special unit of beneficial interest or collateral certificate and the issuing entity are established under the direction of the same entity that initiated the loan securitization.

* * * * *

(10) *Qualifying covered bonds*—(i) *Scope.* An entity owning or holding a dynamic or fixed pool of loans or other assets as provided in paragraph (c)(8) of this section for the benefit of the holders of covered bonds, provided that the assets in the pool are composed solely of assets that meet the conditions in paragraph (c)(8)(i) of this section.

* * * * *

(11) * * *

(i) That is a small business investment company, as defined in section 103(3) of the Small Business Investment Act of 1958 (15 U.S.C. 662), or that has received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company, which notice or license has not been revoked, or that has voluntarily surrendered its license to operate as a small business investment company in accordance with 13 CFR 107.1900 and does not make any new investments (other than investments in cash equivalents, which, for the purposes of this paragraph, means high quality, highly liquid investments whose maturity corresponds to the issuer's expected or potential need for funds and whose currency corresponds to the issuer's assets) after such voluntary surrender; or

* * * * *

(15) *Credit funds.* Subject to paragraphs (c)(15)(iii), (iv), and (v) of this section, an issuer that satisfies the asset and activity requirements of paragraphs (c)(15)(i) and (ii) of this section.

(i) *Asset requirements.* The issuer's assets must be composed solely of:

(A) Loans as defined in § 75.2(t);

(B) Debt instruments, subject to paragraph (c)(15)(iv) of this section;

(C) Rights and other assets that are related or incidental to acquiring, holding, servicing, or selling such loans or debt instruments, provided that:

(*1*) Each right or asset that is a security is either:

(*i*) A cash equivalent (which, for the purposes of this paragraph, means high quality, highly liquid investments whose maturity corresponds to the issuer's expected or potential need for funds and whose currency corresponds to either the underlying loans or the debt instruments);

(*ii*) A security received in lieu of debts previously contracted with respect to such loans or debt instruments; or

(*iii*) An equity security (or right to acquire an equity security) received on customary terms in connection with such loans or debt instruments; and

(*2*) Rights or other assets held under this paragraph (c)(15)(i)(C) of this section may not include commodity forward contracts; and

(D) Interest rate or foreign exchange derivatives, if:

(*1*) The written terms of the derivative directly relate to the loans, debt instruments, or other rights or assets described in paragraph (c)(15)(i)(C) of this section; and

(*2*) The derivative reduces the interest rate and/or foreign exchange risks related to the loans, debt instruments, or other rights or assets described in paragraph (c)(15)(i)(C) of this section.

(ii) *Activity requirements.* To be eligible for the exclusion of paragraph (c)(15) of this section, an issuer must:

(A) Not engage in any activity that would constitute proprietary trading under § 75.3(b)(l)(i), as if the issuer were a banking entity; and

(B) Not issue asset-backed securities.

(iii) *Requirements for a sponsor, investment adviser, or commodity trading advisor.* A banking entity that acts as a sponsor, investment adviser, or commodity trading advisor to an issuer that meets the conditions in paragraphs (c)(15)(i) and (ii) of this section may not rely on this exclusion unless the banking entity:

(A) Provides in writing to any prospective and actual investor in the issuer the disclosures required under § 75.11(a)(8), as if the issuer were a covered fund; and

(B) Ensures that the activities of the issuer are consistent with safety and soundness standards that are

substantially similar to those that would apply if the banking entity engaged in the activities directly.

(iv) *Additional Banking Entity Requirements.* A banking entity may not rely on this exclusion with respect to an issuer that meets the conditions in paragraphs (c)(15)(i) and (ii) of this section unless:

(A) The banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the issuer or of any entity to which such issuer extends credit or in which such issuer invests; and

(B) Any assets the issuer holds pursuant to paragraphs (c)(15)(i)(B) or (i)(C)(*1*)(*iii*) of this section would be permissible for the banking entity to acquire and hold directly.

(v) *Investment and Relationship Limits.* A banking entity's investment in, and relationship with, the issuer must:

(A) Comply with the limitations imposed in §§ 75.14 (except the banking entity may acquire and retain any ownership interest in the issuer) and 75.15, as if the issuer were a covered fund; and

(B) Be conducted in compliance with, and subject to, applicable banking laws and regulations, including applicable safety and soundness standards.

(16) *Qualifying venture capital funds.* (i) Subject to paragraphs (c)(16)(ii) through (iv) of this section, an issuer that:

(A) Is a venture capital fund as defined in 17 CFR 275.203(l)–1; and

(B) Does not engage in any activity that would constitute proprietary trading under § 75.3(b)(1)(i), as if the issuer were a banking entity.

(ii) A banking entity that acts as a sponsor, investment adviser, or commodity trading advisor to an issuer that meets the conditions in paragraph (c)(16)(i) of this section may not rely on this exclusion unless the banking entity:

(A) Provides in writing to any prospective and actual investor in the issuer the disclosures required under § 75.11 (a)(8), as if the issuer were a covered fund; and

(B) Ensures that the activities of the issuer are consistent with safety and soundness standards that are substantially similar to those that would apply if the banking entity engaged in the activities directly.

(iii) The banking entity must not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the issuer.

(iv) A banking entity's ownership interest in or relationship with the issuer must:

(A) Comply with the limitations imposed in §§ 75.14 (except the banking entity may acquire and retain any ownership interest in the issuer) and 75.15, as if the issuer were a covered fund; and

(B) Be conducted in compliance with, and subject to, applicable banking laws and regulations, including applicable safety and soundness standards.

(17) *Family wealth management vehicles.* (i) Subject to paragraph (c)(17)(ii) of this section, any entity that is not, and does not hold itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities, and:

(A) If the entity is a trust, the grantor(s) of the entity are all family customers; and

(B) If the entity is not a trust:

(*1*) A majority of the voting interests in the entity are owned (directly or indirectly) by family customers; and

(*2*) The entity is owned only by family customers and up to 3 closely related persons of the family customers.

(ii) A banking entity may rely on the exclusion in paragraph (c)(17)(i) of this section with respect to an entity provided that the banking entity (or an affiliate):

(A) Provides bona fide trust, fiduciary, investment advisory, or commodity trading advisory services to the entity;

(B) Does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of such entity;

(C) Complies with the disclosure obligations under § 75.11(a)(8), as if such entity were a covered fund;

(D) Does not acquire or retain, as principal, an ownership interest in the entity, other than up to 0.5 percent of the entity's outstanding ownership interests that may be held by the banking entity and its affiliates for the purpose of and to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns;

(E) Complies with the requirements of §§ 75.14(b) and 75.15, as if such entity were a covered fund; and

(F) Complies with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the issuer were an affiliate thereof.

(iii) For purposes of paragraph (c)(17) of this section, the following definitions apply:

(A) ''Closely related person'' means a natural person (including the estate and estate planning vehicles of such person) who has longstanding business or personal relationships with any family customer.

(B) ''Family customer'' means:

(*1*) A family client, as defined in Rule 202(a)(11)(G)–1(d)(4) of the Investment Advisers Act of 1940 (17 CFR 275.202(a)(11)(G)–1(d)(4)); or

(*2*) Any natural person who is a father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of a family client, or a spouse or a spousal equivalent of any of the foregoing.

(18) *Customer facilitation vehicles.* (i) Subject to paragraph (c)(18)(ii) of this section, an issuer that is formed by or at the request of a customer of the banking entity for the purpose of providing such customer (which may include one or more affiliates of such customer) with exposure to a transaction, investment strategy, or other service provided by the banking entity.

(ii) A banking entity may rely on the exclusion in paragraph (c)(18)(i) of this section with respect to an issuer provided that:

(A) All of the ownership interests of the issuer are owned by the customer (which may include one or more of its affiliates) for whom the issuer was created, subject to paragraph (c)(18)(ii)(B)(*4*) of this section; and

(B) The banking entity and its affiliates:

(*1*) Maintain documentation outlining how the banking entity intends to facilitate the customer's exposure to such transaction, investment strategy, or service;

(*2*) Do not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of such issuer;

(*3*) Comply with the disclosure obligations under § 75.11(a)(8), as if such issuer were a covered fund;

(*4*) Do not acquire or retain, as principal, an ownership interest in the issuer, other than up to 0.5 percent of the issuer's outstanding ownership interests that may be held by the banking entity and its affiliates for the purpose of and to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns;

(*5*) Comply with the requirements of §§ 75.14(b) and 75.15, as if such issuer were a covered fund; and

(*6*) Comply with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the issuer were an affiliate thereof.

* * * * *

(d) * * *

(6) *Ownership interest*—(i) Ownership interest means any equity, partnership, or other similar interest. An ''other similar interest'' means an interest that:

(A) Has the right to participate in the selection or removal of a general partner, managing member, member of the board of directors or trustees, investment manager, investment adviser, or commodity trading advisor of the covered fund (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event, which includes the right to participate in the removal of an investment manager for cause or to nominate or vote on a nominated replacement manager upon an investment manager's resignation or removal);

(B) Has the right under the terms of the interest to receive a share of the income, gains or profits of the covered fund;

(C) Has the right to receive the underlying assets of the covered fund after all other interests have been redeemed and/or paid in full (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event);

(D) Has the right to receive all or a portion of excess spread (the positive difference, if any, between the aggregate interest payments received from the underlying assets of the covered fund and the aggregate interest paid to the holders of other outstanding interests);

(E) Provides under the terms of the interest that the amounts payable by the covered fund with respect to the interest could be reduced based on losses arising from the underlying assets of the covered fund, such as allocation of losses, write-downs or charge-offs of the outstanding principal balance, or reductions in the amount of interest due and payable on the interest;

(F) Receives income on a pass-through basis from the covered fund, or has a rate of return that is determined by reference to the performance of the underlying assets of the covered fund; or

(G) Any synthetic right to have, receive, or be allocated any of the rights in paragraphs (d)(6)(i)(A) through (F) of this section.

(ii) Ownership interest does not include:

(A) Restricted profit interest which is an interest held by an entity (or an employee or former employee thereof) in a covered fund for which the entity (or employee thereof) serves as investment manager, investment adviser, commodity trading advisor, or other service provider, so long as:

(*1*) The sole purpose and effect of the interest is to allow the entity (or employee or former employee thereof) to share in the profits of the covered fund as performance compensation for the investment management, investment advisory, commodity trading advisory, or other services provided to the covered fund by the entity (or employee or former employee thereof), provided that the entity (or employee or former employee thereof) may be obligated under the terms of such interest to return profits previously received;

(*2*) All such profit, once allocated, is distributed to the entity (or employee or former employee thereof) promptly after being earned or, if not so distributed, is retained by the covered fund for the sole purpose of establishing a reserve amount to satisfy contractual obligations with respect to subsequent losses of the covered fund and such undistributed profit of the entity (or employee or former employee thereof) does not share in the subsequent investment gains of the covered fund;

(*3*) Any amounts invested in the covered fund, including any amounts paid by the entity in connection with obtaining the restricted profit interest, are within the limits of § 75.12 of this subpart; and

(*4*) The interest is not transferable by the entity (or employee or former employee thereof) except to an affiliate thereof (or an employee of the banking entity or affiliate), to immediate family members, or through the intestacy, of the employee or former employee, or in connection with a sale of the business that gave rise to the restricted profit interest by the entity (or employee or former employee thereof) to an unaffiliated party that provides investment management, investment advisory, commodity trading advisory, or other services to the fund.

(B) Any senior loan or senior debt interest that has the following characteristics:

(*1*) Under the terms of the interest the holders of such interest do not have the right to receive a share of the income, gains, or profits of the covered fund, but are entitled to receive only:

(*i*) Interest at a stated interest rate, as well as commitment fees or other fees, which are not determined by reference to the performance of the underlying assets of the covered fund; and

(*ii*) Fixed principal payments on or before a maturity date (which may include prepayment premiums intended solely to reflect, and compensate holders of the interest for, foregone income resulting from an early prepayment);

(*2*) The entitlement to payments under the terms of the interest are absolute and could not be reduced based on losses arising from the underlying assets of the covered fund, such as allocation of losses, write-downs or charge-offs of the outstanding principal balance, or reductions in the amount of interest due and payable on the interest; and

(*3*) The holders of the interest are not entitled to receive the underlying assets of the covered fund after all other interests have been redeemed or paid in full (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event).

■ 22. Amend § 75.12 is amended by:
■ a. Revising paragraph (b)(1)(ii);
■ b. Revising paragraph (b)(4);
■ c. Adding paragraph (b)(5);
■ d. Revising paragraph (c)(1); and
■ e. Revising paragraph (d) and (e).

The revisions and addition read as follows:

§ 75.12 Permitted investment in a covered fund.

* * * * *

(b) * * *

(1) * * *

(ii) *Treatment of registered investment companies, SEC-regulated business development companies, and foreign public funds.* For purposes of paragraph (b)(1)(i) of this section, a registered investment company, SEC-regulated business development companies, or foreign public fund as described in § 75.10(c)(1) of this subpart will not be considered to be an affiliate of the banking entity so long as the banking entity:

(A) Does not own, control, or hold with the power to vote 25 percent or more of the voting shares of the company or fund; and

(B) Provides investment advisory, commodity trading advisory, administrative, and other services to the company or fund in compliance with the limitations under applicable regulation, order, or other authority.

* * * * *

(4) *Multi-tier fund investments*—(i) *Master-feeder fund investments.* If the principal investment strategy of a covered fund (the ''feeder fund'') is to invest substantially all of its assets in another single covered fund (the ''master fund''), then for purposes of the investment limitations in paragraphs (a)(2)(i)(B) and (a)(2)(ii) of this section, the banking entity's permitted investment in such funds shall be measured only by reference to the value of the master fund. The banking entity's permitted investment in the master fund

shall include any investment by the banking entity in the master fund, as well as the banking entity's pro-rata share of any ownership interest in the master fund that is held through the feeder fund; and

(ii) *Fund-of-funds investments.* If a banking entity organizes and offers a covered fund pursuant to § 75.11 of this subpart for the purpose of investing in other covered funds (a ''fund of funds'') and that fund of funds itself invests in another covered fund that the banking entity is permitted to own, then the banking entity's permitted investment in that other fund shall include any investment by the banking entity in that other fund, as well as the banking entity's pro-rata share of any ownership interest in the fund that is held through the fund of funds. The investment of the banking entity may not represent more than 3 percent of the amount or value of any single covered fund.

(5) *Parallel Investments and Co-Investments*—(i) A banking entity shall not be required to include in the calculation of the investment limits under paragraph (a)(2) of this section any investment the banking entity makes alongside a covered fund as long as the investment is made in compliance with applicable laws and regulations, including applicable safety and soundness standards.

(ii) A banking entity shall not be restricted under this section in the amount of any investment the banking entity makes alongside a covered fund as long as the investment is made in compliance with applicable laws and regulations, including applicable safety and soundness standards.

(c) * * *

(1)(i) For purposes of paragraph (a)(2)(iii) of this section, the aggregate value of all ownership interests held by a banking entity shall be the sum of all amounts paid or contributed by the banking entity in connection with acquiring or retaining an ownership interest in covered funds (together with any amounts paid by the entity in connection with obtaining a restricted profit interest under § 75.10(d)(6)(ii) of this subpart), on a historical cost basis;

(ii) Treatment of employee and director restricted profit interests financed by the banking entity. For purposes of paragraph (c)(1)(i) of this section, an investment by a director or employee of a banking entity who acquires a restricted profit interest in their personal capacity in a covered fund sponsored by the banking entity will be attributed to the banking entity if the banking entity, directly or indirectly, extends financing for the purpose of enabling the director or employee to acquire the restricted profit interest in the fund and the financing is used to acquire such ownership interest in the covered fund.

* * * * *

(d) *Capital treatment for a permitted investment in a covered fund.* For purposes of calculating compliance with the applicable regulatory capital requirements, a banking entity shall deduct from the banking entity's tier 1 capital (as determined under paragraph (c)(2) of this section) the greater of:

(1)(i) The sum of all amounts paid or contributed by the banking entity in connection with acquiring or retaining an ownership interest (together with any amounts paid by the entity in connection with obtaining a restricted profit interest under § 75.10(d)(6)(ii)), on a historical cost basis, plus any earnings received; and

(ii) The fair market value of the banking entity's ownership interests in the covered fund as determined under paragraph (b)(2)(ii) or (b)(3) of this section (together with any amounts paid by the entity in connection with obtaining a restricted profit interest under § 75.10(d)(6)(ii)), if the banking entity accounts for the profits (or losses) of the fund investment in its financial statements.

(2) Treatment of employee and director restricted profit interests financed by the banking entity. For purposes of paragraph (d)(1) of this section, an investment by a director or employee of a banking entity who acquires a restricted profit interest in his or her personal capacity in a covered fund sponsored by the banking entity will be attributed to the banking entity if the banking entity, directly or indirectly, extends financing for the purpose of enabling the director or employee to acquire the restricted profit interest in the fund and the financing is used to acquire such ownership interest in the covered fund.

(e) *Extension of time to divest an ownership interest.* (1) *Extension Period.* Upon application by a banking entity, the Board may extend the period under paragraph (a)(2)(i) of this section for up to 2 additional years if the Board finds that an extension would be consistent with safety and soundness and not detrimental to the public interest.

(2) *Application Requirements.* An application for extension must:

(i) Be submitted to the Board at least 90 days prior to the expiration of the applicable time period;

(ii) Provide the reasons for application, including information that addresses the factors in paragraph (e)(3) of this section; and

(iii) Explain the banking entity's plan for reducing the permitted investment in a covered fund through redemption, sale, dilution or other methods as required in paragraph (a)(2) of this section.

(3) *Factors governing the Board determinations.* In reviewing any application under paragraph (e)(1) of this section, the Board may consider all the facts and circumstances related to the permitted investment in a covered fund, including:

(i) Whether the investment would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies;

(ii) The contractual terms governing the banking entity's interest in the covered fund;

(iii) The date on which the covered fund is expected to have attracted sufficient investments from investors unaffiliated with the banking entity to enable the banking entity to comply with the limitations in paragraph (a)(2)(i) of this section;

(iv) The total exposure of the covered banking entity to the investment and the risks that disposing of, or maintaining, the investment in the covered fund may pose to the banking entity and the financial stability of the United States;

(v) The cost to the banking entity of divesting or disposing of the investment within the applicable period;

(vi) Whether the investment or the divestiture or conformance of the investment would involve or result in a material conflict of interest between the banking entity and unaffiliated parties, including clients, customers, or counterparties to which it owes a duty;

(vii) The banking entity's prior efforts to reduce through redemption, sale, dilution, or other methods its ownership interests in the covered fund, including activities related to the marketing of interests in such covered fund;

(viii) Market conditions; and

(ix) Any other factor that the Board believes appropriate.

(4) *Authority to impose restrictions on activities or investment during any extension period.* The Board may impose such conditions on any extension approved under paragraph (e)(1) of this section as the Board determines are necessary or appropriate to protect the safety and soundness of the banking entity or the financial stability of the United States, address material conflicts of interest or other unsound banking practices, or otherwise further the purposes of section 13 of the BHC Act and this part.

(5) *Consultation.* In the case of a banking entity that is primarily

regulated by another Federal banking agency, the SEC, or the CFTC, the Board will consult with such agency prior to acting on an application by the banking entity for an extension under paragraph (e)(1) of this section.

■ 23. In subpart C, section 75.13 is amended by adding paragraph (d) to read as follows:

§ 75.13 Other permitted covered fund activities and investments.

* * * * *

(d) *Permitted covered fund activities and investments of qualifying foreign excluded funds.*

(1) The prohibition contained in § 75.10(a) does not apply to a qualifying foreign excluded fund.

(2) For purposes of this paragraph (d), a qualifying foreign excluded fund means a banking entity that:

(i) Is organized or established outside the United States, and the ownership interests of which are offered and sold solely outside the United States;

(ii)(A) Would be a covered fund if the entity were organized or established in the United States, or

(B) Is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;

(iii) Would not otherwise be a banking entity except by virtue of the acquisition or retention of an ownership interest in, sponsorship of, or relationship with the entity, by another banking entity that meets the following:

(A) The banking entity is not organized, or directly or indirectly controlled by a banking entity that is organized, under the laws of the United States or of any State; and

(B) The banking entity's acquisition of an ownership interest in or sponsorship of the fund by the foreign banking entity meets the requirements for permitted covered fund activities and investments solely outside the United States, as provided in § 75.13(b);

(iv) Is established and operated as part of a bona fide asset management business; and

(v) Is not operated in a manner that enables any other banking entity to evade the requirements of section 13 of the BHC Act or this part.

■ 24. Amend § 75.14 by:

■ a. Revising paragraph (a)(2)(i);

■ b. Revising paragraph (a)(2)(ii)(C);

■ c. Adding paragraphs (a)(2)(iii), (a)(2)(iv); and (a)(3); and

■ d. Revising paragraph (c).

The revisions and additions read as follows:

§ 75.14 Limitations on relationships with a covered fund.

(a) * * *

(2) * * *

(i) Acquire and retain any ownership interest in a covered fund in accordance with the requirements of §§ 75.11, 75.12, or 75.13;

(ii) * * *

(C) The Board has not determined that such transaction is inconsistent with the safe and sound operation and condition of the banking entity; and

(iii) Enter into a transaction with a covered fund that would be an exempt covered transaction under 12 U.S.C. 371c(d) or § 223.42 of the Board's Regulation W (12 CFR 223.42); and

(iv) Extend credit to or purchase assets from a covered fund, provided:

(A) Each extension of credit or purchase of assets is in the ordinary course of business in connection with payment transactions; settlement services; or futures, derivatives, and securities clearing;

(B) Each extension of credit is repaid, sold, or terminated by the end of five business days; and

(C) The banking entity making each extension of credit meets the requirements of section 223.42(l)(1)(i) and (ii) of the Board's Regulation W (12 CFR 223.42(l)(1)(i) and(ii)), as if the extension of credit was an intraday extension of credit, regardless of the duration of the extension of credit.

(3) Any transaction or activity permitted under paragraphs (a)(2)(iii) or (iv) must comply with the limitations in § 75.15.

* * * * *

(c) *Restrictions on other permitted transactions.* Any transaction permitted under paragraphs (a)(2)(ii), (a)(2)(iii), or (a)(2)(iv) of this section shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c–1) as if the counterparty were an affiliate of the banking entity.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

Authority and Issuance

For the reasons set forth in the Common Preamble, the Securities and Exchange Commission proposes to amend part 255 to chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 255—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

■ 25. The authority citation for part 255 continues to read as follows:

Authority: 12 U.S.C. 1851.

Subpart B—Proprietary Trading

■ 26. Amend § 255.6 by adding paragraph (f) to read as follows:

§ 255.6 Other permitted proprietary trading activities.

* * * * *

(f) *Permitted trading activities of qualifying foreign excluded funds.* The prohibition contained in § 255.3(a) does not apply to the purchase or sale of a financial instrument by a qualifying foreign excluded fund. For purposes of this paragraph (f), a qualifying foreign excluded fund means a banking entity that:

(1) Is organized or established outside the United States, and the ownership interests of which are offered and sold solely outside the United States;

(2)(i) Would be a covered fund if the entity were organized or established in the United States, or

(ii) Is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;

(3) Would not otherwise be a banking entity except by virtue of the acquisition or retention of an ownership interest in, sponsorship of, or relationship with the entity, by another banking entity that meets the following:

(i) The banking entity is not organized, or directly or indirectly controlled by a banking entity that is organized, under the laws of the United States or of any State; and

(ii) The banking entity's acquisition or retention of an ownership interest in or sponsorship of the fund meets the requirements for permitted covered fund activities and investments solely outside the United States, as provided in § 255.13(b);

(4) Is established and operated as part of a bona fide asset management business; and

(5) Is not operated in a manner that enables any other banking entity to evade the requirements of section 13 of the BHC Act or this part.

Subpart C—Covered Funds Activities and Investments

■ 27. Amend § 255.10 by:

■ a. Revising paragraph (c)(1);

■ b. Revising paragraph (c)(3)(i);

■ c. Revising paragraph (c)(8);

■ d. Revising paragraph (c)(10)(i);

■ e. Revising paragraph (c)(11)(i);

■ f. Adding paragraphs (c)(15), (16), (17), and (18); and

■ g. Revising paragraph (d)(6).

The revisions and additions read as follows:

§ 255.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.

* * * * *

(c) * * *

(1) *Foreign public funds.* (i) Subject to paragraphs (c)(1)(ii) and (iii) of this section, an issuer that:

(A) Is organized or established outside of the United States; and

(B) Is authorized to offer and sell ownership interests, and such interests are offered and sold, through one or more public offerings.

(ii) With respect to a banking entity that is, or is controlled directly or indirectly by a banking entity that is, located in or organized under the laws of the United States or of any State and any issuer for which such banking entity acts as sponsor, the sponsoring banking entity may not rely on the exemption in paragraph (c)(1)(i) of this section for such issuer unless ownership interests in the issuer are sold predominantly to persons other than:

(A) Such sponsoring banking entity;

(B) Such issuer;

(C) Affiliates of such sponsoring banking entity or such issuer; and

(D) Directors and senior executive officers as defined in section 225.71(c) of the Board's Regulation Y (12 CFR 225.71(c)) of such entities.

(iii) For purposes of paragraph (c)(1)(i)(B) of this section, the term ''public offering'' means a distribution (as defined in § 255.4(a)(3)) of securities in any jurisdiction outside the United States to investors, including retail investors, provided that:

(A) The distribution is subject to substantive disclosure and retail investor protection laws or regulations;

(B) With respect to an issuer for which the banking entity serves as the investment manager, investment adviser, commodity trading advisor, commodity pool operator, or sponsor, the distribution complies with all applicable requirements in the jurisdiction in which such distribution is being made;

(C) The distribution does not restrict availability to investors having a minimum level of net worth or net investment assets; and

(D) The issuer has filed or submitted, with the appropriate regulatory authority in such jurisdiction, offering disclosure documents that are publicly available.

* * * * *

(3) * * *

(i) Is composed of no more than 10 unaffiliated co-venturers;

* * * * *

(8) *Loan securitizations*—(i) *Scope.* An issuing entity for asset-backed securities that satisfies all the conditions of this paragraph (c)(8) and the assets or holdings of which are composed solely of:

(A) Loans as defined in § 255.2(t);

(B) Rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of such securities and rights or other assets that are related or incidental to purchasing or otherwise acquiring and holding the loans, provided that each asset that is a security (other than special units of beneficial interest and collateral certificates meeting the requirements of paragraph (c)(8)(v) of this section) meets the requirements of paragraph (c)(8)(iii) of this section;

(C) Interest rate or foreign exchange derivatives that meet the requirements of paragraph (c)(8)(iv) of this section; and

(D) Special units of beneficial interest and collateral certificates that meet the requirements of paragraph (c)(8)(v) of this section.

(E) Any other assets, provided that the aggregate value of any such other assets that do not meet the criteria specified in paragraphs (c)(8)(i)(A) through (c)(8)(i)(D) of this section do not exceed five percent of the aggregate value of the issuing entity's assets.

(ii) *Impermissible assets.* For purposes of this paragraph (c)(8), except as permitted under paragraph (c)(8)(i)(E) of this section, the assets or holdings of the issuing entity shall not include any of the following:

(A) A security, including an asset-backed security, or an interest in an equity or debt security other than as permitted in paragraphs (c)(8)(iii), (iv), or (v) of this section;

(B) A derivative, other than a derivative that meets the requirements of paragraph (c)(8)(iv) of this section; or

(C) A commodity forward contract.

(iii) *Permitted securities.* Notwithstanding paragraph (c)(8)(ii)(A) of this section, the issuing entity may hold securities if those securities are:

(A) Cash equivalents—which, for the purposes of this paragraph, means high quality, highly liquid investments whose maturity corresponds to the securitization's expected or potential need for funds and whose currency corresponds to either the underlying loans or the asset-backed securities—for purposes of the rights and assets in paragraph (c)(8)(i)(B) of this section; or

(B) Securities received in lieu of debts previously contracted with respect to the loans supporting the asset-backed securities.

(iv) *Derivatives.* The holdings of derivatives by the issuing entity shall be limited to interest rate or foreign exchange derivatives that satisfy all of the following conditions:

(A) The written terms of the derivatives directly relate to the loans, the asset-backed securities, or the contractual rights or other assets described in paragraph (c)(8)(i)(B) of this section; and

(B) The derivatives reduce the interest rate and/or foreign exchange risks related to the loans, the asset-backed securities, or the contractual rights or other assets described in paragraph (c)(8)(i)(B) of this section.

(v) *Special units of beneficial interest and collateral certificates.* The assets or holdings of the issuing entity may include collateral certificates and special units of beneficial interest issued by a special purpose vehicle, provided that:

(A) The special purpose vehicle that issues the special unit of beneficial interest or collateral certificate meets the requirements in this paragraph (c)(8);

(B) The special unit of beneficial interest or collateral certificate is used for the sole purpose of transferring to the issuing entity for the loan securitization the economic risks and benefits of the assets that are permissible for loan securitizations under this paragraph (c)(8) and does not directly or indirectly transfer any interest in any other economic or financial exposure;

(C) The special unit of beneficial interest or collateral certificate is created solely to satisfy legal requirements or otherwise facilitate the structuring of the loan securitization; and

(D) The special purpose vehicle that issues the special unit of beneficial interest or collateral certificate and the issuing entity are established under the direction of the same entity that initiated the loan securitization.

* * * * *

(10) *Qualifying covered bonds*—(i) *Scope.* An entity owning or holding a dynamic or fixed pool of loans or other assets as provided in paragraph (c)(8) of this section for the benefit of the holders of covered bonds, provided that the assets in the pool are composed solely of assets that meet the conditions in paragraph (c)(8)(i) of this section.

* * * * *

(11) * * *

(i) That is a small business investment company, as defined in section 103(3) of

the Small Business Investment Act of 1958 (15 U.S.C. 662), or that has received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company, which notice or license has not been revoked, or that has voluntarily surrendered its license to operate as a small business investment company in accordance with 13 CFR 107.1900 and does not make any new investments (other than investments in cash equivalents, which, for the purposes of this paragraph, means high quality, highly liquid investments whose maturity corresponds to the issuer's expected or potential need for funds and whose currency corresponds to the issuer's assets) after such voluntary surrender; or

* * * * *

(15) *Credit funds.* Subject to paragraphs (c)(15)(iii), (iv), and (v) of this section, an issuer that satisfies the asset and activity requirements of paragraphs (c)(15)(i) and (ii) of this section.

(i) *Asset requirements.* The issuer's assets must be composed solely of:

(A) Loans as defined in § 255.2(t);

(B) Debt instruments, subject to paragraph (c)(15)(iv) of this section;

(C) Rights and other assets that are related or incidental to acquiring, holding, servicing, or selling such loans or debt instruments, provided that:

(*1*) Each right or asset that is a security is either:

(*i*) A cash equivalent (which, for the purposes of this paragraph, means high quality, highly liquid investments whose maturity corresponds to the issuer's expected or potential need for funds and whose currency corresponds to either the underlying loans or the debt instruments);

(*ii*) A security received in lieu of debts previously contracted with respect to such loans or debt instruments; or

(*iii*) An equity security (or right to acquire an equity security) received on customary terms in connection with such loans or debt instruments; and

(*2*) Rights or other assets held under this paragraph (c)(15)(i)(C) of this section may not include commodity forward contracts; and

(D) Interest rate or foreign exchange derivatives, if:

(*1*) The written terms of the derivative directly relate to the loans, debt instruments, or other rights or assets described in paragraph (c)(15)(i)(C) of this section; and

(*2*) The derivative reduces the interest rate and/or foreign exchange risks related to the loans, debt instruments, or other rights or assets described in paragraph (c)(15)(i)(C) of this section.

(ii) *Activity requirements.* To be eligible for the exclusion of paragraph (c)(15) of this section, an issuer must:

(A) Not engage in any activity that would constitute proprietary trading under § 255.3(b)(l)(i) of subpart A of this part, as if the issuer were a banking entity; and

(B) Not issue asset-backed securities.

(iii) *Requirements for a sponsor, investment adviser, or commodity trading advisor.* A banking entity that acts as a sponsor, investment adviser, or commodity trading advisor to an issuer that meets the conditions in paragraphs (c)(15)(i) and (ii) of this section may not rely on this exclusion unless the banking entity:

(A) Provides in writing to any prospective and actual investor in the issuer the disclosures required under § 255.11(a)(8) of this subpart, as if the issuer were a covered fund; and

(B) Ensures that the activities of the issuer are consistent with safety and soundness standards that are substantially similar to those that would apply if the banking entity engaged in the activities directly.

(iv) *Additional Banking Entity Requirements.* A banking entity may not rely on this exclusion with respect to an issuer that meets the conditions in paragraphs (c)(15)(i) and (ii) of this section unless:

(A) The banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the issuer or of any entity to which such issuer extends credit or in which such issuer invests; and

(B) Any assets the issuer holds pursuant to paragraphs (c)(15)(i)(B) or (i)(C)(*1*)(*iii*) of this section would be permissible for the banking entity to acquire and hold directly.

(v) *Investment and Relationship Limits.* A banking entity's investment in, and relationship with, the issuer must:

(A) Comply with the limitations imposed in §§ 255.14 (except the banking entity may acquire and retain any ownership interest in the issuer) and 255.15, as if the issuer were a covered fund; and

(B) Be conducted in compliance with, and subject to, applicable banking laws and regulations, including applicable safety and soundness standards.

(16) *Qualifying venture capital funds.* (i) Subject to paragraphs (c)(16)(ii) through (iv) of this section, an issuer that:

(A) Is a venture capital fund as defined in 17 CFR 275.203(*l*)–1; and

(B) Does not engage in any activity that would constitute proprietary trading under § 255.3(b)(1)(i), as if the issuer were a banking entity.

(ii) A banking entity that acts as a sponsor, investment adviser, or commodity trading advisor to an issuer that meets the conditions in paragraph (c)(16)(i) of this section may not rely on this exclusion unless the banking entity:

(A) Provides in writing to any prospective and actual investor in the issuer the disclosures required under § 255.11(a)(8), as if the issuer were a covered fund; and

(B) Ensures that the activities of the issuer are consistent with safety and soundness standards that are substantially similar to those that would apply if the banking entity engaged in the activities directly.

(iii) The banking entity must not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the issuer.

(iv) A banking entity's ownership interest in or relationship with the issuer must:

(A) Comply with the limitations imposed in §§ 255.14 (except the banking entity may acquire and retain any ownership interest in the issuer) and 255.15, as if the issuer were a covered fund; and

(B) Be conducted in compliance with, and subject to, applicable banking laws and regulations, including applicable safety and soundness standards.

(17) *Family wealth management vehicles.* (i) Subject to paragraph (c)(17)(ii) of this section, any entity that is not, and does not hold itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities, and:

(A) If the entity is a trust, the grantor(s) of the entity are all family customers; and

(B) If the entity is not a trust:

(*1*) A majority of the voting interests in the entity are owned (directly or indirectly) by family customers; and

(*2*) The entity is owned only by family customers and up to 3 closely related persons of the family customers.

(ii) A banking entity may rely on the exclusion in paragraph (c)(17)(i) of this section with respect to an entity provided that the banking entity (or an affiliate):

(A) Provides bona fide trust, fiduciary, investment advisory, or commodity trading advisory services to the entity;

(B) Does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of such entity;

(C) Complies with the disclosure obligations under § 255.11(a)(8), as if such entity were a covered fund;

(D) Does not acquire or retain, as principal, an ownership interest in the entity, other than up to 0.5 percent of the entity's outstanding ownership interests that may be held by the banking entity and its affiliates for the purpose of and to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns;

(E) Complies with the requirements of §§ 255.14(b) and 255.15, as if such entity were a covered fund; and

(F) Complies with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the issuer were an affiliate thereof.

(iii) For purposes of paragraph (c)(17) of this section, the following definitions apply:

(A) ''Closely related person'' means a natural person (including the estate and estate planning vehicles of such person) who has longstanding business or personal relationships with any family customer.

(B) ''Family customer'' means:

(*1*) A family client, as defined in Rule 202(a)(11)(G) 1(d)(4) of the Investment Advisers Act of 1940 (17 CFR 275.202(a)(11)(G)–1(d)(4)); or

(*2*) Any natural person who is a father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of a family client, or a spouse or a spousal equivalent of any of the foregoing.

(18) *Customer facilitation vehicles.* (i) Subject to paragraph (c)(18)(ii) of this section, an issuer that is formed by or at the request of a customer of the banking entity for the purpose of providing such customer (which may include one or more affiliates of such customer) with exposure to a transaction, investment strategy, or other service provided by the banking entity.

(ii) A banking entity may rely on the exclusion in paragraph (c)(18)(i) of this section with respect to an issuer provided that:

(A) All of the ownership interests of the issuer are owned by the customer (which may include one or more of its affiliates) for whom the issuer was created, subject to paragraph (c)(18)(ii)(B)(*4*) of this section; and

(B) The banking entity and its affiliates:

(*1*) Maintain documentation outlining how the banking entity intends to facilitate the customer's exposure to such transaction, investment strategy, or service;

(*2*) Do not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of such issuer;

(*3*) Comply with the disclosure obligations under § 255.11(a)(8), as if such issuer were a covered fund;

(*4*) Do not acquire or retain, as principal, an ownership interest in the issuer, other than up to 0.5 percent of the issuer's outstanding ownership interests that may be held by the banking entity and its affiliates for the purpose of and to the extent necessary for establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns;

(*5*) Comply with the requirements of §§ 255.14(b) and 255.15, as if such issuer were a covered fund; and

(*6*) Comply with the requirements of 12 CFR 223.15(a), as if such banking entity and its affiliates were a member bank and the issuer were an affiliate thereof.

* * * * *

(d) * * *

(6) *Ownership interest*—(i) Ownership interest means any equity, partnership, or other similar interest. An ''other similar interest'' means an interest that:

(A) Has the right to participate in the selection or removal of a general partner, managing member, member of the board of directors or trustees, investment manager, investment adviser, or commodity trading advisor of the covered fund (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event, which includes the right to participate in the removal of an investment manager for cause or to nominate or vote on a nominated replacement manager upon an investment manager's resignation or removal);

(B) Has the right under the terms of the interest to receive a share of the income, gains or profits of the covered fund;

(C) Has the right to receive the underlying assets of the covered fund after all other interests have been redeemed and/or paid in full (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event);

(D) Has the right to receive all or a portion of excess spread (the positive difference, if any, between the aggregate interest payments received from the underlying assets of the covered fund and the aggregate interest paid to the holders of other outstanding interests);

(E) Provides under the terms of the interest that the amounts payable by the covered fund with respect to the interest could be reduced based on losses arising from the underlying assets of the covered fund, such as allocation of losses, write-downs or charge-offs of the outstanding principal balance, or reductions in the amount of interest due and payable on the interest;

(F) Receives income on a pass-through basis from the covered fund, or has a rate of return that is determined by reference to the performance of the underlying assets of the covered fund; or

(G) Any synthetic right to have, receive, or be allocated any of the rights in paragraphs (d)(6)(i)(A) through (F) of this section.

(ii) Ownership interest does not include:

(A) Restricted profit interest which is an interest held by an entity (or an employee or former employee thereof) in a covered fund for which the entity (or employee thereof) serves as investment manager, investment adviser, commodity trading advisor, or other service provider, so long as:

(*1*) The sole purpose and effect of the interest is to allow the entity (or employee or former employee thereof) to share in the profits of the covered fund as performance compensation for the investment management, investment advisory, commodity trading advisory, or other services provided to the covered fund by the entity (or employee or former employee thereof), provided that the entity (or employee or former employee thereof) may be obligated under the terms of such interest to return profits previously received;

(*2*) All such profit, once allocated, is distributed to the entity (or employee or former employee thereof) promptly after being earned or, if not so distributed, is retained by the covered fund for the sole purpose of establishing a reserve amount to satisfy contractual obligations with respect to subsequent losses of the covered fund and such undistributed profit of the entity (or employee or former employee thereof) does not share in the subsequent investment gains of the covered fund;

(*3*) Any amounts invested in the covered fund, including any amounts paid by the entity in connection with obtaining the restricted profit interest, are within the limits of § 255.12 of this subpart; and

(*4*) The interest is not transferable by the entity (or employee or former employee thereof) except to an affiliate thereof (or an employee of the banking entity or affiliate), to immediate family members, or through the intestacy, of the employee or former employee, or in connection with a sale of the business that gave rise to the restricted profit interest by the entity (or employee or

former employee thereof) to an unaffiliated party that provides investment management, investment advisory, commodity trading advisory, or other services to the fund.

(B) Any senior loan or senior debt interest that has the following characteristics:

(*1*) Under the terms of the interest the holders of such interest do not have the right to receive a share of the income, gains, or profits of the covered fund, but are entitled to receive only:

(*i*) Interest at a stated interest rate, as well as commitment fees or other fees, which are not determined by reference to the performance of the underlying assets of the covered fund; and

(*ii*) Fixed principal payments on or before a maturity date (which may include prepayment premiums intended solely to reflect, and compensate holders of the interest for, foregone income resulting from an early prepayment);

(*2*) The entitlement to payments under the terms of the interest are absolute and could not be reduced based on losses arising from the underlying assets of the covered fund, such as allocation of losses, write-downs or charge-offs of the outstanding principal balance, or reductions in the amount of interest due and payable on the interest; and

(*3*) The holders of the interest are not entitled to receive the underlying assets of the covered fund after all other interests have been redeemed or paid in full (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event).

■ 28. Amend § 255.12 by:
■ a. Revising paragraph (b)(1)(ii);
■ b. Revising paragraph (b)(4);
■ c. Adding paragraph (b)(5);
■ d. Revising paragraph (c)(1); and
■ e. Revising paragraphs (d) and (e).

The revisions and addition read as follows:

§ 255.12 Permitted investment in a covered fund.

* * * * *

(b) * * *

(1) * * *

(ii) *Treatment of registered investment companies, SEC-regulated business development companies, and foreign public funds.* For purposes of paragraph (b)(1)(i) of this section, a registered investment company, SEC-regulated business development companies, or foreign public fund as described in § 255.10(c)(1) of this subpart will not be considered to be an affiliate of the banking entity so long as the banking entity:

(A) Does not own, control, or hold with the power to vote 25 percent or more of the voting shares of the company or fund; and

(B) Provides investment advisory, commodity trading advisory, administrative, and other services to the company or fund in compliance with the limitations under applicable regulation, order, or other authority.

* * * * *

(4) *Multi-tier fund investments*—(i) *Master-feeder fund investments.* If the principal investment strategy of a covered fund (the ''feeder fund'') is to invest substantially all of its assets in another single covered fund (the ''master fund''), then for purposes of the investment limitations in paragraphs (a)(2)(i)(B) and (a)(2)(ii) of this section, the banking entity's permitted investment in such funds shall be measured only by reference to the value of the master fund. The banking entity's permitted investment in the master fund shall include any investment by the banking entity in the master fund, as well as the banking entity's pro-rata share of any ownership interest in the master fund that is held through the feeder fund; and

(ii) *Fund-of-funds investments.* If a banking entity organizes and offers a covered fund pursuant to § 255.11 of this subpart for the purpose of investing in other covered funds (a ''fund of funds'') and that fund of funds itself invests in another covered fund that the banking entity is permitted to own, then the banking entity's permitted investment in that other fund shall include any investment by the banking entity in that other fund, as well as the banking entity's pro-rata share of any ownership interest in the fund that is held through the fund of funds. The investment of the banking entity may not represent more than 3 percent of the amount or value of any single covered fund.

(5) *Parallel Investments and Co-Investments*—(i) A banking entity shall not be required to include in the calculation of the investment limits under paragraph (a)(2) of this section any investment the banking entity makes alongside a covered fund as long as the investment is made in compliance with applicable laws and regulations, including applicable safety and soundness standards.

(ii) A banking entity shall not be restricted under this section in the amount of any investment the banking entity makes alongside a covered fund as long as the investment is made in compliance with applicable laws and regulations, including applicable safety and soundness standards.

(c) * * *

(1)(i) For purposes of paragraph (a)(2)(iii) of this section, the aggregate value of all ownership interests held by a banking entity shall be the sum of all amounts paid or contributed by the banking entity in connection with acquiring or retaining an ownership interest in covered funds (together with any amounts paid by the entity in connection with obtaining a restricted profit interest under § 255.10(d)(6)(ii)), on a historical cost basis;

(ii) Treatment of employee and director restricted profit interests financed by the banking entity. For purposes of paragraph (c)(1)(i) of this section, an investment by a director or employee of a banking entity who acquires a restricted profit interest in their personal capacity in a covered fund sponsored by the banking entity will be attributed to the banking entity if the banking entity, directly or indirectly, extends financing for the purpose of enabling the director or employee to acquire the restricted profit interest in the fund and the financing is used to acquire such ownership interest in the covered fund.

* * * * *

(d) *Capital treatment for a permitted investment in a covered fund.* For purposes of calculating compliance with the applicable regulatory capital requirements, a banking entity shall deduct from the banking entity's tier 1 capital (as determined under paragraph (c)(2) of this section) the greater of:

(1)(i) The sum of all amounts paid or contributed by the banking entity in connection with acquiring or retaining an ownership interest (together with any amounts paid by the entity in connection with obtaining a restricted profit interest under § 255.10(d)(6)(ii)), on a historical cost basis, plus any earnings received; and

(ii) The fair market value of the banking entity's ownership interests in the covered fund as determined under paragraph (b)(2)(ii) or (b)(3) of this section (together with any amounts paid by the entity in connection with obtaining a restricted profit interest under § 255.10(d)(6)(ii) of subpart C of this part), if the banking entity accounts for the profits (or losses) of the fund investment in its financial statements.

(2) Treatment of employee and director restricted profit interests financed by the banking entity. For purposes of paragraph (d)(1) of this section, an investment by a director or employee of a banking entity who acquires a restricted profit interest in his or her personal capacity in a covered fund sponsored by the banking entity

will be attributed to the banking entity if the banking entity, directly or indirectly, extends financing for the purpose of enabling the director or employee to acquire the restricted profit interest in the fund and the financing is used to acquire such ownership interest in the covered fund.

(e) *Extension of time to divest an ownership interest.* (1) *Extension Period.* Upon application by a banking entity, the Board may extend the period under paragraph (a)(2)(i) of this section for up to 2 additional years if the Board finds that an extension would be consistent with safety and soundness and not detrimental to the public interest.

(2) *Application Requirements.* An application for extension must:

(i) Be submitted to the Board at least 90 days prior to the expiration of the applicable time period;

(ii) Provide the reasons for application, including information that addresses the factors in paragraph (e)(3) of this section; and

(iii) Explain the banking entity's plan for reducing the permitted investment in a covered fund through redemption, sale, dilution or other methods as required in paragraph (a)(2) of this section.

(3) *Factors governing the Board determinations.* In reviewing any application under paragraph (e)(1) of this section, the Board may consider all the facts and circumstances related to the permitted investment in a covered fund, including:

(i) Whether the investment would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies;

(ii) The contractual terms governing the banking entity's interest in the covered fund;

(iii) The date on which the covered fund is expected to have attracted sufficient investments from investors unaffiliated with the banking entity to enable the banking entity to comply with the limitations in paragraph (a)(2)(i) of this section;

(iv) The total exposure of the covered banking entity to the investment and the risks that disposing of, or maintaining, the investment in the covered fund may pose to the banking entity and the financial stability of the United States;

(v) The cost to the banking entity of divesting or disposing of the investment within the applicable period;

(vi) Whether the investment or the divestiture or conformance of the investment would involve or result in a material conflict of interest between the banking entity and unaffiliated parties, including clients, customers, or counterparties to which it owes a duty;

(vii) The banking entity's prior efforts to reduce through redemption, sale, dilution, or other methods its ownership interests in the covered fund, including activities related to the marketing of interests in such covered fund;

(viii) Market conditions; and

(ix) Any other factor that the Board believes appropriate.

(4) *Authority to impose restrictions on activities or investment during any extension period.* The Board may impose such conditions on any extension approved under paragraph (e)(1) of this section as the Board determines are necessary or appropriate to protect the safety and soundness of the banking entity or the financial stability of the United States, address material conflicts of interest or other unsound banking practices, or otherwise further the purposes of section 13 of the BHC Act and this part.

(5) *Consultation.* In the case of a banking entity that is primarily regulated by another Federal banking agency, the SEC, or the CFTC, the Board will consult with such agency prior to acting on an application by the banking entity for an extension under paragraph (e)(1) of this section.

■ 29. Amend § 255.13 by adding paragraph (d) to read as follows:

§ 255.13 Other permitted covered fund activities and investments.

* * * * *

(d) *Permitted covered fund activities and investments of qualifying foreign excluded funds.* (1) The prohibition contained in § 255.10(a) does not apply to a qualifying foreign excluded fund.

(2) For purposes of this paragraph (d), a qualifying foreign excluded fund means a banking entity that:

(i) Is organized or established outside the United States, and the ownership interests of which are offered and sold solely outside the United States;

(ii)(A) Would be a covered fund if the entity were organized or established in the United States, or

(B) Is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;

(iii) Would not otherwise be a banking entity except by virtue of the acquisition or retention of an ownership interest in, sponsorship of, or relationship with the entity, by another banking entity that meets the following:

(A) The banking entity is not organized, or directly or indirectly controlled by a banking entity that is organized, under the laws of the United States or of any State; and

(B) The banking entity's acquisition of an ownership interest in or sponsorship of the fund by the foreign banking entity meets the requirements for permitted covered fund activities and investments solely outside the United States, as provided in § 255.13(b);

(iv) Is established and operated as part of a bona fide asset management business; and

(v) Is not operated in a manner that enables any other banking entity to evade the requirements of section 13 of the BHC Act or this part.

■ 30. Amend § 255.14 by:

■ a. Revising paragraph (a)(2)(i);

■ b. Revising paragraph (a)(2)(ii)(C);

■ c. Adding paragraphs (a)(2)(iii), (a)(2)(iv); and (a)(3); and

■ d. Revising paragraph (c).

The revisions and additions read as follows:

§ 255.14 Limitations on relationships with a covered fund.

(a) * * *

(2) * * *

(i) Acquire and retain any ownership interest in a covered fund in accordance with the requirements of §§ 255.11, 255.12, or 255.13;

(ii) * * *

(C) The Board has not determined that such transaction is inconsistent with the safe and sound operation and condition of the banking entity; and

(iii) Enter into a transaction with a covered fund that would be an exempt covered transaction under 12 U.S.C. 371c(d) or § 223.42 of the Board's Regulation W (12 CFR 223.42); and

(iv) Extend credit to or purchase assets from a covered fund, provided:

(A) Each extension of credit or purchase of assets is in the ordinary course of business in connection with payment transactions; settlement services; or futures, derivatives, and securities clearing;

(B) Each extension of credit is repaid, sold, or terminated by the end of five business days; and

(C) The banking entity making each extension of credit meets the requirements of section 223.42(l)(1)(i) and (ii) of the Board's Regulation W (12 CFR 223.42(l)(1)(i) and(ii)), as if the extension of credit was an intraday extension of credit, regardless of the duration of the extension of credit.

(3) Any transaction or activity permitted under paragraphs (a)(2)(iii) or (iv) must comply with the limitations in § 255.15 of this section.

* * * * *

(c) *Restrictions on other permitted transactions.* Any transaction permitted

under paragraphs (a)(2)(ii), (a)(2)(iii), or (a)(2)(iv) of this section shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c–1) as if the counterparty were an affiliate of the banking entity.

Dated: January 29, 2020.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, January 30, 2020.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on January 30, 2020.

Annmarie H. Boyd,

Assistant Executive Secretary.

Issued in Washington, DC, on February 3, 2020 by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

By the Securities and Exchange Commission.

Dated: January 30, 2020.

Eduardo A. Aleman,

Deputy Secretary.

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

Appendices to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds—CFTC Voting Summary and CFTC Commissioners' Statements

Appendix 1—CFTC Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz and Stump voted in the affirmative. Commissioners Behnam and Berkovitz voted in the negative. The document submitted to the CFTC Commissioners for a vote did not include Section IV.F. SEC Economic Analysis.

Appendix 2—Dissenting Statement of CFTC Commissioner Rostin Behnam

I respectfully dissent as to the Commission's decision to propose more revisions to the Volcker Rule. The Volcker Rule, in simple terms, contains two basic prohibitions for banking entities: (1) They may not engage in proprietary trading; and (2) they cannot have an ownership interest in, sponsor, or have certain relationships with a covered fund. Last September, the Commission, along with other Federal agencies,[1] approved changes that significantly weakened the prohibition on propriety trading by narrowing the scope of financial instruments subject to the Volcker Rule.[2] Today, the Commission and the other agencies take aim at the second prohibition, and propose to significantly weaken the prohibition on ownership of covered funds. When the agencies approved the changes on proprietary trading in September, the late Paul Volcker himself sent a letter to the Chairman of the Federal Reserve stating that the amended rule ''amplifies risk in the financial system, increases moral hazard and erodes protections against conflicts of interest that were so glaringly on display during the last crisis.'' [3] I can imagine that he would say something very similar about the further changes that we propose today, particularly the erosion of the existing protections regarding conflicts of interest. I fear that, if we continue to roll back the Volcker Rule, we will soon reach a stage where, sadly, there is nothing left.

Appendix 3—Dissenting Statement of CFTC Commissioner Dan M. Berkovitz

Let's start by calling the Volcker Covered Fund Proposal (''Proposal'') what it is: A regulatory rollback.[4] Virtually every change in the Proposal creates a new exclusion from the rules, or eliminates or reduces existing requirements. The changes to the regulations run counter to the statutory purpose of prohibiting banks from owning hedge funds and private equity funds. The Proposal fails to analyze or discuss the risks inherent in the banking activities it would permit. It presents a thin veneer of a rationale for many of the changes that were precipitated by complaints from the banking industry. The agencies should be making reasoned decisions to improve the effectiveness of the regulations for the purposes mandated by Congress, not implementing industry-driven rollbacks. I therefore dissent.

The general purpose of the Volcker Rule is to eliminate excessive risk taking by banks that enjoy the benefits of U.S. taxpayer support while still preserving their ability to undertake banking activities that serve the public interest.[5] The covered fund provisions are intended to prevent banking entities from circumventing the proprietary trading prohibition in the Volcker rule through covered fund investments and limit bank involvement in covered funds so that the banks are not expected to bail out the funds if they lose money.[6]

While a few of the proposed changes are consistent with this statutory purpose because they correct unintended consequences from the original regulation, the Proposal goes much further than reasonably necessary and appears to create substantial loopholes without effectively analyzing the potential risks. There is no quantitative analysis of those risks. The rationales provided to support these rollbacks are qualitative, legalistic, and summary in nature. They purport to provide ''clarity,'' allow banks to ''diversify'' investments, or improve bank competitiveness—none of which advance the goals articulated by Congress.

I am concerned that the proposed changes, along with the other regulatory reductions implemented in the proprietary trading provisions of the Volcker regulations in November 2019,[7] may together substantially reduce the safety measures instituted in the Dodd-Frank Act. Are the large banks that are subject to Volcker profitable? Definitely. Are the banks less competitive as compared to their international competitors? No.[8] Do we need to give them more rein to take on more risk? A case for that has not been made. I fear that we are putting the United States taxpayer at risk of once again bailing out the banks when we as regulators fail to take a reasoned, thoughtful approach; one that seeks to reach an appropriate balance of free markets with regulatory guard rails for risk-taking. After all, the banks that are subject to the Volcker regulations are insured by the FDIC and/or have access to Federal Reserve Bank support. We should have a say in the risks they take when the U.S. taxpayer is standing behind them.

Specific Changes of Concern

Much of the Proposal addresses regulations that will not impact, or will have only indirect impacts on, the CFTC's core mandate to regulate the derivatives markets.

[1] The Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; and the Securities and Exchange Commission.

[2] Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 84 FR 61974 (Nov. 14, 2019).

[3] Jesse Hamilton and Yalman Onaran, ''Vocker the Man Blasts Volcker the Rule in Letter to Fed Chair,'' Bloomberg (Sep. 10, 2019), *https://www.bloomberg.com/news/articles/2019-09-10/volcker-the-man-blasts-volcker-the-rule-in-letter-to-fed-chair.*

[4] ''Rollback'' is defined as ''reduc[ing] (something, such as a commodity price) to or toward a previous level on a national scale.'' *https://www.merriam-webster.com/dictionary/rollback.*

[5] *See* Statement of Sen. Dodd, 156 Cong. Rec. S6242 (July 26, 2010) (''The purpose of the Volcker rule is to eliminate excessive risk taking activities by banks and their affiliates while at the same time preserving safe, sound investment activities that serve the public interest.'').

[6] The classic example of this risk is the collapse of two Bear Stearns-sponsored hedge funds in 2007. Bear Stearns provided loans intended to shore up two Cayman Islands hedge funds established by Bear Stearns. Bear Stearns was not legally obligated to back the funds financially, but as a business matter, it felt compelled to support them because of its sponsorship of the funds. Those actions were part of a chain of events that eventually led to the fire sale of Bear Stearns to J.P. Morgan in March 2008. To entice J.P. Morgan to buy a distressed Bear Stearns, the Federal Reserve System provided financial support for the purchase. *See* Reuters, *Timeline: A dozen key dates in the demise of Bear Stearns* (Mar. 17, 2008), available at *https://www.reuters.com/article/us-bearstearns-chronology/timeline-a-dozen-key-dates-in-the-demise-of-bear-stearns-idUSN1724031920080317.*

[7] Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, 84 FR 61974 (Nov. 14, 2019).

[8] U.S. banks are the strongest in the world. The recent Global League Tables ranking global banks by amount of banking business activity shows that three or four U.S. banks are in the top five banks in almost every category, including for banking business in foreign markets. *See GlobalCapital.com*, Global League Tables, available at *https://www.globalcapital.com/data/all-league-tables.*

Nonetheless, I cannot vote in favor of proposed regulations that are presented to this agency for review that broadly fail to follow congressional intent—limiting risky behavior by banks connected with hedge funds and private equity funds.

The Proposal states: ''The proposed rule is intended to improve and streamline the covered fund provisions and provide clarity to banking entities so that they can offer financial services and engage in other permissible activities in a manner that is consistent with the requirements of section 13 of the BHC Act.'' [9] This benign façade masks the true purpose and effect of the Proposal, which is a regulatory rollback. It adds five new, substantive exclusions from covered funds regulation; [10] expands three existing and significant exclusions; reduces what constitutes ''ownership'' in a covered fund in numerous ways; and significantly reduces limitations on banking relationships with covered funds.

The Volcker covered fund provisions could benefit from tailored revisions to fix some unintended consequences. The so called ''super 23A'' provisions restrict regular bank clearing activities for certain covered funds for which an affiliate provides services, such as investment management. Clearing services are not risk-taking activities. As another example, the existing regulations inadvertently convert some foreign covered funds into banking entities subject to the entire rule set when the statute intended to exclude those activities if they take place outside the United States. The Proposal would properly address these issues. Unfortunately, it also goes much further in proposing regulatory reductions without careful consideration of the risks involved.

I will discuss three particular provisions to illustrate my concerns. First, the Proposal would exclude ''venture capital funds'' from the covered funds definition with some minor limitations that are not based on the risks involved. The Proposal acknowledges that, as stated in the final release for the current Volcker regulations, venture capital funds are private equity funds. The Proposal states that the venture capital fund exclusion is based in part on several statements by members of Congress regarding venture capital funds. However, a close reading of the four statements cited in the Proposal shows that three of the four do not call for a complete exclusion of venture capital funds. Congress could have excluded venture capital funds if that were the intent. It did not.

The justification for the broad venture capital fund exclusion is flimsy. The Proposal asserts the exclusion could ''promote and protect the safety and soundness of banking entities and the financial stability of the United States'' by allowing banks to ''diversify their permissible investment activities.'' [11] Unfortunately, virtually no analysis or information is provided as to whether such ''diversification'' is in fact a good thing. Allowing banks to invest in anything and everything would greatly increase diversification, but that absurd approach would not likely protect the safety and soundness of banks or our financial system.

A simple Google search reveals data indicating that venture capital investments historically have been high risk. One study found that about 75% of venture capital-backed firms in the United States did not return capital to investors.[12] A 2013 article in the Harvard Business Review noted that ''VC funds haven't significantly outperformed the public markets since the late 1990s, and since 1997 less cash has been returned to VC investors than they have invested.'' [13] The author goes on to note that ''[v]enture capital investments are generally perceived as high-risk and high-reward. The data in our report reveal that although investors in VC take on high fees, illiquidity, and risk, they rarely reap the reward of high returns.'' Although venture capital performs an important function in providing capital to new technologies, and has been critical in boosting our economy and global competitiveness, I do not think we should be permitting such investments by banks backed by U.S. taxpayers *without* analyzing the risks involved.

The Proposal would add another new exclusion from covered fund regulation for ''customer facilitation vehicles.'' This exclusion is concerning because it is not well defined and could potentially become an end run around the Volcker rule. In effect, a bank could be the counterparty for the instruments in the vehicle sold to customers and thereby take on substantial risks permitted as a result of the exclusion. These risks are not addressed in the Proposal.

The Proposal states that such funds or ''vehicles'' would be used to facilitate customer needs. The brief example given is of accommodating a bank customer that wants to purchase structured notes issued through a vehicle, not the bank, ''for certain legal, counterparty risk management, or accounting reasons specific to the customer.'' [14] However, unlike the ''credit fund exclusion,'' which limits the assets that may be held in such funds, the Proposal has no restrictions as to what instruments can be in the vehicle and whether the banking entity can be the counterparty for those instruments. A portfolio of complex derivatives or synthetic ''investments'' could be placed in the vehicle with the bank taking the other side of the trades.

Furthermore, the Proposal acknowledges that the so called ''customer facilitation'' vehicles can in fact be ginned up by the banks themselves and that ''marketing'' the vehicles to the customers is not restricted. In effect, a bank could now create a fund of investments that it wants to hold, put the underlying instruments into a ''vehicle'' and then market the other side of the investments to customers in the form of security ownership in the vehicle. This exclusion has the potential to create a large loophole for creative bankers to exploit.

Finally, there is a special exclusion created for billionaires: The new ''Family Wealth Management Vehicles'' exclusion. This provision would exclude so called ''family offices'' from Volcker covered funds regulation. Unlike the prior two examples, this exclusion is not likely to materially increase undesirable risk taking by banks.[15] Rather, it is concerning because it allows banks and wealth vehicles to avoid Volcker compliance. In my view, wealth vehicles for ultra-wealthy individuals do not need special regulatory relief.

As I noted recently in a statement opposing family office exemptions from several CFTC rules, family offices are not used by ordinary families who may have a modest degree of wealth. Rather, the extraordinarily wealthy—including hedge fund operators, bankers, and super wealthy entrepreneurs—create these organizations to preserve, grow, and pass on their wealth to their descendants.[16] According to the Global Family Office Report 2019, ''[t]he average family wealth of those surveyed for this report stands at USD 1.2 billion, while the average family office has USD 917 million in [assets under management].'' [17] The aggregate amount of wealth managed by family offices is staggering. By one estimate, the total assets under management by family offices is over $4 trillion, and the number of family offices has grown ten-fold in the last decade.[18] A recent Forbes article noted that ''[f]amily offices are now capable of making transactions that were traditionally reserved for big companies or private-equity firms and therefore are becoming a *disruptive force in the market-place.*'' [19]

Furthermore, there are indications that family offices for U.S. persons may be located

[9] Proposal, section II.

[10] While the Proposal lists four exclusions, the parallel investments permission is, in effect, an exclusion from regulation.

[11] Proposal, section III.C.2.

[12] Deborah Gage, *The Venture Capital Secret: 3 out of 4 Start-Ups Fail,* Wall Street Journal (Sept. 20, 2012), (citing research by Shikhar Ghosh, a senior lecturer at Harvard Business School), available at *https://www.wsj.com/articles/SB10000872396390443720204578004980476429190.*

[13] Diane Mulcahy, *Six Myths About Venture Capitalists,* Harvard Business Review (May 2013), available at *https://hbr.org/2013/05/six-myths-about-venture-capitalists.*

[14] Proposal, section III.C.4.

[15] The Proposal would only allow a de minimis investment in such vehicles by banking entities.

[16] Registration and Compliance Requirements for Commodity Pool Operators (CPOs) and Commodity Trading Advisors: Family Offices and Exempt CPOs, 84 FR 67355, 67369 (Dec. 10, 2019). According to one guide to family offices:

[T]he modern concept of the family office developed in the 19th century. In 1838, the family of financier and art collector J.P. Morgan founded the House of Morgan to manage the family assets. In 1882, the Rockefellers founded their own family office, which is still in existence and provides services to other families.

EY Family Office Guide, *Pathway to successful family and wealth management,* at 4, available at *https://www.ey.com/en_us/tax/family-office-advisory-services.*

[17] Campden Research and UBS, *The Global Family Office Report 2019,* at 10, available at *https://www.ey.com/en_us/tax/family-office-advisory-services.*

[18] Francois Botha, *The Rise of the Family Office: Where Do They Go Beyond 2019?,* Forbes (Dec. 17, 2018), available at *https://www.forbes.com/sites/francoisbotha/2018/12/17/the-rise-of-the-family-office-where-do-they-go-beyond-2019/#426044f55795.*

[19] *Id* (emphasis added).

in offshore tax havens to avoid paying U.S. taxes.[20] Financial regulators should not provide special and favorable regulatory treatment to benefit those who seek to avoid paying their fair share of U.S. taxes.

[20] Kirby Rosplock, The Complete Family Office Handbook, A Guide for Affluent Families and the Advisors Who Serve Them, at 5 (Bloomberg Press 2014).

Conclusion

The Volcker Rule and related regulations are complicated. The regulations deserve careful, reasoned reassessment to maintain their effectiveness. Unfortunately, the Proposal is neither reasoned nor careful. It ignores the risk-reducing public policy for the Volcker rule and effectively acknowledges the fact that this rollback is driven by complaints from the very banks the rule is intended to make safer. No effort is made to assess the risks that the Proposal will now allow banks to assume. I cannot support the proposed changes to the Volcker rule because they do not conform to the statutory mandate for the rule and the Proposal does not carefully analyze the effect of the changes on the safety and soundness of our financial system. I therefore dissent.

[FR Doc. 2020–02707 Filed 2–27–20; 8:45 am]

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